I.
CAPITOL
OBSERVATIONS

SOME POLITICIANS JUST DON’T GET IT

My mama used to tell me you can always tell lots about a person by what they have to say and specifically by their choice of words. Over the years I have found that to be very true. In fact, what politicians say pretty much defines them and their vision for the people they are supposed to represent. I believe most folks in this country—regardless of political leanings—want our elected officials to represent all of the people in a bi-partisan manner and understand their needs and be sensitive to them. In order to do that the official must understand the needs and designs of ordinary folks. Let’s see what the man who wants to defeat President Obama and hold the highest office in the land had to say during the GOP primaries.

I’m not concerned about the very rich, they’re doing just fine. Corporations are people, my friend. Of course they are! I’m not concerned about the very poor. We have a safety net there. I like being able to fire people who provide services to me.

Mitt Romney

These statements by Gov. Romney—in his own words—tell us a good bit about the man and also about his vision for America. Unfortunately for most Americans, he made the cut in the primaries, will be the GOP standard bearer, and has a chance to win in the fall.

But Romney will have a difficult time explaining his belief that a corporation is a person and that he isn’t concerned about the dire plight of the poor in the U.S. But considering his track record, I wouldn’t be surprised if he took another view or just flatly denied ever having made any of the statements. In any event, the Romney vision for our country excludes the overwhelming majority of Americans. However, the super-rich, who are bankrolling his campaign through the Super-PACs, have to really like what their candidate says and actually believes.

THE AMERICAN PEOPLE DESERVE
BI-PARTISANSHIP IN CONGRESS

John Archibald wrote a piece in the Birmingham News recently on the need for bi-partisanship in the operation of government that hit the nail squarely on the head. The columnist wrote that we as a people have become too bitter and too partisan for our own good as a community and as a nation. He is absolutely on target. It’s high time we learn once again to work together to solve our problems. I can recall times in years past when members of Congress could sit down in Washington and work out tough issues when national security or the public interest was at stake. But those days are long gone, which is a sad commentary on our times.

There were a number of on-line responses to Mr. Archibald’s article that found common ground with his concerns. I believe that the American people are sick and tired of how Congress has refused to act in a bi-partisan manner on important issues. The goal of the GOP leadership from the outset was to make Obama a one-term president. That has never been the case—at least to the extreme we have seen over the past three years—with any other president. Hopefully, the members of Congress will listen to the folks back home and come back to our Nation’s Capitol next year with a much different mindset and will try to work together for the good of our country.

Source: The Birmingham News

MORE ON THE ATTACKS ON PUBLIC EMPLOYEES

Several of our readers have asked me to expound on the motivation for all of the vicious attacks on public employees. Some wanted to know who really is behind the attacks. While the attacks surely do smell like the work of the infamous Karl Rove, I suspect they come from a group of highly-paid consultants who are under the control of Rove, the Koch brothers, and other right-wing billionaires. The slash-and-burn approach being used, which is vintage Rove, is really a veiled attack on the middle class. I am convinced those in that group of Americans are the real targets of the attacks. The damage to the middle class, resulting from the direct attacks on public employees and teachers, making them out to be the “bad guys” in society, will come after the elections are over. That’s because an uninformed middle-class will tend to vote against their own economic interest. That results in those being elected owing their allegiance to the powerful corporate special interests. The attacks drive the uninformed to the voting ranks of the super rich in Corporate America and therein lies the problem.

We have already seen some effects of the continuing attacks. The all-out assault on public sector workers last year, which has carried over into 2012, resulted in the passage of highly oppressive legislation in a number of states. The targets were federal and state employees, teachers, policemen, firefighters, sanitation workers, park rangers, air traffic controllers, judicial system employees and just about everybody else holding public service jobs. The messages from the “corporate hucksters” were “fire them”—“break up their

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unions”—cut their pay—‘slash their pensions’—and ‘increase their work loads.’

The overall theme of the attacks was to lump all public employees into one category and scorn them at every opportunity. If you look back over the past 18 months, you will find those to be the tactics utilized by the Rove–Koch brothers team on a consistent and recurring basis. While the attacks got results in several state legislative bodies, I believe the tactics may backfire in the long run. History tells us that folks can only be fooled for so long, and when they finally figure out that voting against their own interests simply doesn't make sense, they will refuse to vote for candidates like Gov. Romney, Newt Gingrich and other Tea Party candidates.

II.
A REPORT ON THE GULF COAST DISASTER

OIL SPILL COURT-SUPERVISED SETTLEMENT PROGRAM ON SCHEDULE

On June 4, 2012, the Gulf Coast oil spill Court Supervised Settlement Program will open, and thousands of Gulf Coast residents harmed by the Deepwater Horizon oil spill will be able to file claims for their damages. As we have reported, the settlement reached by the Plaintiffs’ Steering Committee is a historical settlement whereby businesses and individuals will be compensated based on their unique financial position. The economic settlement is set out in a 1200 page document. It will be administered by Pat Juneau in New Orleans, La, and will cover a multitude of different claim types, including:

- Various tourism-related economic loss claims for businesses;
- Commercial shrimpers, oystermen, fin fishermen, and crabbers;
- Commercial fishing deckhands;
- Marinas;
- Charter boat captains and fishermen;
- Seafood processor and wholesaler claims;
- Hotels, condominiums, rental properties, and rental agencies;
- Restaurants;
- Recreational and entertainment businesses, such as water sport businesses and theme parks;
- A variety of spill-related loss of wage claims for lost commissions or wages as a result of the spill;
- Gulf-front property use and enjoyment claims;
- Realized losses on real estate sales during the oil spill;
- Vessel of Opportunity claims;
- Physical boat damage claims;
- Subsistence claims.

While many may concentrate on the types of claims covered, it’s also very important to understand what areas are covered under the settlement. The settlement provides compensation for those who qualify in the states of Louisiana, Mississippi, Alabama, four counties in Texas, and the Panhandle and Western-most counties of Florida. For this reason, businesses and individuals within the settlement’s geographic coverage should take a good look at their financials to determine whether they may have a claim. Lawyers in our firm have fielded calls from businesses and individuals further inland from the coast and calculated significant claims for them under the spill settlement.

In addition to the economic settlement, a separate and equally ground-breaking medical settlement will also open on June 4, 2012. It will be administered by Matthew Garretson of The Garretson Firm Resolution Group. For residents who qualify and cleanup workers, Claimants will be entitled to up-front money compensation for symptoms related to their exposure, a 21-year medical consultation program, and a back-end litigation option against BP for any hidden illnesses that develop later as a result of exposure to oil and dispersant. Given the extreme difficulty in litigating toxic tort exposure cases and obtaining medical consultation programs, we believe this settlement is a very good result for Gulf Coast residents.

Our firm is in the process of preparing claims to file with the settlement program as soon as it opens. Many businesses and individuals have multiple claims. It’s very important that Claimants bring all of their qualifying claims in the settlement—otherwise, they could be lost forever. In addition, claimants with claims that qualify in the settlement must decide by October 1, 2012 whether they want to participate in the settlement. That is critically important.

Lawyers in our firm continue to assist our clients in either the settlement process, or for those who do not qualify under the settlement, outside the settlement process. If you have any questions about the settlement process or about an oil spill claim, we have separated our lawyers by client type:

- For questions about commercial and tourism-related businesses, contact John Tomlinson at John.Tomlinson@beasleyallen.com.
- For questions about real estate, rental property, and rental agency claims, contact Chris Boutwell at Chris.Boutwell@beasleyallen.com.
- For questions about loss of wage claims, contact William Sutton at William.Sutton@beasleyallen.com.

JUDGE BARBIER SETS SCHEDULE FOR TRIALS

The trial to assign blame and damages for the 2010 Gulf of Mexico oil spill has been set for January 14, 2013 by Judge Carl Barbier. Thus far well over 350 witnesses have been deposed and about 100 million pages of documents have been produced by Defendants in the case. This litigation is moving at a rapid pace and that’s a good thing. The January trial will be in two phases—one dealing with causation and the second addressing post-spill activities and efforts to stop the flow of oil.

Other companies in the case are Transocean, Halliburton, Anadarko Petroleum Corp., which owned 25% of the Macondo well; Cameron International Corp., which made a blowout preventer, and Schlumberger NV’s M-I Swaco venture, which provided mud services. All have settled with BP. Mitsui & Co’s MOEX USA unit, which owned 10% of the well, has also settled with BP, and in February agreed to pay $90 million to settle with the federal government.

Source: Insurance Journal

JUDGE RULES FOR THE FEDERAL GOVERNMENT IN SUIT CHALLENGING DRILLING LEASES

Chief U.S. District Judge William Steele in Mobile, Ala., has ruled for the federal government in a lawsuit accusing regula-
tors of short-cutting permitting rules to oil drillers in the wake of the Gulf of Mexico oil spill. The environmental group, Defenders of Wildlife, filed the suit in 2010 against what was then known as the Minerals Management Agency for accepting some 300 bids from oil companies for drilling leases in the Gulf after the April 20, 2010, explosion of the Deepwater Horizon drilling rig. The group sought a court order vacating all leases granted after the oil spill. The group also sought an order requiring the agency to take the effects of the spill into account in evaluating future lease sales.

Judge Steele ruled that granting the bids did not prevent the agency—now known as the Bureau of Ocean Energy Management—from later conducting a more rigorous review taking into account new information provided by the spill. It was very clear that Judge Steele made it clear in his ruling that his review was narrow, when he wrote:

In considering these claims, this Court’s inquiry is not whether it agrees with BOEM’s actions, or whether it would have proceeded differently but it been standing in BOEM’s shoes on April 20, 2010.

Judge Steele determined that the Plaintiff had not met its burden of proving that the agency acted “arbitrarily and capriciously” in implementing the bid approval process. He wrote to that issue:

This case is confined to the narrow question of ESA compliance at the lease sale stage, and this Court will not overstep jurisdictional and pleading boundaries to evaluate the agency’s compliance (or lack thereof) at subsequent stages.

According to lawyers for the wildlife group, the limited effect of the ruling is crucial because it means environmentalists will have a chance to challenge the agency to take the effects of the spill into account in future lease sales.

III. DRUG MANUFACTURERS FRAUD LITIGATION

PHARMACEUTICAL COMPANIES MUST BE HELD FULLY ACCOUNTABLE FOR DEFRAUDING THE GOVERNMENT

Recent polling shows that the American people want pharmaceutical companies to be held fully accountable when they commit fraud against the government. Based on what I have learned in litigation, I certainly believe they should be held accountable. Public Citizen strongly supports a measure proposed by U.S. Sen. Bernie Sanders (I-Vt.) that would more effectively curb fraudulent activity committed by the pharmaceutical industry against the federal and state governments. The provision, contained in an amendment to S.3187, the Food and Drug Administration Safety and Innovation Act (the renewal of the Prescription Drug User Fee Act) would rescind data exclusivity rights of a pharmaceutical product granted under the Food, Drug and Cosmetic Act if the company marketing that product is found, or admits to, engaging in unlawful activity involving the drug. Data exclusivity refers to the exclusive marketing rights granted by the federal government to most brand-name pharmaceuticals for several years following approval. The passage of such an amendment has never been more necessary. Over the past two decades, the pharmaceutical industry has emerged as the biggest defrauder of the federal government under the False Claims Act and has paid $23 billion in settlements and fines to the federal and state governments for myriad civil and criminal violations of this Act and other laws. This illegal activity has cost the taxpayers dearly while putting the public’s safety at risk. Companies engaging in off-label promotion of pharmaceuticals—the most common violation—bypass the Food and Drug Administration’s critical review process, which can endanger patients. Other companies are committing pricing fraud of already overstretched Medicare and Medicaid programs.

Despite a recent increase in settlements and convictions, the financial penalties handed down are so small relative to industry profits that the companies simply factor them into the cost of doing business. The penalties paid by all pharmaceutical companies in the past 21 years comprise just more than half the profits made by the ten largest pharmaceutical companies in a single year (2010). In addition, company heads almost always escape without punishment for overseeing this fraudulent activity.

The proposed amendment would add a critical tool to the federal government’s enforcement efforts, while serving as an effective deterrent against further fraud. Pharmaceutical companies already generate enormous profits through government-granted data exclusivity rights. The Sanders amendment simply put would make those exclusivities contingent on a company following the letter of the law. This is hardly a radical proposition. It must be adopted to help put an end to the ongoing fraud perpetrated by the pharmaceutical industry. If you agree that this industry must be held accountable, contact your Senators and ask them to support Sen. Sanders’ efforts.

Source: Public Citizen

ABBOTT LABORATORIES TO PAY $1.6 BILLION OVER MISBRANDING DRUG

Abbott Laboratories has pleaded guilty and agreed to pay $1.6 billion to resolve its criminal and civil liability arising from the company’s unlawful promotion of the prescription drug Depakote. The U.S. Justice Department announced the settlement on May 7th. Acting Associate Attorney General Tony West said it was a case of Abbott “putting profits ahead of patients.” The total includes a criminal fine of $700 million and civil settlements with the states and federal government totaling $800 million. Abbott pleaded guilty to a criminal misdemeanor for misbranding Depakote.

In addition to and separate from the DOJ settlement, Abbott agreed to pay 45 states a total of $100 million to resolve its liability under state consumer-protection laws. In combination, it will be the second-largest fraud settlement involving a drug company, behind only the $2.3 billion Pfizer settlement in 2010. It is the third-largest fraud settlement in a case involving the government in any field. Abbott pleaded guilty to misbranding Depakote by promoting the drug to control agitation and aggression in

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patients with elderly dementia and to treat schizophrenia. Neither use was approved by the Food and Drug Administration. Pfizer knew exactly what it was doing, ran the risk and made billions along the way.

Top Justice Department officials led by Deputy Attorney General James Cole were joined by Virginia state officials who began the investigation after they were approached by whistle-blowers. The federal government reportedly will receive about $560 million from the civil settlement. The total expected to be divided among all 50 states is about $240 million. The whistle-blowers will receive a total of $84 million. According to U.S. Attorney Timothy Heaphy of the Western District of Virginia, Abbott earned about $13 billion from Depakote sales during the period investigated. But Heaphy said it was difficult to determine how much of that was the result of sales for illegal purposes. Once the fines are factored in, Heaphy says Abbott will not have profited from the improper practices.

As we have written in previous issues, under the law, a drug maker’s promotional activities must be limited to uses approved by the FDA. Promotion by the manufacturer for “off-label” uses renders a product misbranded. In this case, Abbott pleaded guilty to misbranding Depakote by promoting the drug for off-label uses. Abbott will be subject to court-supervised probation and reporting obligations for the company’s CEO and board of directors. According to the Justice Department, it was unable to link the illegal prescriptions to any deaths. The drug manufacturers are willing to run the risk of getting caught when promoting and selling drugs for off-label use. When a drug company markets and sells a drug for a use that hasn’t been approved by the FDA, there can be both safety and efficacy issues. The reason drugs are not approved for certain indications is because evidence does not exist to satisfy the FDA that they are safe and effective for those purposes. It’s shocking that drug companies continue to put their profits over the welfare of the public.

Congress has allowed the powerful drug manufacturers to virtually control what happens in both the House and Senate for years. The Justice Department must continue to prosecute wrongdoers who cheat and violate the law. Congress must give the FDA the ability to get a needed job done and that’s properly regulating the powerful drug industry.

Source: CNN

**State Attorneys General Push For Generic Drug Legislation**

State Attorneys General have urged Washington lawmakers to pass a bill that would allow for generic drug makers to face the same liability as brand name drug companies for failing to include adequate warnings on drug labels. In a letter to Senate Judiciary Committee chairman Sen. Patrick Leahy, D-Vt., 41 state Attorneys General urged the passage of the Patient Safety and Generic Drug Labeling Act, S. 2295. The bill, introduced by Sen. Leahy, would require generic drug manufacturers to update their warning labels to protect patients from previously unknown side effects.

The bill would overturn the U.S. Supreme Court’s ruling in *PLIVA v. Mensing*, which held that state-law failure-to-warn claims against generic drug makers were preempted by federal law, which requires generics to carry the same labeling as their brand name counterparts. The Attorney General’s letter stated:

> This preemption bolding produces arbitrary and unfair results, as both the majority and dissenting opinions in *PLIVA* recognized. Consumers whose prescriptions happen to be filled with the brand-name version of a drug are protected by state law from inadequate warnings, but consumers whose pharmacists fill their prescriptions with the generic version are now denied this protection. The adverse consequences are magnified by the fact that over 70% of prescriptions in the United States are filled with generic drugs.

The Attorneys General join others, including the American Medical Association, Public Citizen, AARP and the Alliance for Justice in pressing for passage of this badly-needed legislation. If you agree with their stand—that generic drug manufacturers should be required to give needed safety warnings—then contact your U.S. Senators and ask them to support this important legislation.

Source: Lawyers USA Online

**More On The Need For Reform Of A Broken System**

I wrote last month about the adverse effects of the U.S. Supreme Court’s decision in the *Citizens United* case and how it had literally changed the political landscape in this country. Several of our readers have asked if there is any way to find out who is actually financing the Romney Campaign through the SuperPACs. In fact one reader asked if it’s possible for foreign countries like China or Iran to dump huge sums into a SuperPAC without their donations being disclosed to the voters before the November election. While I hope that no foreign country would do that, such donations are certainly possible. In fact, some observers believe it’s probable.

We do know that corporate billionaires such as the infamous Koch brothers—who bankrolled the Tea Party—are funding front groups like “Americans for Prosperity.” Usually a name like that spells trouble and is not good for ordinary folks. We also know that Karl Rove has been able to raise hundreds of millions to use in both the Presidential and Congressional campaigns from huge corporations whose names and motives go undisclosed.

A prime example of what has happened since *Citizens United* involves an anonymous donor who gave $10 million late last year to pay for political ads attacking President Obama and Democratic policies. This money was run through Crossroads GPS, a Super-PAC which was founded and run by none other than Karl Rove. We will see much more of this sort of thing in the Presidential campaign over the next six months. In the new, free-wheeling environment of post-*Citizens United* political giving, the identity of this donor, like many others, will remain a permanent mystery.

Without question, the campaign financing system on the national level is broken. Unfortunately, it won’t be fixed this year. As a result, we will witness the most expensive political campaign in the ongoing Presidential race and we won’t know where the vast majority of the money comes from. That’s a scary thought! So all the American people can do at this juncture is to get involved with and support candidates who believe in full disclosure of where money received by or on behalf of all candidates is coming from. Candidates must be supported who understand the

Source: www.JereBeasleyReport.com
It's Dangerous To Be A Moderate In The GOP

Senator Richard Lugar—who had served in the U.S. Senate for years—was beaten badly in his bid for a seventh term. His defeat by over 20 points by Tea Party candidate Richard Mourdock put the six-term Republican from Indiana into forced retirement. While the Tea Party zealots are claiming full credit for the defeat of Sen. Lugar, some credit needs to go to Mourdock who has served two terms as State Treasurer.

I believe the real message to be taken from the race in Indiana is that a candidate for Congress who is either a moderate or a person who has been in office with a record of having worked in a serious, bipartisan manner will have an uphill battle in a GOP primary. Those who are bankrolling the Tea Party won’t allow anybody to be elected to either the U.S. Senate or House of Representatives who doesn’t subscribe to a partisan, scorched-earth approach to public service. That definitely is the litmus test used by the Tea Party bosses when it comes to evaluating new congressional candidates. But how long will real card-carrying Republicans put up with it? I believe Independent voters will be turned off by this sort of thing and it will wind up backfiring on the billionaires bankrolling the Tea Party whose real goal is to control Congress.

V. LEGISLATIVE HAPPENINGS

A Look Back At The Regular Session In Alabama

It appears that the Republican-controlled House and Senate had many more failures than successes during the recently completed Regular Session. The failure to face reality concerning state finances, and ignoring obvious needs, were tremendous disappointments. Once again, the current legislature followed the “kick-the-can down the road” and “borrow from Peter to pay Paul” agendas. Those have been the solutions utilized over the past ten years when dealing with most tough financial problems and for other major problems facing our state. I believe there is a very good reason why our state is having the financial difficulties we are currently facing. Past failures to make public education at every level the top legislative priority is inexcusable, and, in my opinion, is the root cause of most of our state’s problems.

However, one good result in the Session—as it relates to education—was the failure of the push for charter schools in Alabama. I can see no good whatsoever that can come from the creation of charter schools, especially when we have over the past ten years consistently under-funded our current system. Some believe charter schools may just be a clever way for some in the private sector to profit financially. In any event, the efforts to create charter schools failed and I believe that was a good thing for Alabama citizens.

Another failure was the blatant refusal to correct the tremendous problems created by the passage of last year’s infamous Immigration bill. I firmly believe that law should be repealed. But at the very least, meaningful changes are needed to improve—to the extent possible—a very bad law; and one that should never have been passed. Now the Legislature has passed a bill that some say will make bad matters worse. A state that is flat broke will now have to enforce the law at great cost.

The effects of the Immigration law, as amended, will cripple our state economically for years. If Bull Conner were still around today, he would be proud of what this Legislature has done. Some observers say the only things missing from the Conner days are the water hoses and police dogs. Sadly, the spirit behind passage of this law comes from the same political mindset that existed during the Conner days in our state. Indeed, this Immigration law is a sad commentary on the legislative priorities that have been on exhibit for the last two years.

The Court System Is Saved For Now

Fortunately, the Legislature passed legislation that will keep the courthouse doors open in Alabama. The judicial system must be adequately funded and this effort at least solved the problem for the short term. Had the legislators not acted, circuit clerks’ offices around the state would have been virtually shut down. Neither would the courts have been able to function. But we must now have a long term solution for funding the court system. That’s because the constitution requires it and the people of Alabama deserve it.

Comprehensive Sentencing Reform Bill Passes In Alabama Legislature

After years of failed attempts at real sentencing reform in Alabama, including a ten bill package backed by a former Chief Justice of the Alabama Supreme Court, the Alabama Legislature passed a bill that will bring true sentencing reform to Alabama. The legislation is modeled upon Texas and Virginia’s successful sentencing reform legislation. The Alabama bill was written and sponsored by Senate Judiciary Chairman Cam Ward and Representative Alan Farley. The new law, which was supported by Gov. Robert Bentley, changes the make-up of the Sentencing Commission, mandates that the recommendations of the commission become effective unless specifically rejected by the Alabama Legislature, and requires truth-in-sentencing guidelines by 2020. This may wind up being one of the best things done by this legislature.

No More Texting While Driving In Alabama

Alabama has finally joined the vast majority of states with a statewide ban against texting while driving. Gov. Robert Bentley signed a bill into law last month that will become effective on August 1, 2012. The Senate and House unanimously approved this legislation that will make emailing and texting while driving illegal. Many cities, including Huntsville and Madison, have already enacted no-texting ordinances aimed at drivers. This new statewide law will cover areas in between.

Thirty-seven states already ban text messaging for all drivers, according to the Governors Highway Safety Association in Washington. Hopefully, the Legislature’s next focus will be a move toward allowing only hands-free wireless devices for drivers. That is badly needed since sending text messages while trying to drive is both foolish and outright dangerous. Even just a few seconds of inattention can prove fatal to a driver, a pedestrian or bicyclist, or other motorists. No text is really so important that it can’t wait. Sending a text message is never worth the risk of causing a highway collision. All drivers should remember their cell phone records can be subpoenaed in a lawsuit.

While this new text ban law will be difficult to enforce, its passage is certainly a good thing. If nothing else, the knowledge
that it’s against the law will deter some drivers from texting. In that event it will have achieved its purpose. The new law will ban anyone from operating a vehicle on a public road or highway while manually using a cellphone or other wireless device to communicate by text message, instant message or electronic mail. Each conviction will carry a 2-point penalty on a person’s driving record. A person’s driver’s license is suspended for at least 60 days if he or she gets 12 or more points in a two-year period.

The new law won’t ban people from talking on cellphones while driving, a restriction that some states have imposed. I believe that such a ban is also needed. Drivers using cellphones are four times more likely to get into crashes serious enough to kill or injure themselves, and possibly others. Studies show cell phone use while driving can be every bit as dangerous—and sometimes more so—as drinking drunk.

Source: AL.com

PACKAGE OF INSURANCE BILLS BECOME LAW

Several legislators from Baldwin and Mobile counties, with help from others, worked hard to secure passage of a package of insurance bills that were badly needed in the coastal counties. The Alabama Legislature passed all six of these bills. Gov. Robert Bentley has signed the bills into law which includes:

• Senate Bill 210, which mandates that insurers send information to the state Department of Insurance on how many policies they write, how much they charge for premiums and how much they lose because of claims. The Department would aggregate the data and then publish it on an online database that is publicly accessible and searchable by ZIP code.

• Senate Bill 230, which will give tax credits to insurance companies that write policies in particular areas of south Alabama.

• Senate Bill 164, a bill favored by insurance companies that will allow insurers based in Alabama, including Alfa Mutual Group, to make new, potentially more-profitable, out-of-state investments.

• Senate Bill 227, which will allow homeowners to create “catastrophe savings accounts,” with tax breaks similar to those of retirement accounts that could be used to help pay for storm damage.

• House Bill 227, the Homeowners Bill of Rights Act, will require that companies send a checklist to their customers each year that shows which types of coverage are included in their policies and which are not.

• House Bill 323, will establish insurance fraud as a crime and provide penalties for insurance customers and companies found guilty of such action.

Rep. Steve McMillan, who is from Baldwin County, and who has been a long-time champion of insurance reform, called passage of the bills a significant victory. Both Steve and Senator Ben Brooks from Mobile are to be commended for their hard work and dedication to this worthy cause. But there is one slight difference of opinion between these two legislators relating to reform of our insurance laws in Alabama. While Rep. McMillan apparently believes nothing more needs to be done, Sen. Brooks says there is much left to do in order to totally improve things. In any event, the passage of these bills was a start in the right direction.

Source: AL.com

LIMITED SUCCESS ON CONSTITUTION REFORM IN ALABAMA

Rep. Paul DeMarco, who is from Homewood in Jefferson County, was successful in securing passage of the first two rewritten articles of the 1901 Constitution of Alabama by the Legislature. Unfortunately, it took six years to get this done. Rep. DeMarco believes this is “the most effective way to get constitutional reform.” He is convinced the article by article approach is best.

There has been very little progress for decades in getting a new constitution to replace the constricting, racist, heavily-amended 1901 model. At any rate, there’s good reason to believe the Legislature will approve rewritten articles more effectively, thanks to the work of the Constitution Revision Commission. Last year, Senate Pro Tem Del Marsh sponsored the resolution creating the commission and the Legislature approved it. Sen. Marsh wants to make revising the constitution a priority after years with lots of talk, but little action.

Clearly, much of the state’s unjust tax system, unfairly burdens poor and middle-class families and hamstrings governments. It’s embedded in the constitution. At some point, the Legislature must deal with the taxation article. But until then, the article-by-article approach will have to suffice. If voters approve Rep. DeMarco’s first two articles in November, we will get a good idea of how successful the effort ultimately will be.

I understand the next goal is to rewrite the legislative article, which will include addressing whether the Legislature should give some of its power to local governments in favor of what is known as “home rule.” For a revised constitution to be worth the effort, it must give local governments more ability to run their own affairs and not have to rely on the Legislature. That will be the test of whether an article-by-article approach is truly effective.

Source: Birmingham News

VI. COURT WATCH

THE NUMBERS OF WHISTLEBLOWER CASES ARE GROWING

Whistleblower cases represent one of the fastest growing areas of consumer litigation in the country. This is especially true of claims brought against certain practices in the health care industry. Studies have shown that up to 10% of Medicare and Medicaid charges are fraudulent. That should shock even my Tea Party friends. Common examples of Medicare and Medicaid fraud include:

• Billing more than once for the same service;
• Charging for services not performed;
• Offering free items or services in exchange for a Medicare or Medicaid number;
• Billing for expensive equipment while providing cheaper equipment; and
• Someone other than the physician completing the certificate of medical necessity.

The Obama Administration demonstrated great foresight in advocating for increased funding for the Department of Justice to prosecute these cases. USA Today reports that in 2011, the federal government brought in a record $2.3 billion in whistleblower settlements and judgments. This amounts to $7 for each $1 spent by the government fighting fraud. Steven Kohn, director of the non-partisan National Whistleblowers Center, told USA Today that the law could be used even more aggressively. He stated:
About 3,500 fraud cases have not been investigated. Why don’t they get the resources? For every case they prosecute, they bring in more money.

In many instances, whistleblower cases are litigated in partnership between the Department of Justice and the private law firm that initially filed the case on behalf of the whistleblower Plaintiff. Most whistleblowers first report fraud to company managers and are routinely ignored. They then turn to private counsel or law enforcement when they grow frustrated that the fraud continues.

Whistleblower suits are filed under seal, and the government is given an opportunity to investigate the case and intervene if it chooses to do so. The government can recover treble damages under the law, and private Plaintiffs and their counsel can recoup fees up to 30% of the amount recovered. We have several lawyers in our firm handling whistleblower cases. To learn more, you can contact either Dee Miles (Dec.Miles@beasleyallen.com), Larry Golston (Larry.Golston@beasleyallen.com), Archie Grubb (Archie.Grubb@beasleyallen.com), or Andrew Brashier (Andrew.Brashier@beasleyallen.com), lawyers in our Consumer Fraud Section. You can also visit our website for more information at https://www.beasleyallen.com/focus/whistleblower/.

**Judge Blocks $90 Million Insurance Settlement For Lehman Directors And Officers**

A federal judge has refused, at least for now, to allow insurers for former officers and directors of Lehman Brothers Holdings Inc. To pay $90 million to settle a fraud lawsuit brought by investors on May 4th. U.S. District Judge Lewis Kaplan, in Manhattan, directed five former officers of the investment bank, including Chief Executive Richard Fuld, to file financial paperwork to prove the claim.

He contended that his claim was related to claims-handling and thus was not precluded by federal law. The lower court had agreed that the claim was related to claims handling and thus was not precluded by federal law. The Supreme Court in the decision, In re: Lehman Brothers Securities and ERISA Litigation, U.S. District Court, Southern District of New York, No. 08-05523, ruled that preemption applies in disputes related to claims. The Court found the dispute in the case to be claims-related.

James P. Grissom, the homeowner, had purchased flood insurance for his home in Pascagoula under the National Flood Insurance Program. Liberty Mutual was his insurance carrier under the NFIP’s “Write Your Own” program. Following the destruction of his home by Hurricane Katrina, the homeowner sued Liberty Mutual for “negligent misrepresentation” to recover the difference between the coverage he had and the coverage he could have purchased under the preferred risk policy. He contended that his claim was related to insurance procurement rather than claims-handling and thus was not precluded by federal law. The lower court had agreed with the homeowner that his claim was an insurance procurement matter and therefore not preempted by federal law. The result on appeal was to the contrary, applying preemption to what the Court found to be a claims-handling matter.

Source: Insurance Journal

**A Defense Verdict In Second Trial Of Asbestos Case**

The jury returned a defense verdict on the retrial of a case that had involved the largest single victim’s asbestos award in U.S. history. In May of last year the first jury returned a $322 million verdict in favor of Thomas Brown. This man, who worked his entire adult life in the Gulf Coast drilling business as a “roughneck,” claimed he developed asbestos and that it was caused by inhaling raw asbestos powder he used to mix with drilling mud as part of his job. The verdict in the first trial, consisting of $22 million in compensatory damages and $300 million in punitive damages, was against Union Carbide and Chevron Conoco Phillips.

On the appeal by Union Carbide, the Mississippi Supreme Court reversed the verdict, throwing it out completely, and removed the trial judge, saying he had failed to disclose on the record that his parents were involved in similar litigation. The Supreme Court in the decision, also moved the trial of the lawsuit from Smith County to Jones County, where a new jury heard the case and returned a Defense verdict. This was a strange turn of events, but one that definitely worked out well for Union Carbide.

Source: Lawyers USA Online

**Court Reverses Mississippi Award In Flood Policy Case**

Liberty Mutual Fire Insurance Co., a company selling federal flood insurance, has won the case filed against the insurer by a Mississippi homeowner. It was claimed in the suit the insurer was negligent in not informing the homeowner that he was eligible to buy a preferred risk policy with more coverage than he had under his regular flood policy. The U.S. Court of Appeals for the Fifth Circuit ruled against the homeowner who in a Hurricane Katrina claim sought the difference between the coverage he had and the better coverage he could have had under a preferred risk policy at a lower cost.

In its decision, the Appeals Court reversed the verdict of the jury which had been for the homeowner in the district court. The key question on appeal was whether Liberty Mutual’s failure to inform its current insured that he might be eligible for a better insurance policy constituted a “claims handling” or an “insurance procurement” issue. While federal law does not preempt state law in insurance procurement disputes, the Appeals Court ruled that preemption applies in disputes related to claims. The Court found the dispute in the case to be claims-related.

Source: Insurance Journal

**VII. THE CORPORATE WORLD**

**Citizens Bank Joins The Ranks Of Banks Settling In Overdraft Fees Litigation**

Citizens Bank has become the latest institution to settle a class-action lawsuit over the banks changing the order of customer payments to increase the amount they could collect in overdraft fees. The overdraft fees are charged when customers, by
writing checks or using debit cards, spend more than is available in their checking accounts. Citizens Bank, part of Citizens Financial Group and a unit of the Royal Bank of Scotland, will pay $137.5 million to settle the lawsuit. The settlement must be approved by the court. Based in Providence, R.I., Citizens has 1,500 branches in states stretching from New England all the way to the Midwest.

The lawsuit, filed in a Miami federal court, involves more than a dozen banks. Bank of America last year settled for $410 million, and JPMorgan Chase agreed in February to settle for $110 million. At issue in the litigation is the way in which banks process customer transactions. The suit contends that the banks reordered transactions to pay the largest amounts first—instead of in the order in which they actually occurred—so that overdraft fees piled up more quickly than they otherwise would have. Many banks have since abandoned the so-called “high-to-low” processing, in favor of processing transactions in chronological order. Nevertheless, overdraft fees—and services that banks offer to help customers avoid them—are still an area of concern for federal regulators.

The bank was accused of manipulating its customers’ debit card and ATM transactions in order to generate excess overdraft fee revenues for the bank. The lawsuit, part of multidistrict litigation involving more than 30 different banks entitled, is pending before U.S. District Judge James Lawrence King in Miami. The case is styled In re Checking Account Overdraft Litigation, case number 09-cv-02036. Citizens Bank is part of Citizens Financial Group which, through RBS Citizens, N.A. and Citizens Bank of Pennsylvania, operates more than 1,500 retail banking branches throughout the Northeast, the Mid-Atlantic and the Mid-West.

It is claimed in the lawsuit that Citizens Bank employed software programs designed to extract the greatest possible number of overdraft fees from its customers. It’s alleged that Citizens Bank resequenced its customers’ debit card and ATM transactions by posting them in highest-to-lowest dollar amount, rather than in the actual order in which the transactions were initiated by the customers and authorized by the bank. This internal bookkeeping practice resulted in Citizens’ customers being charged substantially more in overdraft fees than if their debit card and ATM transactions had been posted in the order in which they were authorized by the bank, according to allegations in the lawsuit.

The settlement with Citizens Bank is expected to be presented to the Court for approval later this year. Settlements with a number of other banks have been announced over the past six months. Bloomberg News recently reported that the new Consumer Financial Protection Bureau is looking at overdraft protection offered at nine large banks, to see if the rules governing the service need to be revised.

Robert C. Gilbert, a lawyer with Grossman Roth in Miami, serves as Plaintiffs’ Coordinating Counsel overseeing and managing all cases in this multidistrict litigation proceeding. In addition to Gilbert, the principal lawyers involved in the Citizens Bank case are Aaron Podhurst and Peter Prieto of Podhurst Orseck in Miami, and Ted Trief of Trief & Olk in New York. They have done very good work in this matter.

Source: New York Times and Lawyers USA online

FDIC OUTLINES NEW STRATEGY FOR WHEN BIG FINANCIAL FIRMS FAIL

The FDIC has developed a new strategy that it believes will avoid a major blow to the economy the next time a big bank or financial firm fails. The agency proposes to do this by seizing the firm’s parent company while allowing its healthy subsidiaries to continue operations. FDIC Acting Chairman Martin Gruenberg outlined the agency’s strategy in a speech last month. Under the 2010 financial overhaul law, the FDIC has the authority to seize and dismantle big financial firms that could collapse and threaten the broader system. The FDIC’s goal is to avoid another taxpayer bailout of Wall Street banks in the event of another financial crisis. It should be noted that the agency’s power extends to financial firms other than banks, such as insurance companies.

Under the strategy, the FDIC would take over a failing firm’s parent company, but it would allow healthy subsidiaries of the firm to continue operating. Gruenberg believes that would reduce disruption and permit normal financial transactions. Because the subsidiaries would keep operating, their trading and other relationships with other big financial institutions would also continue normally. That would “mitigate systemic consequences,” according to Gruenberg. If the FDIC’s strategy works it would reduce the chance that big financial firms closely connected to each other would fall like dominoes. That seems like a good thing and hopefully it will be.

When the FDIC shuts down a firm’s parent company, the agency would transfer the parent’s assets, especially holdings in its subsidiaries, to a new “bridge” company under the new plan. The firm’s shareholders would lose their investment and the firm’s creditors would receive equity stakes in the “bridge” company. The FDIC’s goal would be for the bridge company to become a healthy company in private hands. The FDIC had this to say about the plan:

We believe this strategy holds the best possibility of achieving our key goals of maintaining financial stability, holding investors in the failed firm accountable for the losses of the company, and producing a new, viable private-sector company out of the process.

In explaining its new strategy, FDIC officials cited the example of Lehman Brothers, whose collapse in September 2008 resulted in the biggest bankruptcy in U.S. history. It precipitated the financial meltdown that plunged the economy into the Great Recession. Despite Lehman’s extensive losses, it was pointed out that there were substantial valuable assets in some of its subsidiaries. That was especially true with its European operation based in London. When Lehman failed, the London-based operation had to be dissolved under British law. The new FDIC strategy would permit such an operation to continue.

The American Bankers Association, the industry’s biggest lobbying group, believes the FDIC’s strategy is an important step toward ending the doctrine of “too big to fail” and government bailouts of big financial institutions. Frank Keating, the group’s president and CEO, said in a statement:

In any failure, it’s the equity owners that should take losses. This strategy assures that, but would continue the operations of the firm going forward to minimize market disruptions.

It will be interesting to see how the FDIC’s new strategy works. At first look, it seems to make sense. Hopefully, it will prove to be a good thing both for big business, their investors and the American people generally.

Source: Insurance Journal

FDIC SUES BIG BANKS OVER MORTGAGE SECURITIES

The government has sued several big banks over toxic mortgage securities they issued that were bought by two small Illinois banks which failed in May 2009. The Federal Deposit Insurance Corp., which seized the two banks when they failed, filed the civil lawsuits last month in federal court. The agency named a number of
banks as Defendants, including Citigroup, JPMorgan Chase, Bank of America, Credit Suisse, Deutsche Bank, Royal Bank of Scotland, UBS and HSBC. According to the FDIC, the banks made false statements and deceived investors about the risks in the securities backed by pools of home mortgages. The failures of the two Illinois banks, Strategic Capital Bank and Citizens National Bank, cost the deposit insurance fund $169 million and $37.2 million, respectively. The FDIC seeks a total of about $92 million in damages.

Source: Statejournal.com

**CHEMICAL INDUSTRY NEEDS RISK GUIDANCE**

A national panel believes the chemical industry needs guidance in choosing alternative processing methods to reduce or eliminate safety hazards. The National Research Council released its report last month. U.S. Occupational Safety and Health Administration regulations require chemical companies to follow certain procedures to ensure manufacturing processes are safe. But this report by the National Research Council says the industry lacks the common practice protocols and understanding required to identify safer processes.

The report recommends that the U.S. Chemical Safety Board or other entity develop a plan to help chemical plant managers choose alternative processes to reduce or eliminate hazards. One method, known as an “inherently safer process” assessment, aims to minimize or eliminate a hazard. But the assessment does not always provide clear guidance. The report said switching to a non-flammable solvent in a process would remove a fire hazard. But if the solvent is toxic, a new hazard is created.

Use of inherently safer process strategies would reduce the number of vulnerable areas around a company’s facilities, which would decrease the scope of emergency preparedness programs. But it potentially could narrow the focus too much and overlook certain outcomes, according to the report.

Congress ordered the study following a 2008 explosion at BayerCropscience’s plant in Institute that killed two workers. The explosion occurred near a storage tank containing methyl isocyanate, a highly toxic chemical also known as MIC. Fortunately, the tank was not damaged and the chemical wasn’t released. Bayer took measures to reduce risks associated with MIC manufacturing and storage at the Institute plant. But the study found that the company did not incorporate all possible methods to control hazards. Hopefully, the report will be used to improve safety methods and procedures in the chemical industry.

Source: Claims Journal

**SCHWAB LOSSES BID TO HALT REGULATORY DISCIPLINE OVER RIGHT TO SUITE**

A federal court judge has thrown out a lawsuit by Charles Schwab Corp. That sought to stop its regulator from bringing a disciplinary case against the company for trying to take away customers’ rights to sue it in class-action lawsuits. Magistrate Judge Elizabeth Laporte of the U.S. District Court for the Northern District of California granted a request by the Financial Industry Regulatory Authority to dismiss the lawsuit that Schwab had filed against the regulator in February. The San Francisco-based brokerage sued FINRA, Wall Street’s industry-funded watchdog, a day after the regulator announced an enforcement case against the company.

FINRA alleged that Schwab added a new provision to more than 6.8 million customer account agreements in October that would preclude them from starting or joining class-action lawsuits against the brokerage. It was said that the case raised significant investor protection issues. Class actions are a common way for small investors to band together in a court case to recover their losses. A win by Schwab would have set the stage for a showdown that would allow other companies to change their arbitration agreements and weaken FINRA’s hold over its own enforcement process. Judge Laporte, in his opinion, agreed with FINRA that Schwab, which FINRA regulates, is required to follow its procedures for disciplinary cases. That process ultimately includes a review by a federal court judge.

Source: Insurance Journal

**FEDERAL JUDGE REFUSES TO DELAY BANK OF AMERICA $20 MILLION SETTLEMENT**

A U.S. federal judge in New York, last month, refused to delay the approval process for a controversial $20 million settlement between Bank of America Corp. directors and shareholders who accused the bank of overpaying for Merrill Lynch & Co. U.S. District Judge Kevin Castel rejected as premature a request by another shareholder group, pursuing a similar lawsuit against Bank of America directors, to intervene in the New York case. The second group of shareholders, who have filed suit in the Delaware Chancery Court, contend that the amount of the New York settlement is inadequate and could destroy their claims.

Bank of America agreed to buy Merrill on Sept. 15, 2008, at the height of the financial crisis. Merrill’s losses were a factor in the bank being forced to obtain a second federal bailout, and contributed to a 93% drop in its share price over six months. The takeover closed in January 2009. The second shareholder group contends that the New York settlement was the result of a “collusive scheme” between directors trying to avoid a “big payout” and the lawyers representing the shareholders. They also said the settlement amount is far too low considering the damages suffered and the fact that $500 million of insurance coverage is available to protect the directors. But Judge Castel ruled:

Such arguments are best raised in the settlement approval process. At this point the parties here have executed only a memorandum of understanding.... A review of the merits of any settlement is premature.

Source: Claims Journal

**VIRGINIA JURY CONVICTS MAN IN $485 MILLION FRAUD CASE**

A federal jury in Virginia convicted a former Costa Rican insurance executive last month on all counts in a $485 million fraud scheme. The Defendant had been accused of lying to clients and investors about the financial stability of his company. Minor Vargas Calvo, the Defendant, was president of Provident Capital Indemnity Ltd. Provident sold bonds guaranteeing funding for life settlement companies, which buy life insurance policies from insured people at less than face value and collect the benefits when those people die.

The government originally claimed Provident sold $670 million in bonds based on fraudulent financial statements, but an accounting done by an Internal Revenue Service investigator verified only $485 million. According to prosecutors, Vargas not only misrepresented the company’s assets, but also lied when he told clients, investors and regulators that Provident was protected by reinsurance agreements with major companies. The jury found Vargas guilty of one count of conspiracy and three counts each of mail fraud, wire fraud and money laundering. Vargas is scheduled for sentencing October 25th and could face a maximum of 170 years in prison.

Source: Insurance Journal

www.BeasleyAllen.com
The New York settlement, if approved, would resolve claims that Bank of America directors breached their duties for having misled shareholders about Merrill’s soaring losses and hidden how Merrill was paying $3.6 billion of bonuses despite those losses. Among the Defendants is Kenneth Lewis, the onetime Bank of America chief executive who engineered the takeover.

In early May, Delaware Chancellor Leo Strine put the case before him on hold, as he denied a request by shareholders in that case to block Judge Castel from reviewing the settlement. Judge Castel also oversees nationwide shareholder litigation against Bank of America over the Merrill purchase. Reportedly, damages in that litigation could be much larger.

Lead Plaintiffs in the New York case are the Hollywood Police Officers’ Retirement System in Florida, and the Louisiana Municipal Police Employees Retirement System. Both cases are derivative lawsuits brought on behalf of Bank of America. Payouts under the settlement would go to the bank, not to shareholders. The cases are: Bank of America Corp Stockholder Derivative Litigation, Delaware Chancery Court, No. CA4307; and In re: Bank of America Corp Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation, U.S. District Court, Southern District of New York, No. 09-md-02058.

Source: Insurance Journal

Wells Fargo & Co. has asked a federal appeals court to throw out a judge’s order requiring the bank to pay California customers $203 million for manipulating debit-card transactions to boost overdraft fees. Wells Fargo claimed that customers can’t sue under California law over how the bank deals with debit-card transactions because its practices are regulated by federal laws that allow Wells Fargo and other banks to determine their own methods for calculating fees. Wells Fargo argues that the claims in the lawsuit are “preempted by federal banking law.” Wells Fargo also argues that the claims should also “fail as a matter of state law.” A three-judge panel of the U.S. Court of Appeals in San Francisco held a hearing on the request in mid May.

Customers alleged in a 2007 complaint that San Francisco-based Wells Fargo changed the way it treated daily debit transactions and cash withdrawals in 1999 so that transactions with the highest dollar amount posted first, rather than in the order they occurred. The practice, which customers alleged was intended to boost revenue from overdraft fees, led to account holders overdrawing funds by small amounts multiple times a day.

Under the practice, customers could be charged as much as $54 each time they overdrew. It was alleged that the bank violated California’s unfair business practices law. Three Wells Fargo customers, suing on behalf of thousands of Californians, won their lawsuit in 2010 when U.S. District Judge William Alsup agreed that the policy was unfair, deceptive and fraudulent. Judge Alsup ordered Wells Fargo to end the practice and pay $203 million to customers who were charged multiple overdraft fees. The customers’ lawyer told the Appeals Court that Wells Fargo's practice of reordering transactions was “engineered” for the “sole purpose of generating overdraft fees.”

The Office of the Comptroller of Currency, the federal agency that regulates national banks, has acknowledged that there are limits to its authority. Judge Sobol said in his ruling that in this case, those limits are subject to California law, and that he relied on that premise in his opinion. More than 30 banks have been sued over similar practices. Bank of America Corp. agreed to pay $410 million last year to settle customer claims and JPMorgan Chase & Co. reached a preliminary agreement in February to pay $110 million to resolve a lawsuit. A lawsuit against other banks is pending in federal court in Miami. In this case, Wells Fargo says that customers were warned about the practice, which was stated in account agreements and allowed by the Federal Reserve and other national bank regulators. The bank claims the customer account agreement “expressly authorizes high-to-low posting and specifically discloses that high-to-low posting can result in high overdraft fees.”

The customers contend that Wells Fargo misled customers about the policy, burying it in fine print and advertising that debit transactions would “automatically” be deducted from accounts. It was contended that this led customers to assume that withdrawals would be posted in chronological order. The bank’s contention that customers can’t sue Wells Fargo under California’s unfair business practices law was disputed by the customers. They say only claims that interfere with bank operations are preempted by federal regulation of banks. The Appeals Court didn’t say when it would rule.

Richard M. Heizman and Michael Sobol, lawyers with the California firm Lieff Cabraser Heimann & Bernstein, represent the customers. They have done very good work in this important case. The case is

Source: Bloomberg

SEC Charges Firm With Using Advisory Client To Rescue Hedge Fund Client

The SEC has settled its claims against Martin Currie, a Scotland-based fund management group. It was contended by the agency that the group fraudulently used one of its U.S. fund clients to rescue another client, a China-focused hedge fund struggling in the midst of the global financial crisis. Martin Currie agreed to pay a total of nearly $14 million to the SEC and the United Kingdom’s Financial Services Authority to settle the charges that it steered a U.S. publicly-traded fund called The China Fund Inc. into an investment to bolster the hedge fund.

The hedge fund had acquired a significant and largely illiquid exposure to a single Chinese company. It was stated by the SEC that Martin Currie directly alleviated the hedge fund’s liquidity problems by deciding to use the China Fund—to the detriment of the fund and its shareholders—in a bond transaction that reduced the hedge fund’s exposure.

VIII. PRODUCT LIABILITY UPDATE

FORD SETTLES BRONCO II LAWSUIT

Ford Motor Co. has settled a lawsuit that alleged defects in tires on a Ford Bronco II contributed to cause a crash that left a man paralyzed and with cognitive impairment. Terms of the settlement with the Plaintiff, Bryan Mizenko, are confidential and were sealed by the court. A jury in Cascade County, Mont., in April found that defects in a Firestone tire were the primary factor in a 2003 crash. Both Firestone and the used car dealer where the Plaintiff bought the vehicle settled out of court. The Plaintiff contended the crash was one of several caused by tread belt separation on this type of Firestone tire. Ford argued that the tire failed because it was 14 years old and had been damaged.

Source: Freep.com
A Report on Saw-Related Injuries

It has been reported that table saws, band saws, radial arm saws and miter saws are responsible for thousands of injuries each year to their users. Table saws alone account for approximately 40,000 injuries per year. According to the National Consumer League, table saws cause more than ten amputations every day. Table saw injuries cost more than $2 billion a year in medical costs to victims. Given the costs of treatment and the pain/suffering inflicted on the victims and their families, any and all safety improvements that can reduce or eliminate these injuries should be implemented.

Table saws are sold with removable guards. While these guards can be effective in preventing some injuries, the guards do not prevent all injury events. A Consumer Product Safety Commission report found that as many as a third of all table saw injuries happen with the guard in place. Many times, the guards are removed for operational convenience. Other times, the guards are removed to make certain cuts but are not re-installed afterwards. Either way, table saw manufacturers know that their guards are removed regularly.

Most would be surprised to know that technology which can prevent all amputations and injuries, whether the guard is in place or not, has been available to table saw manufacturers since November of 2000. SawStop technology will stop a table saw blade within milliseconds of contact with human skin. This technology is effective and to date there has not been a single documented injury with this technology in place. Unfortunately, table saw manufacturers have resisted this amazing technology, arguing costs.

Table saw manufacturers’ reluctance to adopt this technology belies common sense and good business practices. Studies have estimated that table saws equipped with this new technology cost approximately $100 more than the same saw without the technology. We believe that an increased cost of $100 is acceptable, especially when one considers the elimination of deaths and amputations, savings in medical treatment, the elimination of the pain, emotional trauma and permanent disfigurement associated with these injuries.

Kendall Dunson, a lawyer in our firm, recently filed a case against a major table saw manufacturer. In that case, our client sustained a serious hand injury on a table saw. SawStop technology would have prevented his injury. On October 5, 2011, the CPSC voted 5-0 to consider a national table saw safety standard. The industry has and will frustrate this process of adopting a national saw safety standard. If a national saw safety standard is ever implemented, the industry will spend millions making it as weak as possible. In the meantime, thousands will continue to be unnecessarily maimed.

 Hopefully, brave consumers like our client will continue to come forward and push the industry through litigation to do the right thing and implement proven technology that will prevent thousands of unnecessary injuries and the associated costs. We will update you on the progress of this case. If you need additional information on this subject, contact Kendall Dunson at 800-898-2034 or by email at Kendall.Dunson@beasleyallen.com.

NHTSA Proposes New Brake-Throttle Override Requirement

In April 2012, the National Highway Traffic Safety Administration proposed to add a “Brake-Throttle Override” requirement to existing safety standards. This proposed mandate applies to all cars and trucks up to 10,000 lbs. GVWR. A brake-throttle override reduces engine power when both the brake and gas pedal are depressed at the same time which allows the vehicle to slowly come to a stop. With this requirement, NHTSA hopes to reduce the risk of unintentional acceleration as seen in 2009 with Toyota vehicles.

Brake-throttle override technology has been available for several years and has been used by General Motors, Nissan, and now, Toyota. Since 2009, most automakers have installed this technology to prevent unintentional acceleration caused by pedal sticking or floor mat entrapment. U.S. Transportation Secretary Ray LaHood who has praised the proposal, had this to say:

America’s drivers should feel confident that anytime they get behind the wheel they can easily maintain control of their vehicles—especially in the event of an emergency. 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.

NHTSA has considered requiring automakers to install brake-throttle override since 2010 when it launched its ten-month long investigation of the 2009-2010 Toyota unintended acceleration recall. Toyota recalled nearly eight million vehicles in 2009-2010 due to what was said to sticking pedals or floor mat entrapments. In response to this massive recall, NHTSA enlisted NASA to determine whether the unintended acceleration was caused by electronic flaws. NASA didn’t find electrical issues to be the problem. NHTSA Administrator David Strickland explained the significance of the NASA and NHTSA studies in proposing the brake-throttle override requirement:

We learned as part of the comprehensive NASA and NHTSA studies of high-speed unintended acceleration that brake override systems could help drivers avoid crashes.

While NHTSA’s defect investigation program will continue to monitor and consider consumer complaints of any potential vehicle safety issues, this proposal is one way the agency is helping keep drivers safe and continuing to work to reduce the risk of injury from sticky pedals or pedal entrapment issues.

Once the brake-throttle override proposal is published in the Federal Register, members of the public will have 60 days to comment on the proposal. If you would like additional information on the brake-throttle proposal, you can contact Stephanie Stephens, a lawyer in our firm, at 800-898-2034 or by email at Stephanie.Stephens@beasleyallen.com.

Sources: Consumer Reports and NHTSA

Worker Injured by Boiler Explosion Settles His Case

Recently, Robert I. Feinberg and John Johnson, lawyers in the Boston firm of Feinberg & Alban, settled a case for one of their clients. The case involved a boiler that ruptured at a condominium complex. In that case, the Plaintiff, a worker, suffered burns over 50% of his body. These lawyers did an outstanding job of representing their client against the condominium association that failed to drain and depressurize the boiler before the worker began repairing it. It was a hotly-contested and extremely difficult case. But the lawyers representing the injured worker did a tremendous job of preparing their case and ultimately justice prevailed. The burn injuries suffered by the Plaintiff in this case is another example of a worker being injured by a third party while working for another company.

A Look At Other Boiler Explosion Cases

Lawyers in our firm have represented many employees hurt on the job because of the carelessness or reckless conduct of a
third party. Typically, a worker hurt on the job is limited to recovering workers’ compensation benefits, which never fully compensate victims. Fortunately, the law allows a worker to also seek compensation from a third party if that party is responsible for the worker’s injury.

Our firm has also handled a number of boiler cases similar to the one in Boston. In one such case, Mike Andrews, one of our lawyers, handled a complex case for the widow and family of a man who was horribly burned and died as a result of a boiler explosion. Our client was employed at the Rock Tenn paper mill in Demopolis, Ala., and was sent to check the operation of one of the mill’s steam boilers. The subject boiler, roughly 30 feet square and 60 feet tall, was built and installed in the mid-1950s and had been in continuous operation for over 50 years.

Although the ASME boiler code specifies that tubing of steam power boilers must be inspected regularly, portions of the subject boiler tubing were encased in a concrete-like material known as a refractory. The boiler inspection company hired to perform the annual inspections was recognized as a leader in boiler technology. Instead of performing a thorough inspection, the company only inspected those portions of the boiler that were readily accessible. The portions of the boiler in the refractory were never inspected.

Ultrasound and X-ray technology had been used by this company on other inspections, but on this boiler the company didn’t use either technology to inspect the portions of the boiler that were not readily accessible. As a result, dangerously thin sections of steam tubing encased within the refractory were never discovered. These thin sections failed, causing the boiler to violently rupture.

These events occurred as our client walked by the boiler. The force of the tube failure blew a hole in the steel outer casing of the boiler and spewed superheated steam directly onto our client. Somehow, he managed to get to the mill control room before he was transported to the local emergency room and then to the burn trauma unit at South Alabama in Mobile. Despite world class burn care, our client died from his burns. After extensive case preparation which included multiple depositions of experts in metallurgy, boiler operation, inspection techniques and burn care, this case settled a week before we were set to select a jury.

We were blessed to represent his family and recover money for his death. Under the workers’ compensation laws, the family would have received a minimal amount for his death. However, because a third party was careless and contributed to his death, the family was able to recover reasonable compensation. This widow and family were concerned for others. They did not want someone else to die or be seriously injured because of a company’s failure to inspect a dangerous boiler. Fortunately, because of the courage of this widow, who had suffered a tremendous personal loss, the case helped to bring about needed changes in the industry. If you need more information, contact Mike Andrews, a lawyer in our firm, at 800-898-2034 or by email at Mike.Andrews@beasleyallen.com.

INJURED TRASH TRUCK DRIVER AWARDED $11.4 MILLION

A federal court jury in San Francisco has awarded $11.4 million in damages to a garbage truck driver whose spine was injured when a front wheel of his truck collapsed and the 55,000-pound vehicle dropped to the ground. Forty-six year old Raymond Mariolle, a Waste Management Co. driver for more than 20 years, suffered compression injuries from the October 2007 incident that left him in severe pain despite three surgeries. The right front hub of the truck fractured and the wheel fell off while Mariolle was driving the truck. It was alleged in the lawsuit that Consolidated Metco (which made the hub), Volvo Truck (which built the cab and chassis), and Wittke Manufacturing (which designed the truck), all knew the hub was defective and overloaded and failed to warn drivers or the public.

Mariolle returned to work ten months later. He later transferred to part-time and nondriving duties, but was physically unable to work after August 2010. The companies contended Mariolle had pre-existing back injuries that were the primary cause of his disabilities and ongoing pain. After a three-week trial, the jury found that the wheel hub, the truck and the cab and chassis were all defective and had caused the Plaintiff’s injuries.

The Plaintiff’s damages included $2.4 million for lost wages and medical costs and $7.5 million for pain and suffering. The jury also awarded his wife, Regina Mariolle, $1.5 million for loss of marital and family relations.

Source: SFGate.com

IX. MASS TORTS UPDATE

LEIGH O’DELL NAMED TO PLAINTIFFS’ STEERING COMMITTEE IN TRANSVAGINAL MESH LITIGATION

Leigh O’Dell, a lawyer in our Mass Torts Section, has been selected to serve on the Plaintiff’s Steering Committee for consolidated Multidistrict Litigation (MDL) involving transvaginal mesh. As we have previously written, transvaginal mesh is used to repair conditions such as pelvic organ prolapse (POP) and stress urinary incontinence (SUI). The mesh is implanted through the vagina and is used to shore up pelvic organs that have become displaced due to age, childbirth, hysterectomy or obesity. The U.S. Judicial Panel on Multidistrict Litigation recently granted motions to create MDLs against three transvaginal mesh manufacturers and transfer the MDLs to the U.S. District Court for the Southern District of West Virginia, under Chief Judge Joseph R. Goodwin. Centralizing the litigation in the Southern District of West Virginia makes the pretrial proceedings more efficient, conserves judicial resources and avoids the risk of inconsistent rulings.

The recent JPML order created MDLs against American Medical Systems, Inc. (MDL No. 2325), Boston Scientific Corp. (MDL No. 2326) and Johnson & Johnson (MDL No. 2327). Since 2010, Judge Goodwin has also been overseeing a MDL against another transvaginal mesh manufacturer, C.R. Bard, Inc. (In re Avaulta Pelvic Support Systems Product Liability Litigation, MDL No. 2187). On April 13, Judge Goodwin held a hearing to consider what MDL attorneys will be appointed to serve as counsel for the Plaintiffs in the consolidated transvaginal mesh litigation. Leigh O’Dell was appointed as a member of the Plaintiffs’ Steering Committee for all four MDLs.

The cases involve lawsuits filed in federal courts across the country by women who have suffered injuries after being implanted with vaginal mesh products for the treatment of pelvic organ prolapse and/or stress urinary incontinence. According to the FDA, reported complications from the transvaginal placement of the mesh include erosion of the mesh into vaginal tissue, organ perforation, pain, infection, painful intercourse and urinary and fecal incontinence. Often women require surgery to remove the mesh. In some cases, this can require mul-
mple procedures without successfully removing all of the mesh. Leigh had this to say about the MDL:

This is very worthwhile and necessary litigation. There are thousands of women who have been injured and are suffering, and many of them are only just learning this mesh may be the cause of their suffering. I feel honored to be able to work on their behalf, and hope to prevent other women from having to go through this same thing in the future.

Currently, Leigh is investigating cases involving mesh manufactured by American Medical Systems, Bard, Boston Scientific, Caldera, and Johnson & Johnson. For more information, you can visit our page on transvaginal mesh, or the bladder sling website or you can contact Leigh directly at 800-898-2054 or by email at Leigh.O'dell@beasleyallen.com.

**ANDROGEL EXTREMELY DANGEROUS WHEN TRANSFERRED TO CHILDREN**

AndroGel, a prescription topical testosterone gel manufactured by Abbott Laboratories, is used to treat adult males who have low testosterone and other conditions associated with testosterone deficiency. AndroGel is intended to be used by adult males only. AndroGel comes in a pump bottle and is to be applied on the shoulders, upper arms and depending on the dosage, the stomach area. AndroGel’s label indicates that it is to be applied once daily after showering or bathing. Due to AndroGel’s topical application method, there is an extremely high risk of transfer to others. Transfer of AndroGel to women and children may occur through skin-to-skin contact with an adult using AndroGel as well as exposure through clothing, bed linens, and other shared exposures.

An FDA report regarding risks of children exposed to AndroGel through indirect transfer from their fathers outlines the horrific results. Male children who have come in contact with AndroGel have experienced: pubic hair development, enlarged penis, advanced bone age and/or growth velocity, increased testosterone levels, and hypersexualized behavior. Female children have experienced clitoromegaly (an abnormal enlargement of the clitoris), development of pubic hair, hypersexualized behavior, and elevated testosterone levels.

The 2009 FDA report looked at nine cases of indirect exposure to children. One case involved a 16-month-old boy, who had an enlarged penis with erections, pubic hair, increased testicular volume, and advanced bone age. In that case, the father was using testosterone gel twice daily for about a year, and the child slept in the same bed as the parents and the father would hug the baby boy on his chest with skin-to-skin contact. In another male case, a patient had a testosterone level of eight times that normal for an infant. A five-year-old boy experienced elevated testosterone levels, advanced bone age, preoccupation with masturbation, and was “thrust into puberty.” In that case, the father would put on a shirt immediately after applying the gel, but the child slept with his parents.

The results seen in female children are equally disturbing. A nine-month-old girl experienced clitoromegaly and elevated testosterone levels, which required the girl to undergo a clitoral reduction surgery. In that case, the father applied AndroGel in the morning, went to work, and showered upon his return home; no skin-to-skin contact was reported. Two sisters, two and four years old, were exposed to AndroGel through clothing and sheets on the bed. The girls experienced pubic hair growth, clitoromegaly, advanced bone age, and a preoccupation with masturbation. In each case, when use of AndroGel was discontinued or the children were removed from exposure, the symptoms improved. Unfortunately, however, long-term effects such as sterility have been seen in both male and female children.

Using AndroGel around children is extremely dangerous. In light of the extraordinary consequences to young children if they are exposed to AndroGel, it is unclear why physicians would not prescribe and patients would not insist on testosterone shots as a safer alternative. Monthly testosterone shots are just as effective, result in no risk of harm to women or children, and cost approximately $30 per month (as compared to the $400+ per month cost of AndroGel). Males using AndroGel should talk with their healthcare professional about the viability of testosterone shots or, at a minimum, use extraordinary care not to expose women and children to AndroGel. For those who have any questions regarding AndroGel or its effects, contact Leigh O’Dell, a lawyer in our Mass Torts Section, at Leigh.O'dell@beasleyallen.com or 334-269-2343.

**GENERIC DRUGS ARE BIOLOGICALLY EQUIVALENT BUT LEGALLY DEFECTIVE**

Many of us were somewhat surprised when in 2009 the United States Supreme Court upheld the jury’s determination in Wyeth v. Levine. In the Levine case, the Court determined that the Hatch-Waxman Act amending the Food, Drug and Cosmetic Act did not establish complete immunity for pharmaceutical manufacturers. The Court correctly ruled that Wyeth was responsible for providing adequate warnings for its drugs even if that meant Wyeth had to provide warnings stronger than the FDA required.

Then, just last year the High Court spoke again in PLIVA v. Mensing. This time the Court explained that manufacturers of generic drugs are required to use the same labels as their brand name equivalents. Therefore, the Court said that generics cannot be held responsible for failing to warn consumers about the dangers of their products. As the First Circuit Court of Appeals pointed out last month in Bartlett v. Mutual Pharmaceutical Co., this logic leads to the inequitable result of consumers who purchase name brand drugs being compensated when pharmaceutical companies fail to warn of a drug’s dangers, while consumers who purchase generic drugs are denied any recovery for the company’s failure to warn.

In an example of bad logic leading to more bad logic, the First Circuit, being bound by Mensing, held that the consumer could not recover against a generic manufacturer for failure to warn. The Court explained that Mensing did not address the Plaintiff’s design defect theory of liability. The manufacturer argued that legally it could not alter the design of the drug. If it did the drug would not be a generic. Instead, it would be a new drug, requiring FDA approval. It also argued the drug consisted of a single active molecule and therefore was impossible to alter. The First Circuit ruled that the manufacturer could alter the drug by refusing to produce it all together because its benefits were outweighed by its risks. Under this reasoning, while a generic manufacturer cannot be held liable for failing to warn about known dangers of a drug, it can be held liable if the Plaintiff proves that the risk of the drug is greater than its utility.

Senator Patrick Leahy has introduced legislation in the U.S. Senate to require generic manufacturers to update their labels to reflect known risks of their drugs. Considering the current climate on Capitol Hill, it is doubtful that such a logical bill will ever even be brought up for a vote. It will, however, provide a litmus test to determine which of our elected officials place Big Pharma’s interests above the interests of those citizens who actually have the right to vote. That’s why it is important to contact your Senators. Ask them to get Sen.
Health Canada Issues Actos Warning

Health Canada has issued a warning about the risk of Actos bladder cancer, following the lead of the US Food and Drug Administration (FDA). As we have reported, there have been a number of Actos side effects lawsuits filed around the country. Concerns continue to grow about the link between Actos and bladder cancer. Some experts recommend doctors and patients stay away from the medication. The warning was issued by Health Canada following a safety assessment of Actos. According to Health Canada, taking Actos may increase the patient’s risk of developing bladder cancer. Health Canada now requires Takeda update the Actos warning label to reflect the risk. Studies are currently being done on Actos to determine whether or not the drug is actually associated with an increased risk of cancer. According to The Canadian Press, a five-year data review of a ten-year study conducted by Takeda suggests there is a link between Actos and the development of bladder cancer.

At least one province in Canada—Ontario—has moved Actos off the list of drugs that can be freely prescribed and onto a list that requires approval before prescription. Some experts in Canada say the drug should only be used in patients who have done well on it in the past. Health Canada says the risk appears to be highest in patients who took the drug for the longest periods or at the highest doses. But, the agency does not rule out a risk of bladder cancer even in short-term Actos use. Health Canada recommends Actos not be used to treat patients with active bladder cancer, a history of bladder cancer, or unexplained blood in their urine.

Lawsuits have been filed against Takeda Pharmaceuticals alleging Actos caused some patients to develop bladder cancer. The first lawsuits were filed in August 2011, with some experts predicting thousands of Actos bladder cancer lawsuits could be filed. It should be noted that Actos sales were suspended in Germany and France because of safety concerns. In 2011, the FDA issued its own warning about a possible link between Actos and bladder cancer, although sales of Actos in the US continue. Actos became the top-selling diabetes medication after rival drug Avandia was shown to increase the risk of heart attack in patients. Use of Avandia was severely restricted after an FDA advisory panel meeting. But patients can still use Avandia under limited circumstances. At one point, Actos was thought to be safer than Avandia, but concerns about the risk of bladder cancer are having an effect on the drug’s sales. If you need additional information on the Actos litigation, contact contact Roger Smith, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Roger.Smith@beasleyallen.com.

Source: lawyersandsettlements.com

X. BUSINESS LITIGATION

Pfizer and BYU Settle Celebrex Lawsuit

Brigham Young University and Pfizer Inc., the giant drug manufacturer, have settled a lawsuit for $450 million. At issue was whether BYU had been cheated out of billions of dollars in royalties for aiding in the development of the highly-successful anti-pain drug Celebrex. Settlement terms are confidential in the case which had been in litigation for nearly six years. But the New York-based company has reported it took a $450 million charge against its earnings to settle the case.

BYU claimed in the lawsuit, filed in October 2006, that professor Daniel Simmons had discovered an enzyme and a gene called Cox 2 that would allow for development of an anti-inflammatory drug that did not have the long-term side effects of aspirin. The school entered into a contract with Monsanto for a joint research project to develop a drug with BYU to receive royalties. The school claimed that the discovery was a key to development of Celebrex, but Monsanto, which eventually became part of Pfizer, arbitrarily canceled the contract. It was contended that Monsanto did not place Dr. Simmons on patents and misappropriated his work to create the drug. The product was one of the most financially successful of all time, bringing in revenues of about $35 billion.

As part of the settlement, Pfizer said that BYU will establish a Dan Simmons Chair in recognition of Dr. Simmons. Interestingly, Pfizer had argued in court documents that Dr. Simmons’ discovery was not a key to development of Celebrex, and instead claimed development was largely the result of the work of its own scientists.

Source: sitrib.com

XI. AN UPDATE ON SECURITIES LITIGATION

Merrill Lynch and Bank of America One Former Financial Advisors Millennials In Unpaid Deferred Compensation

Merrill Lynch/Bank of America has been hit recently with several adverse rulings concerning deferred compensation that was wrongfully denied former Merrill Lynch Financial Advisors. In some of the most egregious cases, Merrill Lynch/Bank of America was ordered to pay combined...

Source: Insurance Journal

amounts in unpaid compensation, fines, and punitive damage awards up to $10 million! Last month, a FINRA arbitration panel ruled that:

**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 in September, 2008.**

Following that decision, the Wall Street Journal reported that Merrill Lynch/Bank of America is beginning to talk to the lawyers of over 1,000 former Advisors. The Advisors have lost hundreds of millions of dollars in deferred compensation and deserve to be made whole. Lawyers in our firm are investigating potential claims on behalf of former Merrill Lynch Financial Advisors. These former Advisors often left either because of the changes that occurred or in some cases were pressured or pushed out by the incoming management. In any case, they were wrongfully 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. Lawyers in our firm are ready to help those former Merrill Lynch Financial Advisors win that fight. If you need additional information on this subject, contact Chad Stewart, a lawyer in our Consumer Fraud Section, at 800-898-2034 or by email at Chad.Stewart@beasleyallen.com.

**SEC FRAUD LAWSUIT AGAINST MORGAN KEEGAN REVIVED**

A federal appeals court has revived a U.S. Securities and Exchange Commission lawsuit accusing Morgan Keegan & Co of fraudulently misleading investors about the safety of auction-rate securities it sold. The U.S. Circuit Court of Appeals for the Eleventh Circuit reversed a federal district judge in Atlanta, saying the court erred in finding that the alleged misrepresentations made by Morgan Keegan brokers about the debt were not material. The Appeals Court sent the case back to the district court for more proceedings.

Morgan Keegan is a unit of Raymond James Financial Inc, which on April 2 bought the brokerage from Regions Financial Corp for $1.2 billion. The Morgan Keegan case is one of the rare large-scale auction-rate cases to be addressed in court. The SEC accused Morgan Keegan in its 2009 lawsuit of hiding the debt’s risks, including by telling customers that the debt carried “zero risk” or was “just like a money market” fund.

Last June, U.S. District Judge William Duffey found that Morgan Keegan had adequately disclosed the risks. He also said the SEC must show more than “a few isolated instances of alleged broker misconduct” to hold Morgan Keegan legally responsible. But a three-judge 11th Circuit panel concluded that “the brokers’ misleading statements and failure to disclose the known liquidity risk of auction-rate securities could have been viewed by the reasonable investor as having significantly altered the total mix of information made available.” The appellate panel also said Morgan Keegan, having known that more auctions were failing in late 2007 and early 2008, was not excused by having given customers “general cautionary language” about the debt on the back of its trade confirmations. Source: Reuters

**XII. INSURANCE AND FINANCE UPDATE**

**TEXAS ATTORNEY GENERAL TAKES ON STATE FARM NON-RENEWAL PLANS**

Texas Attorney General Greg Abbott has taken issue with the plan of State Farm Insurance Co., one of the nation’s largest homeowners insurers, to non-renew thousands of policies for properties along the Texas Gulf Coast. The Attorney General’s office is conducting an investigation into State Farm’s proposal to deny renewed coverage on more than 11,000 policies of Gulf Coast Texans. State Farm filed suit in an attempt to stop the probe. In an announcement released by his office, Attorney General Abbott said:

**The largest issuer of homeowners insurance in Texas has filed a lawsuit in an attempt to prevent the Attorney General’s Office from investigating its non-renewal of thousands of residential property insurance policies along the Gulf Coast. Given the number of Texans that are affected, we want to ensure that State Farm complies with the law. If State Farm has not done anything wrong, it’s certainly curious that they would go to court just to avoid the State’s subpoenas.**

In mid-April the Attorney General’s Office sent civil investigative demands—a type of civil subpoena—to State Farm Lloyds of Texas seeking information about the company’s decision not to renew the coastal policies. State Farm subsequently filed a lawsuit against the Attorney General in an attempt to modify or set aside his office’s request for information. In the filing, State Farm indicated the Attorney General had demanded 22 “separate categories of information, involving potentially thousands of pages of documents” to be produced in a week’s time.

While the Attorney General’s office asserted that State Farm’s lawsuit was an “effort to avoid its obligation to provide the information requested by the State,” the company countered that its filing was an effort to “preserve its rights.” State Farm indicated that it notified the Attorney General before filing the lawsuit, and that the company intended to cooperate and would not go forward with the lawsuit “unless and until it becomes necessary.” State Farm public affairs representative Patti Kelly confirmed that the non-renewal of around 11,000 Texas coastal policies began on May 1st of this year. The impacted counties are Galveston, Brazoria, Jefferson, Orange and Chambers, according to State Farm.

State Farm stated in its lawsuit that in December 2011, the company provided TDI with “underwriting guidelines for property insurance that modified the eligibility requirements for new business along the Coast.” State regulators were also “provided additional requested information—prior to implementation,” according to State Farm. The lawsuit says that TDI ultimately “determined the guidelines complied with state law.” But, when the company informed regulators in 2012 that it intended to non-renew some 11,300 customers—both residential and commercial—along the Coast “consistent with the eligibility requirements for new business” contained in the previously filed underwriting guidelines, TDI opened an investigation. That investigation is ongoing. It will be interesting to see which side prevails in this battle. I tend to agree with the Attorney General: If State Farm has nothing to hide, why did it file the lawsuit? Source: Insurance Journal

Source: Insurance Journal
Allstate Insurance is seeking to recover more than $796,000 from 18 New York-area Defendants. The lawsuit, filed following an investigation by Allstate's Special Investigative Unit, seeks reimbursement for personal injury protection benefits Allstate paid on behalf of its customers during the timeframe specified in the lawsuit. The complaint, filed in Federal District Court as a Declaratory Judgment/Recovery action, alleges that two medical doctors, along with four laypersons and five lay entities, illegally owned and controlled two professional medical corporations allegedly owned on paper by a medical doctor and used to submit fraudulent billing to the insurer.

In addition, two other individuals and three other companies were also named as being part of the overall scheme to submit fraudulent bills. Allstate contends in the lawsuit that professional service corporations were actually owned and controlled by laypersons, rather than by licensed medical professionals. In addition, it’s alleged that the Defendants submitted claims for services that were performed by independent contractors in violation of the No-Fault Law. The suit contends that Kings-care Medical, P.C. and FOT Hamilton Medical, P.C. were fraudulently incorporated through a scheme using the names of two licensed medical doctors. However, those medical entities were actually run by four laypersons. Neither of those four individuals is a medical doctor. There are also five management companies that were utilized to effectuate this scheme.

Included in this lawsuit are claims for unjust enrichment against the Defendants. The lawsuit was filed following an investigation by Allstate’s Special Investigative Unit and seeks reimbursement for personal injury protection benefits Allstate paid on behalf of its customers during timeframes specified in the lawsuit. Allstate says the lawsuit filed was the latest in a string of actions taken by the insurer to protect consumers from these and similar activities. Interestingly, since 2003, Allstate has filed 39 fraud lawsuits in New York, seeking nearly $204 million dollars in damages. As I have stated before, it’s always good to see a huge corporation, which believes it has been wronged, having faith in our judicial system.

Wal-Mart To Pay $4.8 Million For Overtime Violations

Wal-Mart Stores Inc. will pay $4.8 million in back wages and damages to more than 4,500 employees nationwide for unpaid overtime. The company will also pay nearly $464,000 in civil penalties for violating federal overtime laws. The violations cover current and former managers at Wal-Mart vision centers and certain security personnel at Wal-Mart Discount Stores, Wal-Mart Supercenters, Neighborhood Markets and Sam’s Club Warehouses. The company improperly considered the workers to be exempt from overtime pay. Based on reports from the Labor Department, Wal-Mart began correcting the way it classifies the affected employees in 2007.

Source: Associated Press

TierOne Banking Company Settles Lawsuit

A lawsuit filed in May 2010 alleging that TierOne Corp. misled investors has been settled for $3.1 million. The lawsuit claimed TierOne, which is based in Lincoln, Neb., issued false or misleading financial statements about the bank company in an effort to boost its stock price. The stock had traded at $35 a share in 2007, but dropped to $5.50 a share in August 2008. At the time of the lawsuit being filed, TierOne's stock was just 17 cents a share. TierOne Bank was closed by federal regulators and its assets sold to Great Western Bank. The settlement will be paid by TierOne's insurers and covers anyone who bought the stock between August 9, 2007, and May 14, 2010.

Source: Insurance Journal

Mortgage Guaranty Insurance Corporation Settles Discrimination Claims Involving Women On Maternity Leave

The Department of Justice has settled its lawsuit against the Mortgage Guaranty Insurance Corporation (MGIC) for discriminating against women on maternity leave in violation of the Fair Housing Act. This settlement is the Department’s first involving discrimination against women and families in mortgage insurance. The 2011 lawsuit, filed in the U.S. District Court for the Western District of Pennsylvania, alleged that MGIC required women on maternity leave to return to work before the company would insure their mortgages even for women who had a guaranteed right to return to work after the leave. Most mortgage lenders require applicants seeking to borrow more than 80% of their home’s value to obtain mortgage insurance.

The settlement, which has been approved by the court, establishes a $511,250 fund to compensate 70 individuals whom the United States identified as aggrieved by the alleged discriminatory treatment between 2007 and 2010. The settlement also requires MGIC to pay a $38,750 civil penalty to the United States. The Department of Justice identified the aggrieved individuals based on its extensive review of MGIC’s mortgage application records. It was reported that MGIC cooperated with the U.S. Government in turning over records during the course of settlement negotiations.

The settlement also requires MGIC to follow a number of detailed nondiscriminatory provisions in its future review of mortgage insurance applications involving women or men who are on, or have returned from, paid or unpaid leave related to the birth, adoption, or foster care placement of a child. The settlement requires further that MGIC must monitor its treatment of applicants on leave to care for a new child, to train its employees on the requirements of the fair housing laws, and to provide nondiscrimination notices to mortgage applicants.

This lawsuit arose as a result of a complaint filed with the U.S. Department of Housing and Urban Development by a Wexford, Pa., loan applicant. After investigating the complaint, HUD issued a charge of discrimination and referred the case to the Department of Justice after the parties were unable to settle their dispute and the complainant elected to have the case heard in federal court. The Department of Justice filed the case under the Attorney General’s authority to seek redress for housing discrimination that raises an issue of general public importance.

The HUD complainant will receive $42,500 from the settlement fund, to address her specific pain and suffering and compensate her for leave that she forfeited in response to MGIC’s requirement that she return to work. Individuals compensated as part of the settlement will remain eligible to receive compensation from the separate private class action lawsuit brought by the HUD complainant.
MGIC has entered into a preliminary settlement of the class action lawsuit, which remains subject to court approval, allowing victims of MGIC’s alleged maternity leave discrimination to submit claims for extraordinary damages above the amount covered by the compensation provided through MGIC’s settlement with the United States.

Source: infozine.com

**Texas Firms Fined By The EEOC In Discrimination Suits**

Two Texas companies have been ordered to pay fines to resolve discrimination lawsuits based on workers’ age and disability. Eight dock workers fired from Central Freight Lines, based in Waco, will be paid a total of $400,000 in the settlement of an age discrimination lawsuit brought by the U.S. Equal Employment Opportunity Commission. The company has terminals in Fort Worth and Dallas. The other company, Service Temps, doing business as Smith Personnel Solutions, lost an appeal of a jury verdict awarding $103,200 to a woman who suffered discrimination related to a disability.

Source: Star Telegram

**XIV. Predatory Lending**

**Bankruptcy of Ally Mortgage Raises Questions About Foreclosure Fraud Settlement**

Ally Bank, the nation’s fifth-largest mortgage servicer formerly known as GMAC Mortgage, has recently put its mortgage subsidiary, Residential Capital, into bankruptcy. As you may recall, Ally is still majority-owned by the US government. This latest move by Ally is part of a continuing effort to escape its mortgage liabilities. But this move begs the question: how does it affect the foreclosure fraud settlement to which Ally is a signatory?

Ally had previously planned to repay its loan from the federal government with an initial public offering, but that no longer appears to be an option. Now, the bankruptcy of Residential Capital appears to be the means by which the government will be paid, while relieving itself of major liabilities with the mortgage unit. Also, it could spawn a copycat in the form of Bank of America, which has considered using bankruptcy for Countrywide.

Under the settlement agreement, Ally sold off its servicing arm for $2.5 billion to Fortress Investment Group, an investment management firm. Presumably, Ally will still honor the signed agreement with 49 state Attorneys General and the federal government while it completes the sale and the bankruptcy process. I understand Barclays Bank will finance the servicer during the bankruptcy. Ally will also throw in $750 million in cash for creditors of Residential Capital. Considering that there is a separate management group which has its own group of lawyers and specialists running the servicer, and now a bankruptcy process expected to last the rest of 2012, its worth questioning whether or not this will affect the aforementioned settlement. The investors will have to get in line for payments.

Nationstar, the nation’s largest non-bank mortgage servicer, which is majority-owned by Fortress, will most likely end up with the loans in the purchase. After the purchase, Nationstar would have $370 billion in loans to service. Nationstar also originates mortgages and manages loans in foreclosure as it attempts to become a fully integrated mortgage company. And in the end, Ally gets to rid itself of its mortgage problems, leaving them with a profitable retail banking and car loan portfolio. If only the same could be said for homeowners saddled with former GMAC Mortgage loans.

If you have any questions about predatory lending or mortgage servicing fraud, contact Bill Robertson, one of our lawyers in the firm’s Consumer Fraud Section, at 800-898-2034 or by email at Bill.Robertson@beasleyallen.com. Bill is currently handling cases involving predatory lending practices. He is also handling cases involving mortgage servicing fraud of several different companies.

Source: news.firedoglake.com

**XV. Premises Liability Update**

**St. Louis Stadium Tent Collapse Raises Safety Questions**

Large tents are used quite often for events held outdoors and few folks who attend these events imagine that any dangers or hazards may exist or develop. In fact, many event organizers fail to recognize that they could have legal exposure to folks who are injured on the premises. A recent incident in St. Louis, Mo., brings this problem area into focus. It appears that city officials must more closely scrutinize large tents that are commonly set up near downtown stadiums in St. Louis. This development comes after one of the temporary structures collapsed in high winds on April 28, resulting in the death of one man and dozens of persons being injured after a baseball game.

Sam Dotson, a spokesman for St. Louis Mayor Francis Slay, said it’s unclear if adequate regulations were in place and being followed or if the disaster was simply the result of people not paying attention to severe weather warnings. He said that the tent had been inspected, but that the city needs “to make sure there weren’t modifications to it.”

The fast-moving April storm ripped a large beer tent at Kilroy’s Sports Bar from its moorings and sent it and debris flying through the air about 80 minutes after the end of a St. Louis Cardinals baseball game. Seventeen people in the tent were treated at the scene, which was near Busch Stadium. Questions about the tent’s safety—especially in dangerous weather—remain unanswered. According to the Building Commissioner, Kilroy’s was granted a tent permit on April 11th and the tent passed inspection a few days later.

The city of St. Louis requires tents to be able to withstand winds up to 90 mph. The wind gust that destroyed the tent—shattering the aluminum poles and blowing the structure onto nearby railroad tracks—was measured at over 70 mph. The city said that tents are not a safe place to be in bad weather and are “temporary structures.” They are certainly not designed to handle weather like that of April 28th. It was reported that it took about five seconds for the wind to lift the tent and send it and much of what was inside airborne. At press time, two lawsuits had been filed arising out of the tent collapse incident.

Source: Insurance Journal

**Burned Couple Settles Wildfire Suit For $6 Million**

A lawsuit filed by a badly-burned Santa Barbara couple has been settled against a property owner for $6 million. Lance and Carla Hoffman were overtaken by flames and nearly killed in the November 2008 Tea Fire, which was started when partying college students left a campfire unattended in the Montecito hills above their rented home. You may recall from media reports
that the wildfire destroyed more than 200 homes.

The couple’s lawsuit alleges that Mary K. Robinson and the trust in her name took no steps to prevent trespassing on the property. The Hoffmans have undergone dozens of surgeries, and their medical bills have reached nearly $5 million. The owner and their liability insurance carrier accepted the Hoffmans’ settlement demand and agreed to settle the claim.

Source: The Santa Barbara News-Press

**Mental Health Center Partly Liable For Death**

A Colorado jury has determined that a mental health center in Denver is partly liable for the death of a convenience store clerk who was shot by a patient that had been released by the facility. The jury assigned half the liability for 28-year-old Natnael Mulugeta’s death to the Mental Health Center of Denver. The victim’s father was awarded compensatory damages of $1.1 million and punitive damages of $5.2 million, as well as $23,751 for burial expenses. The decedent, an Ethiopian immigrant, was shot at the south Denver store on May 2, 2009. The shooter, Dale Wayne Baylis, was arrested nearby. He was tried and sentenced to 30 years in prison for second-degree murder. An appeal is being considered by the Center in the civil case. John Case, a lawyer with Benson & Case in Denver, represented the Plaintiff in this case. He did a very good job for his client.

Source: Claims Journal

**Jury Awards $450,000 In 2008 Propane Fire In Motorhome**

A state count jury in California awarded $450,000 last month to three family members, one of whom was seriously burned near Yosemite National Park in 2008 while filling the propane tank of a motorhome which had been leased in Carson. The lawsuit was brought by Dennis Domaille, his wife and daughter. Although the family’s damages were determined to be in the millions of dollars, the damages were reduced by the jury’s finding that the lessor, Cruise America Inc., was only 10% liable. Domaille, now 61, suffered second- and third-degree burns over 45% of his body when a fireball erupted while he was tending to a customer’s leased 2005 Four Winds 28A motorhome. The incident occurred in 2008, outside the family’s Tioga Gas Mart business located in Lee Vining.

The jury was asked by the court to determine if the motorhome had a design defect by having a refrigerator burner and ignition directly above the tank filler valve. One of the Defense lawyers contended that the recreational vehicle did not have such a problem and that Domaille, another Tioga Gas Mart employee, and AmeriGas, were the ones primarily at fault. AmeriGas provided the propane dispensing equipment at their business. Domaille, his wife and a daughter filed the products liability lawsuit against Cruise America and AmeriGas Inc. in January 2010. The daughter alleged negligent infliction of emotional distress. Her mother claimed loss of consortium in a separate claim.

The jury attributed 35% of the negligence causing Domaille’s injuries to AmeriGas. Another 30% was assigned to Domaille because of his actions with 25% assigned to a Tioga Gas Mart employee. AmeriGas settled with the Plaintiffs prior to trial. John Raders, a lawyer with Morgan, Lewis & Bockius, a firm located in Los Angeles, represented the family and did a very good job in a most difficult products case.

Source: Dailybreeze.com

**A $716 Million Jury Verdict In An Alcohol-Related Lawsuit**

A jury in Florida awarded $716 million last month to the family of a man who was killed more than four years ago. The case arose out of a motor vehicle crash involving a drunk driver. A 17-year-old, who was intoxicated, lost control of his vehicle and crashed into a car driven by Sammy Garcia. The drunk driver was doing 75 mph in a 25 mph speed zone. The convenience store that provided the alcohol was found to be legally responsible for the death.

On February 28, 2008, the 32-year-old Garcia was in his car and stopped outside a restaurant in Apollo Beach, when then-17-year-old David Holdsworth, a high school senior, slammed into Garcia’s vehicle. Holdsworth admitted he had bought alcohol—a twelve-pack of beer and some extra-powerful beer called Tilt—twice that day at the Best For Less Food Mart. His blood alcohol was almost twice the legal limit at the time of the crash.

During the trial, teenagers testified the food mart was well-known among local students as a place where they could buy alcohol. In fact, the Sheriff’s office said the store had a system of selling alcohol beverages to minors who were charged a premium and that the store was always paid in cash. Holdsworth pled guilty to negligent homicide and is about halfway through serving his five-year prison sentence. The jury in this case, by their verdict, intended to send a message—loud and clear—to anyone who sells alcohol that if they sell it to minors they will be severely punished. Florida lawyers Bill Gilbert and Rolando Santiago represented the family and they did a very good job.

Source: myfoxtampabay.com

**Lawsuit Filed Against Drunk Driver and Bar Arising Out Of Fatal Crash**

The mother of a young man, who died in a car crash near Palos Hills, has filed a wrongful death lawsuit against a drunk driver and the bar that sold him alcohol. Judy Feil, the Plaintiff, alleges that Sam Cafè, who was legally intoxicated on March 10, was negligent when he was involved in the car crash resulting in the death of her 28 year old son, Ryan Osowski. The lawsuit, filed in Cook County Circuit Court, named Trio Sports Bar & Grill LLC and Cafè as Defendants.

Cafè was driving on a city street at a high rate of speed when his car crashed into the Osowski vehicle, causing it to flip several times. Cafè, who was charged with several counts of felony driving under the influence, was served alcoholic drinks at the bar prior to the crash. This is another tragic example of the consequences of drinking and driving. It also sends a message to bars that serve alcoholic beverages.

Source: Chicago Tribune

**Michigan Lawsuit Over Carbon Monoxide Poisoning Settled**

A case in Wisconsin has resulted in a settlement of more than $2 million for a Michigan man who was permanently disabled by carbon monoxide poisoning. The settlement provides that 60-year-old Larry Brenke will get payments from four companies following the 2009 poisoning, which happened in a recreational vehicle parked in Tomah, Wis. The liability insurance carriers for the RV’s owner, Allen Smith, and a construction company, agreed to pay $1 million. The insurance carrier for the company that built the vehicle will pay another $1 million. Other companies will pay $75,000 in the settlement. Brenke and another man accompanied Smith, the owner, on the trip. All three men became sick after their first night. Other parts of the lawsuit had previously been settled.

Source: Claims Journal
A company that makes “Girls Gone Wild” DVDs is trying to overturn a verdict awarding nearly $6 million to a St. Louis-area woman who claims her bare breasts were recorded without permission. Circuit Judge John Garvey in St. Louis ruled for Tamara Favazza in her suit against Mantra Films Inc. and MRA Holdings LLC, awarding her $5.77 million. In 2005, Mrs. Favazza was a 20-year-old college student when someone pulled down her tank top during a party at a St. Louis bar, exposing her breasts. Another person filmed the incident. She later discovered the recording was part of the “Girls Gone Wild Sorority Orgy” DVD series.

Mrs. Favazza contended in the suit, filed in 2008, that she did not give consent and that the DVD damaged her reputation. A St. Louis jury ruled for the DVD makers in 2010, but a retrial was granted. Judge Garvey issued his ruling on March 5. On April 25, the Defendants filed motions asking that the judgment be set aside and a new trial granted.

“Girls Gone Wild” videos and DVDs, featuring young women exposing themselves on camera, have made a literal fortune for Joe Francis, the founder of this “business.” But Francis has been sued by dozens of women who said they were upset at being filmed. Francis was originally named in Favazza’s suit, but was dismissed from the case in 2009. The video was made at a bar then known as the Rum Jungle near the St. Louis riverfront. Court testimony indicated that a woman acting as a contractor for “Girls Gone Wild” pulled down Mrs. Favazza’s shirt at the shoulder strap, exposing her breasts. Another person filmed the incident.

Mrs. Favazza, now a 26-year-old wife and mother, said she only became aware of her appearance in the video when a friend of her husband told her about it. She sued soon after learning about the video and the DVD. Three months after a jury sided with “Girls Gone Wild” in 2010, the judge in that case, John J. Riley, ordered a new trial. He ruled that the verdict didn’t reflect the weight of evidence. Judge Riley wrote that it was clear in the video that Mrs. Favazza was an “unwilling participant,” saying she is seen mouthing the word “no” as her shirt is pulled down. Jeffrey P. Medler, a lawyer with Medler & Roither, a firm located in Clayton, Mo., represented Mrs. Favazza. He did a very good job in this case.

Source: Associated Press

XVI. WORKPLACE HAZARDS

A New York court has ruled that a hotel maid’s sexual assault lawsuit against French man, Dominique Strauss-Kahn, can go forward. State Supreme Court Justice Douglas McKeon ruled that Strauss-Kahn, a former International Monetary Fund leader, is not entitled to diplomatic immunity. The judge derided Strauss-Kahn’s claim of international protection in the civil lawsuit filed last August, calling it the legal equivalent of a “Hail Mary” football pass. That’s a most interesting way for the judge to say the Defendant’s claim of immunity was pretty weak!

The United States never agreed to a 1947 United Nations regulation that grants absolute immunity to the executives of agencies such as the IMF, Judge McKeon found. He noted that the disgraced politician didn’t cite diplomatic immunity last year when faced with criminal charges for the May 2011 encounter and pointed out that Strauss-Kahn resigned from the IMF long before he was sued. Judge McKeon wrote in his order: “If Mr. Strauss-Kahn was entitled to absolute immunity, as he contends, there was ample opportunity before now to assert it.”

The 33-year-old maid, Nafissatou Diallo, 33, who filed the suit, says Strauss-Kahn tried to rape her. In August, Ms. Diallo sued Strauss-Kahn in the Bronx, her home borough.

Strauss-Kahn allegedly chased the woman around his suite at the Sofitel hotel in midtown New York, dragged her into the bathroom, and forced her to perform oral sex on him. The ex-finance chief’s lawyers claim he did nothing illegal and is being unfairly targeted. It was reported that Strauss-Kahn is also under fire for alleged involvement with a hotel prostitution ring in France. In a rather surprising development, Strauss-Kahn has filed a countersuit against the maid in her case, claiming she had hurt his reputation. That’s a most interesting claim considering this man’s history, to say the least.

Douglas Wigdor, the founding partner of Thompson Wigdor, a firm with offices in New York City, represents Ms. Diallo. Based on media reports, I believe his client will be successful in her case. At least, if media reports are accurate, I certainly hope so.

Source: New York Daily News

A Georgia jury has awarded more than $5.6 million to a longshoreman for injuries he suffered in a collision in 2005 at the Port of Savannah. The jury’s award to the Plaintiff, Kirk Deweese, included medical expenses, lost wages, and pain and suffering experienced by the Plaintiff. Deweese was driving a truck when a top lift backed into his vehicle, causing the truck to jackknife. He suffered injuries to his neck, back and hip that required nine surgeries and left him unable to work as a longshoreman. State law limits the maximum liability of the Georgia Ports Authority to $1 million. The Authority is considering whether to appeal.

Source: Insurance Journal

Regulators Propose $105,000 Fine For Hazards At Texas Facility

OSHA has cited Houston-based AWC Frac Valves Inc. with one willful, six serious and four other-than-serious violations for exposing workers at the company’s Conroe, Texas, facility to multiple safety hazards, including amputation dangers. The proposed penalties total $105,000. The willful violation is failing to provide the required machine guarding to prevent employees from coming in contact with moving machinery parts such as vertical and manual lathes.

A willful violation is one committed with intentional, knowing or voluntary disregard for the law’s requirements, or with plain indifference to employee safety and health. The serious violations include failing to: ensure that working surfaces are clear of trash and debris; to provide a lockout/tagout program for machines’ energy sources when they are being set up for production; and to properly guard pulleys, belts and live electrical circuits. A serious violation occurs when there is substantial probability that death or serious physical harm could result from a hazard about which the employer knew or should have known.

The other-than-serious violations include failing to properly maintain the required injury and illness logs, and adequately close openings on electrical equipment. An other-than-serious violation is one that has a direct relationship to job safety and health, but probably would not cause death or serious physical harm.

AWC Frac Valves employs about 100 workers in Conroe who fabricate high-pressure hydraulic fracturing valves for the oil and gas industry. The company had 15
business days from receipt of the citations to comply, request an informal conference with OSHA's Houston North area director, or contest the citations and penalties before the independent Occupational Safety and Health Review Commission.

Source: Claims Journal

**OSHA Proposes $137,000 Fine For Wisconsin Company**

A River Falls, Wis., company is facing $137,000 in potential fines following a trench collapse last year that killed a 19-year-old worker. OSHA issued citations last month against Gordy’s Pumping Service. The victim and another worker were working in a 6-foot-deep trench in November when one wall caved in. Fortunately, the other worker wasn’t hurt. OSHA levied five safety violations, including one for failing to take proper precautions to prevent a trench collapse. Gordy’s had 15 business days to comply with the fines, contest the citations, or request a conference with OSHA.

Source: Insurance Journal

**Michigan Fines Four Companies In Ambassador Bridge Death**

The Michigan Occupational Safety and Health Administration has levied $107,000 in fines against four companies after the death of a painter who fell to his death while working on a bridge that links Detroit and Windsor, Ontario. The state agency announced the fines against Seaway Painting LLC, Walter Toebe Construction Co., Rauhorn Electric Inc. and Soil and Materials Engineers Inc. According to the agency, the January death of 27-year-old Kent Morton, who worked for Seaway Painting, was caused by the negligence of the companies.

Source: Claims Journal

**Company Cited For Cleveland Casino Garage Collapse**

OSHA has cited a cement contractor for six safety violations with proposed fines totaling $38,000 after a parking garage deck collapsed at the site of the new Cleveland casino. Fortunately, no one was seriously hurt when the deck collapsed while concrete was being poured on December 16th at the garage, which is located across from the downtown Horse-shoe Casino Cleveland. OSHA cited Cleveland Cement Contractors Inc. for violations including not following design and construction standards. But Cleveland Cement says it complied with the standards and it disputes the citations.

Source: Claims Journal

**Two Workers Hurt In Texas Fracking Tank Site Blast**

Two workers were hurt last month in an explosion at a hydraulic fracturing tank site in south Texas. OSHA regulators cited the company that owns the site, Vann Energy Services LLC, for what inspectors called serious health and safety violations at the facility. The men were cleaning a tank at the maintenance facility that holds hydraulic fracturing or fracturing tanks in Nixon, Texas, when the blast happened.

According to OSHA, the company required workers to enter a fracturing tank for cleaning without first testing for atmospheric hazards or training them on the hazards of confined spaces. It was stated by OSHA that “confined space and electrical hazards like the ones found at this site can kill workers.”

OSHA had proposed fining Vann Energy $70,200 for 17 serious violations in February. The citations included failures to maintain electrical conductors and cords; to ensure electrical equipment such as fans were approved for hazardous places; and to provide covers for open pits. The violations also included failure to provide workers with proper protective clothing and chemical hazard training. Vann Energy provides trucking and oilfield support services, including cleaning fracturing tanks, at the Nixon site.

Source: Insurance Journal

**Worker Death Results In $473,000 Fine For Illinois Manufacturer**

A manufacturing plant in Illinois faces a fine of $473,000 after a worker died from chemical burns. OSHA cited Raani Corp. for failing to seek emergency medical treatment after a worker incurred chemical burns at the Bedford Park, Ill., manufacturing plant on November 17th. The worker died from his injuries on December 8th. The company has been cited with 14 safety violations, including six willful violations. The worker reportedly died from burn injuries caused by high-temperature water and a solution that erupted while the worker was beneath an open tank hatch.

An investigation by OSHA determined that the company failed to call 911 to seek emergency medical treatment and neglected to wash the worker in the available safety shower. The worker was actually transferred to a local occupational health clinic in a co-worker’s vehicle more than 30 minutes after the injury. Willful violations have been cited for failing to:

- utilize available emergency care;
- provide, require and train workers on the proper use of protective clothing;
- provide eye, face and hand protection when handling high-temperature liquid and hazardous chemicals; and
- failing to provide hazard communication training to workers exposed to hazardous chemicals.

Generally, OSHA found workers wearing medical-grade latex gloves, which are not insulated or sufficient when using high-temperature liquids or the majority of chemicals used at the site. A willful violation is one committed with intentional, knowing or voluntary disregard for the law's requirements, or with plain indifference to worker safety and health. Additionally, seven serious safety violations were found which involved failing to:

- perform a personal protective equipment assessment;
- correct an improperly guarded platform;
- provide visible quick drenching facilities within the immediate work area;
- train about the usage of powered industrial vehicles;
- enclose live parts of electrical equipment;
- use proper safety precautions when transferring flammable liquids; and
- not maintaining dry, clean floors.

As previously noted, a serious violation occurs when there is substantial probability that death or serious physical harm could result from a hazard about which the employer knew or should have known. One other-than-serious violation was cited for failing to report the fatality to OSHA. An other-than-serious violation is one that has a direct relationship to job safety and health, but probably would not cause death or serious physical harm.

Raani Corp., a manufacturer of healthcare items, over-the-counter pharmaceuticals and household and salon products, employs 150 workers, of which nearly half are temporary day workers. The company was previously inspected by OSHA in 1993, resulting in five serious violations.
Raani Corp. had 15 business days from receipt of its current citations and penalties to comply, request an informal conference with OSHA’s area director, or contest the findings before the independent Occupational Safety and Health Review Commission.

**OSHA CITES BUILDER IN NEW YORK CITY COLLAPSE THAT KILLED A WORKER**

Federal officials say a New York City contractor failed to make sure a building under construction was stable before it collapsed and killed a worker and hurt four others last fall. OSHA cited SP&K Construction, a Brooklyn-based company, with 11 safety violations. The company could face more than $77,000 in fines.

SP&K was working on a project in Brooklyn’s Brighton Beach section when three floors collapsed as concrete was being poured in November. According to OSHA, the building’s structural frame wasn’t properly braced and the exterior walls weren’t aligned correctly, among other problems. The agency also says the scaffolding on the building wasn’t sufficiently braced. The city’s Department of Buildings issued nine violation notices to SP&K shortly after the collapse.

Source: Claims Journal

**$600,000 OSHA SETTLEMENT IN MASSACHUSETTS PLANT BLAST**

OSHA has reached a $600,000 settlement with adhesives manufacturer Bostik, Inc. The agency had levied the workplace safety citations arising out of a March 2011 explosion at the Bostik plant located north of Boston. Four workers had nonlife-threatening injuries. According to OSHA investigators, a valve had accidentally been left open, causing acetone vapors to fill the building and ignite. The explosion rattled a surrounding neighborhood, and damaged two buildings at the plant complex. In announcing the settlement, OSHA said Bostik has taken corrective measures and will continue to do so. OSHA had proposed fines of $917,000 last fall. Bostik said then it had upgraded the plant since the incident.

Source: Claims Journal

**XVII. TRANSPORTATION**

**GOVERNMENT PROPOSAL AIMED AT BUS AND TRUCK ROLLOVERS**

The National Highway Traffic Safety Administration has proposed a new regulation relating to buses and trucks. Manufacturers would have to equip large trucks and buses with safety systems that help prevent rollover accidents through computer-controlled braking, under the regulations. The proposal would require electronic stability control in new trucks and buses, including motorcoaches. The safety system senses when a driver might lose control and automatically applies brakes to individual wheels to keep the vehicle stable and avoid a rollover. It helps prevent skidding across icy or slick roads, and helps motorists keep control when swerving to avoid an unexpected object in the road. The individual wheel braking is designed to counter over-steering and under-steering.

Government research shows the technology could prevent up to 56% of rollover crashes each year—the deadliest among all crash types—and another 14% of loss-of-control crashes. NHTSA estimates that a standard requiring the safety systems on large trucks and large buses would prevent up to 2,329 crashes, eliminate an estimated 649 to 858 injuries, and prevent between 49 and 60 fatalities a year. The safety systems are already required in passenger cars, sport utility vehicles and light trucks, beginning with the current model year. But the safety systems have been available in all SUVs and many passenger cars for years. NHTSA Administrator David Strickland said in a statement:

“We’ve already seen how effective stability control can be at reducing rollovers in passenger vehicles. Now, we’re expanding our efforts to require stability enhancing technology on the many large trucks, motor coaches, and other large buses on our roadways.

Safety advocates welcomed the proposal. Jacqueline Gillan, president of Advocates for Highway and Auto Safety, had this to say about rollovers:

Rollover crashes can be costly and catastrophic, especially when involving a large truck weighing 80,000 pounds or a motorcoach carrying as many as 54 passengers.

Preventing a rollover is essential to protecting motorcoach occupants. Motorcoaches have become the over-the-road passenger airlines for millions of families, students, seniors and church groups, with nearly 750 million trips taken each year. David Champion, senior director of automotive testing for Consumer Reports, has called electronic stability control “the single most important advance in auto safety since the development of the seatbelt.”

Source: Claims Journal

**INADEQUATE GUARDRAILS AT NEW YORK SITE WHERE SEVEN DIED**

According to a safety group, the section of highway in New York where a highway crash sent seven members of a Bronx family flying over a guardrail and plummeting to their deaths has narrow lanes, steep hills, tight turns, inadequate guardrails and no breakdown lane. The Bronx River Parkway “lacks modern transportation engineering features,” according to Robert Sinclair, spokesman for the American Automobile Association’s New York City affiliate. Sinclair said the parkway was conceived in 1907 and opened in 1925 as “the first limited access multilane highway in the U.S.”

Three sections of the parkway in the Bronx, including one at or near the crash site, are on the state Transportation Department’s 5% List, a federally-mandated report of locations “exhibiting the most severe highway safety needs.” The driver, Maria Gonzalez, clipped a highway divider and damaged a tire before her SUV plunged off a highway and six stories down into a ravine on the grounds of the Bronx Zoo. Three generations of a family, including three children, were killed.

Reportedly, the state Department of Transportation is working closely with all agencies involved to determine the cause of this tragic incident. The crash was the second in the past year where a car fell off the same stretch of the parkway. Fortunately, the first incident didn’t cause deaths. But in 2006, six people were killed on the parkway when one car crossed the median into oncoming traffic.

The driver in the most recent crash, Maria Gonzalez, was driving south at 68 mph when she bumped a concrete barrier separating the north- and southbound lanes. With one tire damaged, her Honda Pilot crossed over three lanes of traffic, hit a two-foot-high concrete curb and went airborne, clearing a 4-foot-tall guardrail. There was a curb at that location, which is most unusual. It’s not a good safety practice to put curbs on high-speed
roadways because they can serve as launching pads. That appears to have been a factor in what happened in this incident, when the Gonzalez vehicle flew over the four-foot guardrail.

A guardrail should be higher when used on an elevated roadway such as this one. Ms. Gonzalez was driving well above the posted 50 mph limit, but speeding is common at that point and she may have been simply keeping up with traffic, according to a New York Police Department spokesman. Neither is there any evidence Ms. Gonzalez was texting, on a phone, or had been drinking. There was no evidence of her vehicle having any mechanical failure, according to the police. All seven of the victims, who were wearing seat belts, died from blunt force trauma. This was a tragic occurrence that could have been prevented.

Source: Insurance Journal

Coast Guard Steps Up Inspections of Towboats

A new round of inspections of towboats and tugs will start in July as part of a nationwide push by the Coast Guard to improve the safety of the nation’s rivers and harbors. Since a 2008 collision and oil spill near New Orleans involving an improperly licensed towboat captain, the Coast Guard has begun inspecting work boats across the nation. The Coast Guard has inspected 2,887 towing vessels that volunteered to be inspected in the 26 states that fall under the Coast Guard’s Eighth District, which is headquartered in New Orleans.

Starting on July 1, the agency says it will begin inspecting the rest of the towing fleet in the district. Michael White, a Coast Guard towing vessel specialist, stated: “Our goal is 100% participation.” The inspections will help improve the safety of towing vessel operations on our nation’s waterways and protect life, property and the marine environment. Inspectors will be seeking out about 900 vessels that haven’t been inspected yet in the Eighth District’s boundaries, which stretch from the Gulf Coast to the Appalachian Mountains to the Rocky Mountains.

Safety in the towing industry came under scrutiny following a July 23, 2008, accident between the towboat Mel Oliver and the Tintomara oil tanker on the Mississippi River near New Orleans. The collision spilled about 283,000 gallons of oil and closed a nearly 100-mile stretch of river near New Orleans for six days, temporarily idling dozens of tankers and ships as environmental crews used booms and vacuums to clean oily riverbanks. After that accident, Congress called for action, and the tug industry moved to close some of its own loopholes. The Coast Guard started drawing up regulations for an improved inspection program and began the “Big Tow Operation,” a nationwide effort to crack down on tugs that break the rules.

The Coast Guard also trained a new corps of field inspectors specifically for tugs, hoping to examine the entire fleet. The inspections are welcomed by many in the industry who complained that the towing fleet was under-regulated. Before the new inspection program, towing vessels were among the only work boats that did not have to be inspected by the Coast Guard.

According to Ken Hocke, senior editor of WorkBoat Magazine, an industry journal based in Mandeville, La., the inspections were long overdue and ferreted out bad operators. He added:

Those kinds of people who lived at the shadows of the industry, so to speak, who had a tug that broke every environmental regulation you could think of, don’t have a place on the river anymore. The inspections have forced companies to spend more money and time on making sure their vessels and crews are up to the Coast Guard’s standards. But, contrary to some fears, the inspections haven’t driven companies out of business. Overall, people are happy with it. The Coast Guard is doing a good job with what they have to work with.

Hopefully, the proposed inspections will improve tug boat safety and will help to reduce accidents. If so, lives can be saved and the numbers of serious injuries reduced.

Source: WorkBoat Magazine

Jury Awards $24 Million To Woman In Texas Cell Phone Case

A jury in Corpus Christi, Texas, awarded $24 million to a woman who was hit by a Coca-Cola truck driver who was talking on her cellphone at the time of a highway crash. The Coca-Cola truck hit the Ford Fusion the Plaintiff was driving. The jury awarded 37-year-old Vanice Chatman-Wilson $14 million in compensatory damage and $10 million in punitive damages. The Plaintiff was injured in the crash and had to undergo lumbar surgery after the 2010 crash.

Coca-Cola has a policy requiring drivers to use a hands-free device when using a cellphone while driving. The company’s truck driver maintains she was using a headset, in accordance with company policy. But the Plaintiff contended that the company’s policy is not enforced and that the truck driver was using the cellphone when the crash occurred.

Coca-Cola said in a statement that the damages awarded to the Plaintiff had no connection to her injuries. Interestingly, Araceli Vanessa Cabral, the truck driver, testified she was not aware of the risks involved in using a cellphone while driving. She testified that had she known of the policy, she would not have used her phone. It appears the jurors were telling Coca-Cola Enterprises to change its policy or at the very least to enforce the one it currently has.

Corpus Christi lawyers, Robert C. Hilliard and with Hilliard, Munoz & Gongolees, and Thomas J. Henry with Thomas S. Henry personal injury lawyers, represented the Plaintiff. Mr. Henry had this to say:

We really need better rules, regulations and laws, and corporations need to have a no-cellphone policy while operating a vehicle.

I totally agree with his assessment. Our firm is seeing more and more tragic cases—resulting in deaths and serious injuries—that are caused by distracted drivers using a cellphone or texting. The lawyers in the Texas case did a very good job for their client. Coca-Cola says it plans to appeal the jury’s decision.

Source: Claims Journal

Vermont Motorist Does Two Dumb Things

Based on media reports, a Vermont motorist is guilty of two counts of “dumbness” while driving a motor vehicle. Jesse Clayton, the 33-year-old motorist, was distracted while writing a text message on his cellphone when he crashed into a police car about 1 a.m. on May 18th. Clayton reportedly came to a momentary halt at a stop sign, but wasn’t paying attention when pulling into the intersection and crashed into the side of the police cruiser that was passing through the intersection. Fortunately, nobody was injured, but both vehicles sustained damages. Clayton was issued several traffic citations.

Texting while driving is illegal in Vermont, punishable by a fine of $100 and two points on a driver’s license for a first
offense. This man, who was very fortunate, did two very dumb things:

• He was texting while driving a vehicle.
• He hit a police officer's car.

Hopefully, laws being passed around the country in a number of states will help stop drivers from texting while driving. But common sense tells all of us it’s a pretty dumb thing to do!

Source: *Insurance Journal*

**$17 MILLION SETTLEMENT IN DEADLY PHILLY DUCK BOAT CRASH**

The families of two Hungarian students killed two years ago when a tugboat-guided barge slammed into and sank their amphibious sightseeing boat in the Delaware River have settled their lawsuit for $15 million. The settlement came last month, just days into a federal wrongful-death trial that had been expected to last a month. Eighteen surviving passengers will share in an additional $2 million in the settlement, which was approved by a judge after two days of testimony.

The two victims—Szabolcs Prem, 20, and Dora Schwendtner, 16—were part of a group visiting the U.S. Through a church exchange program. They drowned when their amphibious sightseeing boat, called a duck boat, was slammed by the empty sludge barge and capsized on July 7, 2010. Robert J. Mongeluzzi, a lawyer with Saltz, Mongeluzzi, Barrett & Benedesky, a Philadelphia firm, represented the families and did a very good job.

Source: *montereyherald.com*

**MOTORCYCLIST HIT BY RIDE-THE-DUCKS VEHICLE FILES LAWSUIT**

Austin Porter, while riding his motorcycle, was run over and dragged by a Ride the Ducks amphibious vehicle loaded with tourists. The incident occurred in downtown Seattle. Porter and his wife filed a civil suit last month against Ride the Ducks of Seattle seeking damages. As you may know, the Ride the Ducks vehicles are used in Seattle primarily for tourists.

The safety of the Seattle fleet of Ducks was questioned during a news conference. It was pointed out that the vehicles' huge hulls and faulty sightlines make them a hazard to other vehicles. It's significant that Duck drivers are expected to serve as "tour guide and entertainer" from behind the wheel, creating even more of a danger to other vehicles. It's significant that Duck drivers are expected to serve as "tour guide and entertainer" from behind the wheel, creating even more of a danger to other vehicles.

Source: *nwsource.com*

**$4.55 MILLION SETTLEMENT IN HIGHWAY MOTOR VEHICLE CRASH**

Anna Reznik, who was catastrophically injured in a 2009 motor vehicle crash, has settled her lawsuit with the State of California. A state agency, Caltran, will pay her $4.55 million under the terms of the settlement. Monterey County and the estate of the other driver will also contribute to the settlement. Caltrans was sued for maintaining a dangerous roadway over a long period of time. The settlement comes as the start up of construction to correct the safety problems at the interchange where the crash occurred.

Ms. Reznik sued the state and county in 2010, alleging they knew the dangers of the chaotic intersection and did not move quickly enough to remedy a disaster in the making. The California Highway Patrol had called the intersection one of the most dangerous in the county. A Caltrans official has called the crash "a poster child for the kind of accident we're trying to avoid" with the new interchange. Construction on the interchange will begin by December and is expected to be complete in 2015.

The state was aware of the dangerous crossroad as far back as 1946 and rejected an improvement proposal by Monterey County in 1965. In 1974, after 11 accidents and four deaths at the site over two years, the transportation agencies proposed changes. Now, with 38 years having passed, those changes still hadn't happened and Ms. Reznik was injured as a result.

Ms. Reznik's case was settled on the eve of trial. Monterey County, which was sued because it controls San Juan Road, had already settled for $190,000. Caltrans settled a few weeks before the scheduled trial date. The insurer for the Bowman estate settled thereafter for $610,000. Ms. Reznik immigrated to the United States in 1993 from the former Soviet Union, where she was a news reporter, television host and producer for almost 20 years. She had been a caretaker for two elderly women for 15 years. Bores E. Efron, a lawyer from Menlo Park, Calif., represented Ms. Reznik. He did a very good job for her in this case.

Source: *montereyherald.com*

**LAWSUIT FILED AGAINST NEW YORK METS IN HIT-RUN ACCIDENT THAT KILLED WOMAN**

The family of a Staten Island woman, who was killed in a hit-and-run accident, has filed suit against the New York Mets. The family is blaming the Mets for serving too much alcohol to the driver causing him to become intoxicated at Citi Field on the night of the April incident. The lawsuit filed last month names the Mets, the driver Brian McGurk, stadium vendors and a local bar, Nurnberger Bierhaus, as Defendants. It was contended that all of the defendants were responsible for the woman's death. The 40-year-old driver, McGurk, was said to have left the scene after hitting Mrs. Clara Almazo. The woman saved her eight-year-old grandson's life by pushing him away from the speeding Ford Escape as they were walking home from church services on Holy Thurs-

Source: *nwsource.com*
The two men never heard the train whistle. Based on the investigation of this crash, it’s probable that old Jack Baker were killed. Based on the 2009. Both 43-year-old Ziegler and 42-year-old driver found to be negligible for running a red light. The plaintiff, James Renshaw, 48, was in a coma for three weeks and hospitalized for two months after he was struck on the night of January 11, 2011, while riding his motorcycle.

Cooke was driving on a provisional license, at the time of the crash, accompanied by a 17-year-old classmate. He told the investigating officer that he wasn’t paying full attention and didn’t realize the arrow was red until he had entered the intersection.

The $1.7 million jury award covers more than $500,000 in medical expenses. It will also cover future surgeries, the $21,000 loss of Renshaw’s Harley-Davidson motorcycle, and the loss of future earnings. Renshaw had been offered a job as a fire prevention inspector with Raytheon Co. a few days before he was hit. He is now trying to find work he can do despite his injuries and he will need future surgeries. Allen Ball, a Southern California lawyer with Ball, Yorker, located in Ventura, represented the Plaintiff in this case. He did a very good job for his client.

The Widow of an 88-year-old Colorado man who died as a result of bedsores he suffered in a nursing home located in Colorado, has been awarded $3.2 million by a jury. The jury found Pioneer Health Care Center to be guilty of negligence in the death of Henry Frazier. The resident stopped eating, drinking and walking and became bed-bound when he was placed in the nursing home in 2009. Mr. Frazier died in 2010. He had advanced Parkinson’s disease.

Mr. Frazier developed a pressure sore on his bottom. The family who visited Mr. Frazier on a regular basis said they were not informed of how serious the pressure sore was. The pressure sore became infected and a nurse aide at the nursing home finally informed Mr. Frazier’s son that he needed to look at the seriousness of the sore. The family asked that he be sent to the hospital. Upon arrival, he was diagnosed as being septic, dehydrated and malnourished. The pressure sore was also infected with MRSA and was considered a Stage IV wound. It’s common knowledge in the medical community that Stage IV events aren’t supposed to happen. Pioneer Health Care Center is owned and operated by Grace Health Care. An appeal is expected by the nursing home.

Nursing homes are required to move bedridden clients every two hours so they won’t develop skin problems or sores. Colorado Health Department officials inspected the nursing home and cited the facility for 27 deficiencies after discovering many problems including wide scale infections. Jerome M. Reinan, a lawyer from Denver, who also specializes in Nursing Home litigation, represented the family. He did a very good job in this case.

Source: Insurance Journal

A Virginia jury has returned a verdict totaling $6.5 million for an 84-year-old woman who was injured in a fall at a nursing home. The jury’s verdict included a punitive damages award of $5 million. Obviously, the jury intended to punish the owner of the nursing home for a policy that discouraged the use of bed alarms to signal when a patient was getting out of bed.

When she fell in her bedroom, Mrs. Virginia Crouse was a resident of Stanleytown Health Care Center, owned by the Roanoke, Va.-based Medical Facilities of America, Inc. She had been receiving therapy to boost her mobility after a stroke. The fall broke her shoulder and hip and left her with permanent impairment, particularly in the use of her left arm. Staff members testified a bed alarm was in use and sounded. Evidence was presented at trial that no bed alarm was in use, even though Mrs. Crouse’s care plan called for one.

Family members testified they never saw a bed alarm. EMS providers reportedly saw no bed alarm when they were called because of the fall. An expert witness said there were no indications a bed alarm was in use. A bed alarm is an “early warning device” that signals the staff when a patient is moving in a manner that might lead to a fall. Training materials used by MFA actually discouraged the clinical staff from using bed alarms.

It was reported that the “restraint reduction” training materials “created the fiction of characterizing bed alarms as restraints.” It appears that MFA essentially invited its staff to discontinue the use of safety devices because it would mean less work. It was shown at trial that the facility had insufficient staff to respond to patients who might be in danger of a fall.

The trial was split into two sessions. In the first, the jury was asked to decide liability and compensatory damages with the second considering punitive damages. In the initial session, the jury found that there was no bed alarm in use, despite staff testimony to the contrary. The jury considered Mrs. Crouse’s damages, including $72,000 in medical and special care expenses, and awarded her $1.5 million in compensatory damages.

In the punitive damages portion of the trial, evidence was introduced that MFA discouraged the use of bed alarms throughout its chain of 51 Virginia nursing homes. Inspection reports from the Virginia Department of Health were presented showing a number of cases where bed alarms were absent, contrary to the patients’ care plans. I understand that MFA never made an offer in the case. Robert W. Carter Jr., a lawyer with offices in Appomattox, Va., and Lynchburg, Va., who specializes in nursing home cases, represented Mrs. Crouse in this case and he did a very good job.

Source: Lawyers USA Online

A jury has returned a verdict in favor of a retired Ventura County firefighter in his lawsuit arising out of a motor vehicle crash. The Plaintiff was awarded $1.7 million By Jury

Source: voestar.com

Union Pacific Railroad and the family of a man killed in a train crash in Minnesota have reached a settlement. Union Pacific has agreed to pay $650,000 to the family of Todd Ziegler. He and another man were in a county dump truck that was struck by three locomotives near Crystal Lake in July 2009. Both 43-year-old Ziegler and 42-year-old Jack Baker were killed. Based on the investigation of this crash, it’s probable that the two men never heard the train whistle due to the noise of the dump truck. This railroad crossing was the only one in the area that didn’t have lights or crossing arms.

Source: Insurance Journal

$650,000 Settlement Reached Over 2009 Minnesota Train Crash

Source: New York Daily News

Retired Firefighter Awarded $1.7 Million By Jury

XVIII. NURSING HOME UPDATE

Jury Verdict In Nursing Home Fall Lawsuit

The medical community that Stage IV wound. It’s common knowledge in the medical community that Stage IV events aren’t supposed to happen. Pioneer Health Care Center is owned and operated by Grace Health Care. An appeal is expected by the nursing home.

Nursing homes are required to move bedridden clients every two hours so they won’t develop skin problems or sores. Colorado Health Department officials inspected the nursing home and cited the facility for 27 deficiencies after discovering many problems including wide scale infections. Jerome M. Reinan, a lawyer from Denver, who also specializes in Nursing Home litigation, represented the family. He did a very good job in this case.

Source: Denver Post

Source: Insurance Journal

Regulators Should Monitor Safety Throughout a Drug’s Lifecycle

The U.S. Food and Drug Administration should review drugs on a regular basis for as long as they are on the market in order to catch any new safety issues, according to a report from an independent research body. The Institute of Medicine, which often advises the government on scientific matters, said the FDA should then create a comprehensive, publicly-available document that reflects risks that crop up throughout the “lifecycle” of the drug.

The FDA asked the Institute to evaluate the scientific and ethical aspects of conducting post-market safety studies for approved drugs pursuant to the agency’s authority under the Food and Drug Administration Act of 2007. In the report, the Institute stressed that safety issues involving FDA-approved drugs can arise long after the drugs are evaluated and reach the market, since preapproval studies involve small sample sizes and relatively short time frames.

The FDA has been criticized for not responding quickly enough to dangerous side effects that become more evident after a product is brought to market, such as with Vioxx, a painkiller that Merck & Co. pulled five years after approval because of a link to heart attacks and strokes. “It’s impossible to know all the risks and benefits of a drug before approval,” according Dr. Ruth Faden, co-chair of the Institute’s committee. The Institute called on the FDA to monitor drug safety at regular intervals over time. As we have stated in prior issues, the recommendations by the Institute are impossible to know all the risks and benefits of a drug before approval,” according Dr. Ruth Faden, co-chair of the Institute’s committee. The Institute called on the FDA to monitor drug safety at regular intervals over time. As we have stated in prior issues, the recommendations by the Institute are not binding. Interestingly, the FDA has expressed some reservations about costs. Sandy Walsh, an FDA spokeswoman, stated:

We support the general concept of ensuring the public to be able to clearly monitor relevant safety issues for all drugs. However, we feel it would be very challenging to implement this recommendation within our current resources without seriously compromising other critical regulatory activities.

It is quite obvious that the FDA should have the responsibility to monitor drugs after they hit the market. But apparently that doesn’t always happen. The Institute stated in the report:

The IOM concludes that the FDA’s current approach to drug oversight in the postmarket setting is not sufficiently systematic and does not ensure that it assesses the benefits and risks of drugs consistently over the drug’s life cycle. Adopting a regulatory framework that is standardized across all drugs, yet flexible enough to adapt to regulatory decisions of differing complexity, could help make the agency’s decision-making process more predictable, transparent and proactive. These changes could allow the FDA to better anticipate post-approval research needs and improve drug safety for all Americans.

Currently, the FDA must only check for new safety issues after the drug has been sold for 18 months, or after it has been used by 10,000 patients, whichever is later. It relies upon reports of side effects submitted by the drugmaker, doctors, or patients. The FDA did get greater power under a 2007 law to compel drugmakers to do additional post-approval safety trials or change their labels in response to new information, rather than relying on voluntary action from the companies.

In a report in April, the FDA said it now spends as much effort and resources on tracking a drug after it is approved as it does in the pre-approval process. It said it has required companies to do 385 post-market studies since 2008, and to change the label based on new safety information 65 times. Dr. Faden, who is also director of the Johns Hopkins Berman Institute of Bioethics, said extensive post-approval monitoring is critical because safety concerns with a drug only become apparent once it has been used for many years, and by thousands of patients. Dr. Faden observed:

We’d like to think that when a drug is approved, the evidence is like you need to convict someone at a murder trial: rock solid and without a shadow of a doubt. But that’s not a criterion the FDA could ever use and get drugs out to people in a reasonable amount of time…. exactly how that drug will fare once it’s released is an open question.

We mentioned in this issue the 2011 Supreme Court ruling in PLIVA v. Mensing. This decision held that failure-to-warn claims against generic drug makers, required by law to carry the same warning labels as their brand-name equivalent, are preempted by federal law. We also said that Congress should pass the Patient Safety and Generic Drug Labeling Act, S. 2295. The measure would require generic drug manufacturers to update their warning labels to protect patients from previously unknown side-effects. Again, I hope our readers will ask their U.S. Senators to support S.2295.

Sources: Lawyers USA Online and Insurance Journal

Some Birth Control Associated With Increased Blood Clot Risk

A new medical study has found that women who use birth control patches like Ortho-Evra or contraceptive vaginal rings like NuvaRing have a heightened risk of blood clots. The study, released last month by the British Medical Journal, found:

Women who use transdermal patches or vaginal rings for contraception have a 7.9 and 6.5 times increased risk of confirmed venous thrombosis compared with non-users of hormonal contraception of the same age.

The conclusion was based on a study of 1.6 million non-pregnant Danish women from 2001 to 2010. The participants in the study had no history of thrombotic (clotting) disease or cancer. There has been a great deal of litigation involving both birth control patches, and vaginal rings have been the target of numerous product liability suits throughout the country.

In 2008, Johnson & Johnson agreed to pay more than $687 million to settle the earliest cases brought by women who claimed their blood clots were caused by the Ortho-Evra patch. The patch must be worn for three consecutive weeks each month, to continuously provide hormones through the skin and into the blood stream. Thousands of lawsuits, filed in both state and federal courts, allege that Johnson & Johnson failed to adequately warn about the increased risk of blood clots. Stronger warnings have been added to the product’s label several times since the patch was introduced in 2002.

NuvaRing is a vaginal contraceptive that releases estrogen and progestin. Its main advantage is said to be convenience, because it can be left in place for three weeks instead of taking a pill every day. The device was originally manufactured by Organon Pharmaceuticals and its affiliates. Schering-Plough Corp. acquired the Organon entities in 2007. Merck in turn acquired Schering-Plough in 2009. Merck now faces hundreds of product liability suits in state and federal court concerning
the NuvaRing device. The lawsuits allege that NuvaRing has a design defect in the dosage and type of progestin used. Plaintiffs also claim that the manufacturers failed to warn about side effects, including blood clotting, pulmonary embolism, heart attack, stroke and deep vein thrombosis.

The just-released Danish study indicates that an increased risk of blood clots may justify a change in which birth control products women choose to use. The study states:

A risk of 10 per 10,000 women years implies a risk of venous thrombosis of more than 1% over a 10-year user period. Therefore women are generally advised to use combined oral contraceptives with levonorgestrel or norgestimite, rather than to use transdermal patches or vaginal rings.

If you need additional information on this subject, contact Melissa Prickett, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Melissa.Prickett@beasleyallen.com.

Source: Lawyers USA Online

XX.
ENVIRONMENTAL CONCERNS

HOT FUEL LITIGATION GAINING MOMENTUM

Over the past six months, the Hot Fuel MDL centered in Kansas City, Kan., has gained serious traction, both in the media and on the litigation front. As we have reported, as temperatures rise, fuel volume expands but the energy within that given fuel remains the same. As a result, consumers who purchase hot fuel are getting less fuel than they are actually paying for. At the same time, oil companies profit from the sale of more fuel as the fuel’s temperature increases. In fact, at every level of the distribution chain except at retail, oil companies compensate for the impact temperature has on motor fuel using temperature compensation devices. The goal of the Hot Fuel litigation is to correct this inequity.

Late last year, the Defendants filed over 200 motions for summary judgment seeking to dismiss the Plaintiffs’ cases. Preparing responses to these motions was a significant undertaking. Parker Miller, a lawyer in our firm, coordinated responses in Alabama, Georgia, Tennessee and Mississippi for this litigation. Judge Kathryn Vratil of the District of Kansas has since begun ruling on the motions in the Kansas bellwether case, and we are pleased to report that at almost every turn, the Plaintiffs have been victorious. Specifically, Judge Vratil has upheld the Plaintiffs’ unjust enrichment and consumer protection claims, as well as the Plaintiffs’ pursuit of injunctive relief against the Defendants. Previously, the 10th Circuit Court of Appeals upheld the District Court’s grant of class certification on the Plaintiffs’ claims.

The Plaintiffs’ Steering Committee in the MDL, which has done a fantastic job in this case, has obtained numerous settlements with the Defendants. These include settlements with Costco Wholesale Corp., Valero Energy Corp., Casey’s General Stores, Inc., BP Products North America, Inc., Conoco Phillips Co., and Shell Oil Products US. In addition, the world’s largest retailer, Walmart, along with its subsidiary Sam’s Club, have settled. Recently, the Court approved the groundbreaking Costco settlement, whereby Costco will begin converting gasoline dispensers in some states to automatically compensate for fuel expansion due to temperature.

The first Hot Fuel case is set for trial on August 27 of this year in the District of Kansas. Rhon Jones, a Plaintiffs’ Steering Committee member, and Parker Miller, both lawyers in our firm’s Toxic Torts Section, have worked extremely hard on this case from its inception. If you need additional information contact Rhon or Parker at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com or Parker.Miller@beasleyallen.com.

XXI.
THE CONSUMER CORNER

MAN RECEIVED HIV-POSITIVE BLOOD PRODUCTS DURING HEART OPERATION

Our firm has filed a lawsuit on behalf of a man who received blood infected with HIV during coronary bypass surgery. As a result of receiving the HIV-positive blood, Howard Midkiff of Montgomery contracted HIV. He will have to take medication and receive treatment for the rest of his life. LifeSouth Community Blood Centers is the Defendant in this case.

It’s tragic and unforgivable—particularly in light of today’s medical testing capabilities—that a man could undergo heart surgery and survive the risks associated with such a complex operation, only to learn months later that he contracted HIV from a tainted blood transfusion he received during surgery. A tainted blood supply puts everyone at risk.

The blood contaminated with HIV was collected by LifeSouth in Dale County, Ala., from “John Doe” on October 14, 2010. Mr. Midkiff was admitted to Baptist Medical Center in Montgomery, on October 18, 2010 for coronary bypass grafting. During his surgery, Mr. Midkiff received a transfusion of blood and blood components provided by LifeSouth. In May 2011, LifeSouth discovered the distributed blood products tested positive for HIV and notified Baptist Medical Center. After blood testing in June 2011, Mr. Midkiff was diagnosed as being HIV-positive.

We contend in the lawsuit that LifeSouth negligently provided blood infected with HIV, and negligently designed and/or failed to implement reasonable screening, handling and testing procedures that could have prevented the dissemination of blood contaminated with HIV. Mike Andrews, a lawyer in our firm, will be the lead attorney in this case. I will also be working with Mike on this important case and will be on the trial team.

SAFETY REGULATORS INVESTIGATING ELECTRIC CAR FIRE

NHTSA is investigating a fire in Texas that destroyed three vehicles last month, including a luxury plug-in sports car built by Fisker Automotive. The Fisker Karma, which sells for more than $100,000, was parked in the garage of a newly built home in Sugar Land, Texas, when the fire broke out. The agency has sent investigators to inspect the site, but has not opened a formal investigation. NHTSA said in a statement that it “is working with local authorities to evaluate whether there are any potential safety implications and will continue to monitor the situation.”

After the fire, the Karma’s lithium-ion battery was intact, suggesting it was not a “contributing factor,” Fisker said at the time, adding that the Karma was not plugged in. The safety of electric car batteries has been in the spotlight since last year when U.S. safety regulators opened an investigation into General Motors Co.’s Chevrolet Volt after some battery packs caught fire during testing. But NHTSA closed the probe in January, saying that electric cars pose no greater risk of fire than gasoline-powered cars.

Fisker has faced tough questions about the reliability of the Karma after a number of high-profile battery problems in recent months. In March, a Karma battery failed...
during a test conducted by Consumer Reports magazine. Fisker recalled 239 Karma cars in December to fix a battery defect that raised the risk of a fire. The Karma that was destroyed in the garage fire was purchased after the recall. No fires or injuries have been tied to the Karma battery, which is built by A123 Systems.

**A Significant Lawsuit Filed Against Indiana’s Largest Hospital Group**

A lawsuit that accuses the state’s largest hospital group of charging uninsured patients more for treatment than insured patients is receiving lots of attention. The case, argued before the Indiana Supreme Court last month, involves a 2010 lawsuit filed by two uninsured patients who accuse IU Health of overbilling them. Although their breach-of-contract claims in the case amount to just a few thousand dollars, the legal stakes in this case are very high.

A favorable ruling for the two Plaintiff’s could allow other patients to sue over billings as far back as ten years. If the Plaintiffs win on appeal, the case could be converted to a class action. This would open the suit to hundreds of uninsured patients who might have been over-billed by the health system over the past decade. Other Indiana hospitals could also be faced with similar lawsuits seeking damage claims in the millions of dollars.

The Indiana Hospital Association, which filed a friend-of-the-court brief with the Supreme Court in support of IU Health’s legal position, calls the case “a pretty concerning situation” for hospitals. It’s the first time the Indiana Supreme Court will deal with the legalities of a hospital charging uninsured patients more than patients who are insured. The Court’s consideration of the issue comes after a new federal law took effect which requires hospitals to give discounts to uninsured patients similar to those given to insured ones.

That new law led IU Health to offer uninsured patients a 40% discount off its full-price “chargemaster” rates in January of last year, according to Lauren Cislak, an IU Health spokeswoman. Ms. Cislak said IU Health’s discount applies to uninsured patients regardless of income and is based on the best rates it charges its commercially insured customers or Medicare. It should be noted that the new federal guidelines do not prohibit patients from suing over past billing practices.

At the heart of the IU Health case are 120 years of state common law holding that if a contract for a service doesn’t specifically set a price or fee, the bill must be “reasonable.” One definition of “reasonable” is the price charged most other customers. Plaintiffs Abby Allen and Walter Moore believe that’s where they were wronged by IU Health North Hospital, located in Carmel.

According to Ms. Allen, a college student, she was billed $15,641.64 to treat an infection in 2008. The lawsuit alleges that an insured patient would have been charged $7,308.78 for the same procedure, taking the discounts IU Health had negotiated with insurance companies into account. Mr. Moore, a Carmel police trainee, says he was charged $1,138 in 2009 for treatment of injuries after an auto accident. He was uninsured and claims the hospital would have accepted “significantly less” had he been insured.

Both patients claim their bills were submitted to a collection agency, which damaged their credit ratings. The lawsuit was filed in Marion County Superior Court. A judge sided with IU Health and dismissed the case. But the state Court of Appeals said last fall the complaint had merit and that the case should be tried in the county court. IU Health appealed the decision by that Appeals Court to the Supreme Court.

IU Health’s lawyers argued to the Appeals Court that hospital billing disputes don’t belong in the courts, saying “the anomalies which exist in the American system of providing health care” mean that a court “could not possibly determine what a ‘reasonable charge’ for hospital services would be.” The new federal regulations don’t negate a hospital’s responsibility “to right what was wrong” with past billing methods. It will be most interesting to see how the Supreme Court rules in this case.

In opposing the certification of a class of current Ohio residents who purchased one of the specified Duets, Whirlpool argued that the incidence of mold problems was rare and that individual questions of liability precluded class treatment. But the Sixth Circuit concluded that the Plaintiffs met the federal requirements for class certification with respect to their claims for tortious breach of warranty, negligent design and negligent failure to warn. The Court said in its order:

*Based on the evidentiary record, the district court properly concluded that whether design defects in the Duets proximately caused mold or mildew to grow and whether Whirlpool adequately warned consumers about the propensity for mold growth are liability issues common to the plaintiff class. These issues are capable of classwide resolution because they are central to the validity of each plaintiff’s legal claims and they will generate common answers likely to drive the resolution of the lawsuit.*

We will continue to monitor this case and will update its status in future issues. The case is Glazer v. Whirlpool Corp., U.S. Court of Appeals, 6th Circuit, No. 10-4188.

**Skechers Will Pay $40 Million To Settle False-Ad Claims**

Skechers has agreed to pay $40 million to settle charges it misled consumers with claims that its toning sneakers would do everything from help them lose weight to make their “bottom half their better half” without ever going to a gym. The settlement, which will be used to provide refunds to buyers of Shape-ups and other Skechers toning sneakers, is believed to be the FTC’s largest ever involving consumer refunds. The announcement comes about eight months after Reebok settled similar FTC charges for $25 million. Skechers had acknowledged in an SEC filing that it was being investigated by the FTC. The reason Skecher’s settlement was larger, in part, was because it has more market share in toning sneakers than did Rebook. Skechers was the market leader in the toning footwear category. Its Shape-ups, introduced in April 2009, cost consumers about $100 a pair. Resistance Runner, Toners, and Toned-ups were sold starting in mid-2010 for $60 to $100 a pair.

Under the terms of the settlement, Skechers will be prohibited from making

Source: Insurance Journal

Source: Lawyers USA Online
unsubstantiated claims about the health and fitness benefits of Shape-ups and related footwear. The SEC alleged Skechers also made deceptive claims about its Resistance Runner, Toners, and Tone-ups shoes. Along with singling out deceptive ads, such as Super Bowl ads featuring Kim Kardashian and Brooke Burke, the FTC said research underlying the claims was suspect.

It appears that Steven Gautreau, a chiropractor, recommended the product based on a clinical study he claimed was “independent.” He also claimed that the shoes’ benefits were tested and compared to regular fitness shoes. But the FTC found the study did not produce the results claimed in the ad. The agency also says Skechers failed to disclose that Dr. Gautreau is married to a Skechers marketing executive and that Skechers paid him to do the study.

David Vladeck, director of the FTC’s Bureau of Consumer Protection, says the Skechers sneakers didn’t just fail to live up to their purported fitness claims, he says they contained significant levels of one or more toxic chemicals ranked by the group to be of “high concern.” The data was published on the website www.HealthyStuff.org. If you need additional information on this subject, contact Shanna Malone at Shanna.Malone@beasleyallen.com.

Source: CNN

**TOXIC CHEMICALS FOUND IN Gardening Tools**

The planting season in Alabama came early this year, as it probably did in most states. As a result, lots of folks are already using gardening tools. A new study has raised a red flag about some of the products currently being used. Researchers for the Ecology Center, a nonprofit environmental group, tested nearly 200 common garden products and found two-thirds of them contained significant levels of one or more toxic chemicals ranked by the group to be of “high concern.” The data was published on the website www.HealthyStuff.org. If you need additional information on this subject, contact Shanna Malone at Shanna.Malone@beasleyallen.com.

Source: CNN

**FDA SAYS NEARLY 1,000 DOGS NOW SICK FROM Jerky Treats**

Nearly 1,000 dogs reportedly have been sickened by chicken jerky pet treats from China. This is according to new complaints from dog owners and veterinarians submitted to federal health officials. The Food and Drug Administration has logged some 900 reports of illnesses and deaths since November, when it warned owners about continued problems with the products known variously as chicken jerky strips, treats and nuggets. At that time, the agency already had heard from 70 owners about problems ranging from vomiting and diarrhea to kidney failure and other serious ailments after animals reportedly consumed the treats. Since then, complaints have mounted steadily, putting growing pressure on the FDA to solve the problem.

Source: MSNBC

**Dick’s Sporting Goods Settles With Governor’s Office Of Consumer Protection For $500,000**

John Sours, Georgia’s Administrator of The Governor’s Office of Consumer Protection (OCP), announced last month that his agency has entered into a settlement with Dick’s Sporting Goods, Inc. To resolve claims of deceptive advertising. The agency alleges that Dick’s compared merchandise “sale” prices to “original” or “list” prices that were inflated to give consumers the impression that they were receiving larger discounts than they actually were. Mr. Sours had this to say:

> This type of advertising is unfair to consumers and to legitimate businesses alike. Advertised sale price comparisons should be based on prices that merchandise was actually sold for.

Dick’s has signed an Assurance of Voluntary Compliance with OCP requiring it to pay a total of $350,000 in cy pres restitution apportioned as follows:

- approximately $121,000 worth of sporting equipment to the Georgia Department of Natural Resources, to be divided among the Wildlife Resources, Parks, and Law Enforcement divisions;
- $100,000 in cash to the Board of Regents of the University System of Georgia to be used in connection with athletic programs; and
- the remainder, approximately $129,000 in cash to the Georgia State Games Commission.

The company must also pay a $100,000 civil penalty and $50,000 in administrative expenses. In addition, Dick’s agrees to refrain from using false or misleading price savings or comparisons in its future advertisements.

Source: consumer.ga.gov

**BBB Warns Of Social Security Card Scam**

The Better Business Bureau has alerted folks to a new scam involving Social Security cards. Those running the scam are telling consumers that the government or other agencies will pay their bills for them. All they need is your Social Security card number. According to the BBB, several complaints have come out of south Alabama. Consumers are given a routing number and are told to use the number off the back of their Social Security card as the bank account.

The BBB informed consumers that the statements in the scam are not true. Customers must know that their bills are not being paid. Also, they can incur additional charges such as late fees and/or disconnection of services. Folks should never give out any personal information to a phone caller and certainly not a Social Security card number. Contact the BBB toll free at 1(800) 239-1642 if you think you may have been a part of this scam.

Source: Better Business Bureau
XXII.
RECALLS UPDATE

I realize that which I am about write will sound like a “broken record,” but once 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 May 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.

68,000 JEEP WRANGERS RECALLED FOR FIRE RISK

Chrysler Group has recalled about 68,000 Jeep Wranglers in the U.S. for a problem that has led to fires in some cases. In 2010 Wranglers with automatic transmissions, a skid plate—a metal plate located under the transmission—can trap debris. Due to a change in the exhaust system for 2010 models, the skid plate is close to the vehicles’ catalytic converter. The catalytic converter is a part of the exhaust system that removes harmful chemicals from exhaust fumes and, when a vehicle is driven, it gets extremely hot. In these Jeeps, the heat can ignite trapped debris causing a fire.

Wranglers built for subsequent model years don’t have this problem because, as a weight-saving measure, Chrysler switched from skid plates to lighter skid bars that do not trap debris this way. NHTSA had been investigating reports of Jeep Wrangler fires. In a letter to NHTSA, Chrysler acknowledged at least 14 reports of fires. To fix the problem, Wrangler owners will be asked to bring their vehicles to a Jeep dealership to have the skid plate replaced with a skid bar. Owners will be notified as soon as parts are available to make the change.

FORD ADDS VIRGINIA TO WINDSTAR MINivan RECALL

Ford has added 27,000 Windstar minivans from Virginia to a larger recall because the rear axles can crack and fail. In August of 2010, the company announced it was recalling more than 600,000 Windstars in the U.S. and Canada. The recall covered vans from the 1998 to 2003 model years that were sold in states where salt is used to clear the roads of snow and ice. Over time the axles can rust, crack and break, causing a driver to lose control. While Virginia wasn’t in the original recall, Ford says a recent analysis shows that vans in that state can have similar problems. There were 11 reports of axle cracks from Virginia between October 2011 and March of 2012. Ford will either replace the axles or install brackets to reinforce them.

BMW RECALLS 3 SERIES FOR FRONT SEAT HEAD RESTRAINT VIOLATION

BMW has recalled 7,600 of its 3 Series sedans for front-seat head restraints that can move downward more than the law allows when they are adjusted to the highest position. Federal regulations limit potential downward movement to 25 mm (which is slightly less than an inch). The recall covers 2012-model 3 Series cars built from last Oct. 19 through March 18th of this year. The car’s build date is on the plate on the driver’s door opening. If the head restraint is fully extended, it “may unexpectedly move down slightly” in a crash, increasing risk of injury, according to documents on the National Highway Traffic Safety Administration website. Owners were notified of the recall last month. Dealers will put a clamp on the restraint to restrain its range of adjustment.

CHRYSLER RECALLS CHARGERS AND CHRYSLER 300 FOR ABS AND ELECTRICAL ISSUES

Chrysler Group has recalled Dodge Charger and Chrysler 300 vehicles in the United States and Canada due to potential problems in electrical stability control and the anti-lock braking systems. The recall affects some 127,550 current model cars from the 2011-2012 model years and produced through December 20, 2011. A fuse in the power distribution center in the vehicles may overheat and cause loss of control, increasing the risk of a crash.

The condition first surfaced on a Michigan State Police training vehicle.

Chrysler told the National Highway Traffic Safety Administration that it is not aware of any crashes, injuries or fires related to the overheating. Chrysler will fix the issue without charge. Recall notices went out in May.

HONDA’S ACURA RECALLS OVER 52,000 CARS IN U.S.

Honda Motor Co Ltd’s Acura brand has recalled 52,615 TL sedans from model years 2007 and 2008 in the United States to replace the power steering hose. The recall was due to a potential fluid leak caused by worn out power steering hoses. Acura says there are some 52,615 cars affected by the recall in the U.S. alone. According to Acura, the hose may deteriorate and leak over time. Leaking fluid could lead to a loss of power steering assistance or could cause smoke and fire, the Japanese automaker said. Honda said no crashes, injuries or fires have been reported related to the issue. Honda Motor Co. recalled 273,000 TLs in 2008 for a similar problem. They were from the 2004 through 2008 model years. The company said owners will be notified of the recall by mail, beginning in mid-June. Customers also can see if their car is affected by the recall at www.recallsonacura.com.

GM RECALLS CHEVROLET MALIBU ECO FOR AIR BAG PROBLEMS

General Motors has recalled its 2013 Malibu Eco cars for a problem with the air bag electronics. The car is Chevy’s redesigned midsize sedan with the so-called e-Assist hybrid powertrain also used on the Buick. Conventional gas-engine 2013s are coming, but the other Malibus on sale now are the 2012 last-generation models. GM will notify owners of 4,304 Malibu Ecos to bring them to dealers for new software for the computer module that controls the air bags. GM says that in an extreme turn, the side-curtain air bags might go off and that in other situations the car’s air bags and seat-belt pre-tensioners might not deploy. GM says it found the issue in testing the car. GM says it has no reports of crashes or injuries.

LEXUS RECALLS NEW GS 350s FOR FAULTY ELECTRONIC STEERING

Toyota Motor Corp. has recalled certain Lexus GS 350 sport sedans
from the 2013 model year to fix a problem with its variable-ratio steering system that could cause drivers to lose control. The recall includes cars built from Dec. 12, 2011, through Feb. 7, 2012. On the affected vehicles the electronic control unit or ECU that controls the variable gear ratio of the steering system could cause the steering wheel to be off-center. In a document filed with NHTSA the car maker said the problem can affect the car when it is restarted after being parked with the steering wheel turned. If this happens, the driver may not realize the steering wheel is off-center, and the car may move in an unexpected direction and possibly cause a crash.

The recall affects 663 vehicles. It could raise questions about variable-ratio steering, which is gaining popularity in the auto industry. Such variable systems allow the front wheels to turn farther and faster with less steering-wheel movement at low speeds, such as when parking or maneuvering in tight spaces. At cruising speeds the ratio changes to make the steering less sensitive or twitchy. Under the recall, Lexus dealers will update the variable steering system free of charge. The recall was expected to begin this month. Owners may contact Toyota at 800-331-4331 for more information.

**Kawasaki USA Recalls Recreational Off-Highway Vehicles**

About 2,000 Teryx Recreational Off-Highway Vehicles have been recalled by Kawasaki Motors Corp., U.S.A., of Irvine, Calif. The recalled products have been incorrectly labeled as having a higher occupant capacity than is safe. Operating the vehicle with additional occupants creates an injury or death hazard. The recalled vehicles are model year 2012 Kawasaki four-wheel recreational off-highway vehicles with side-by-side seating for two people, automobile style controls, with model types Teryx 750 FI 4x4, Teryx 750 FI 4x4 LE, Teryx 750 FI 750 4x4 LE SGE and Teryx 750 FI 4x4 Sport. The model type is printed on the hood of the vehicles. The recalled vehicles are available in the solid colors green, red, grey, silver, black and camouflage (khaki).

The vehicles were sold at Kawasaki dealers nationwide from August 2011 through March 2012 for between $10,600 and $12,000. Consumers will receive a replacement glove compartment cover stating the correct occupant capacity in the mail. They can install it themselves with included instructions or contact their Kawasaki dealer to schedule a free installation. For more information, contact Kawasaki between 8 a.m. and 5 p.m. Monday through Friday toll-free at (866) 802-9381 or visit the company’s website at www.kawasaki.com. Kawasaki is contacting its customers directly which is always a good thing.

**Salsa Cycles Recalls Bicycle Racks**

Salsa Cycles, a wholly-owned brand of Quality Bicycle Products Inc., of Bloomington, Minn., has recalled about 1,100 Salsa Minimalist bicycle racks. The L-shaped mounting straps used to attach the bicycle rack to the front of the bicycle can break and cause the rack to fall while the bicycle is in use, posing a fall hazard to the rider. Salsa Cycles has received two reports of bicycle racks breaking at the mounting straps, resulting in minor injuries from falls. This recall involves all Salsa Minimalist bicycle racks sold after January 2011. The racks are made of tubular aluminum with a black or silver finish, and can be installed on either the front or rear of a bicycle.

The recalled bicycle racks have steel mounting brackets, identified as straps, with a single hole in the center used to mount the strap to the bicycle fork. “Salsa” is printed on the side of the bicycle rack. They were sold by bicycle retail stores nationwide by Internet retailers from January 2011 through March 2012 for about $80. Consumers should immediately remove the recalled bicycle racks and contact an authorized Salsa dealer for inspection, re-mounting or refund.

**Bicycle Stems Recalled by Ridley Bikes Due to Fall Hazard**

About 105 4ZA Threadless Carbon Bicycle Handlebar Stems have been recalled by Race Productions NV, Belgium. The bicycle handlebar stems can crack or break, posing a fall hazard. The company received one report of a handlebar stem breaking, resulting in minor injuries. The recall involves all 4ZA 31.8 threadless bicycle handlebar stems sold as individual aftermarket components. The stems are black and have the words “4ZA Cycling Performance” painted on the carbon extension between the steerer clamp and handlebar clamp. The recalled stems range in extension lengths from 90mm to 130mm, approximately 3.5 to 5 inches.

The handlebar stems were sold at specialty bicycle retailers and via websites from January 2005 through April 2010 for about $59. Consumers should immediately stop using their bicycles and contact the bicycle retailers where the stems were purchased to obtain a free replacement stem. Other bicycle shops can handle the replacement process by contacting the manufacturer’s current distributor, Quality Bicycle Products, Inc. For additional information, please contact Quality Bicycle Products, Inc. Toll-free at (877) 745-7703 between 8 a.m. and 6 p.m. CT Monday through Friday, or visit www.ridley-bikes.com.

**Inflatable Pool Slide Recalled After 29-Year-Old Mother Is Killed**

About 21,000 inflatable water slides for in-ground pools, sold at Walmart and Toys-r-us, have been recalled. This came after the death of a 29-year-old mother in Colorado. The Consumer Product Safety Commission says the Banzai water slides can deflate during use and the rider can hit the ground underneath the slide. The vinyl slide can also topple in both still and windy conditions, according to the CPSC.

The CPSC reported that a 29-year-old Colorado mother died in Andover, Mass., after fracturing her neck going down a Banzai in-ground pool water slide. She hit her head at the bottom of a partially deflated slide. The CPSC knows of two other injuries—a man from Springfield, Mo., who became a quadriplegic and a woman from Allen-town, Pa., who fractured her neck. The slides were manufactured in China by Manley Toys Ltd., and were sold at Walmart and Toys R Us nationwide from January 2005 through June 2009. People are urged to immediately stop using the slide and return it to Walmart or Toys R Us for a full refund. Consumers can call Walmart at 800-925-6278 or Toys R Us at 800-869-7787 for more information.
TRAMPOLINES RECALLED BY SPORTSPOWER LIMITED DUE TO FALL HAZARD

Sportspower Limited, of Hong Kong, China, has recalled about 92,000 Sportpower BouncePro 14’ Trampolines. The netting surrounding these trampolines can break, allowing children to fall through the netting and be injured. Sportspower has received 17 reports of the net breaking, resulting in 11 injuries including broken bones, back and neck injuries, and contusions. The recall involves the Sportpower BouncePro 14’ Trampolines with brown mesh netting. UPC codes 68706404210 and 68706404244 are printed on the trampoline box. “Sportpower BouncePro 14“ and “TR-14-63-A” are printed on a plate on the leg of the trampoline frame. The trampolines are surrounded by brown netting measuring about six feet high on the perimeter of the trampoline. The netting is designed to contain individuals bouncing on the trampoline. The trampolines were sold Exclusively at Walmart stores nationwide from February 2009 through February 2012 for about $275. Consumers should stop using the trampolines immediately and contact Sportspower to receive replacement black netting for the trampoline. For additional information, contact Sportspower’s customer service hotline toll-free at (888)-965-0565 between 9 a.m. and 5 p.m. ET Monday through Friday, or visit the company’s website at sportspowerltd.net. The U.S. Consumer Product Safety Commission (CPSC) is still interested in receiving incident or injury reports that are either directly related to this product recall or involve a different hazard with the same product. Please report your experience with the product on SaferProducts.gov.

AQUA-LEISURE RECALLS CHILDREN’S TRAMPOLINES DUE TO FALL HAZARD

About 40,000 First Fitness® Trampolines with Handlebars have been recalled by the manufacturer Aqua-Leisure Industries Inc., of Avon, Mass. Metal fatigue can cause the handlebar to break away during use, posing a risk of laceration from exposed metal surfaces or other injury from a fall. Aqua-Leisure has received four reports of handlebars breaking from the metal connection joint during use. No injuries have been reported. This recall involves First Fitness Kid’s First trampolines with handlebars. The child-size toy trampolines have a red and blue metal handlebar, a blue nylon deck guard and a black jumping deck. “First Fitness” is embossed on the jumping deck in white letters. The trampolines can be identified by model number FF-6902TR and Toys R Us SNK 491463. The model and store numbers can be found on the lower right corner of the back of the packaging. A sewn-in tag on the bottom of the deck lists the factory date code of five numbers followed by “GLTX.”

The trampolines were sold exclusively at Toys R Us stores nationwide from September 2010 through April 2012 for between $45 and $70. Consumers should immediately take the recalled trampolines from children and contact Aqua-Leisure’s recall hotline for a full refund. For additional information, please contact Aqua-Leisure toll-free at (888) 912-7087 between 8:00 a.m. and 5:00 p.m. ET Monday through Friday, or visit the company’s website at www.aqualeisure.com.

LA JOLLA SPORT RECALLS BOYS’ HOODED FLANNEL SHIRTS DUE TO STRANGLATION HAZARD

About 600 O’Neill Pluto hooded flannel shirts have been recalled by La Jolla Sport USA Inc. doing business as O’Neill Clothing, of Irvine, Calif. The hooded sweatshirts have drawstrings in the neck that can pose a strangulation hazard to children.

This recall involves O’Neill Pluto brand, boys’ flannel long sleeve shirts with button front, a hood and two chest pockets. Style name “Pluto Flannel” and Style No. 41204106 is printed on a label sewn inside the wearer’s left side seam. “O’NEILL” is printed on a label sewn inside the back neck. The shirts were sold in dark grey with horizontal black stripes and in child sizes small, medium, large and extra large. The shirts were sold at East Coast Surf Products, Hансens Surfboards, Huntington Surf & Sport, Jacks Surf and Sport, Main Beach Surf & Sport, O’Neill, Riders Outlet, Sports Chalet, Valley Skate N Surf and other surfing specialty stores nationwide between September 2011 and December 2011 for about $60.

Consumers should immediately take the recalled flannel shirt from their child, remove the drawstring to eliminate the hazard, and return the garment to the place of purchase or to the company for a full refund. For additional information, please contact La Jolla Sport at (800) 213-6444.
between 9 a.m. and 5 p.m. PT Monday through Friday, or visit the company's website at www.shoponeilusa.com.

**Toddler Jackets Sold At Dillard's Recalled Due To Choking Hazard**

Dillards has recalled the Class Club Children's Letterman Jackets because the snaps on the jacket can detach, posing a choking hazard, according to the U.S. Consumer Product Safety Commission. About 320 jackets were sold exclusively at Dillards. Consumers should immediately stop using the jackets and return them to Dillards for a full refund. There have been no reports of injuries from the jackets.

This recall involves Class Club brand children's letterman jackets. The 100% polyester jackets were sold in navy with white sleeves in sizes 2 and 3. A patch on the upper right chest of the jacket reads "28 F Football Athlete State Champs." Style number "F14CL112L" is printed on the back of the sewn-in size label in the back neck, according to USCPs. The jackets were sold at Dillard's stores nationwide and online at www.dillards.com between September 2011 and November 2011 for about $25. For additional information, please contact Supreme Trading Limited toll-free at (866) 466-3523 between 9 a.m. and 5 p.m. ET Monday through Friday, or visit the retailer's website at www.dillards.com.

**Kennedy International Recalls Folding Step Stools Due To Fall Hazard**

Kennedy International Inc., of Dayton, N.J., has recalled its Folding Step Stools. This includes about 1.6 million in the United States and 64,000 in Canada. The folding step stools can break or collapse unexpectedly when in use, posing a fall hazard to consumers. Kennedy International is aware of at least 15 reports of incidents involving step stools cracking or breaking, including three reports of injuries to consumers using the stools. Injuries included two reports of back injuries and one report of a fractured leg. This recall involves 9-inch and 13-inch Kennedy International folding step stools. The step stools are plastic and have a handle for carrying the stools when they are folded. The style number is 3575 for the 9-inch and 3576 for the 13-inch step stools. The style number is printed on a sticker on one of the legs of the stool. “Kennedy Home Collection” is also printed on a label on some of the stools. They were sold in the following colors: blue, green, gray, red, purple, pink, orange, turquoise, aqua, white, plum, orchid, emerald, sapphire, sangria, ocean, sage, fuchsia, lime and various color combinations.

They were sold at HomeGoods, Marshalls, TJ Maxx and other retailers nationwide from January 2010 through January 2012 for between $8 and $12. Consumers should immediately stop using the recalled step stools and contact Kennedy International to receive a full refund. For additional information, contact Kennedy International toll-free at (855) 270-8301 between 9 a.m. and 5 p.m. ET Monday through Friday or visit the company's website at www.kennedy-intl.com.

**Crib Tents Recalled**

Federal regulators have announced the recall of crib tents and play yard tents made by Tots in Mind, Inc. The tents were sold at numerous retail stores including Bed Bath & Beyond/Buy Buy Baby, Burlington Coat Factory, Toys R Us/Babies R Us, Walmart and online on websites including Amazon.com, for between $60 and $85. The U.S. Consumer Products Safety Commission is warning parents and caregivers who own these products that infants and toddlers are at risk of serious injury or death due to strangulation and entrapment hazards presented by these products. Tots in Mind recalled the play yard tents in July 2010 and offered a repair kit that is no longer available. The company is no longer in business and has stopped all sales. CPSC staff urges parents and caregivers to stop using these crib tents and play yard tents immediately and do not attempt to repair them yourself.

According to the CPSC, 27 tent failures, including one fatality and one serious injury, occurred between January 1997 and April 2012 from crib tents and play yard tents made by Tots in Mind, Inc. In 2008, a two year old boy died after becoming entrapped between the bottom rail of a play yard tent and the top rail of a play yard. In 2007, a two year old boy sustained a catastrophic brain injury when the crib tent affixed to his crib tent inverted and the product's broken rod trapped him at the neck.

The remaining 25 reports to CPSC involved inverted crib tents (entrapments between the tent and the crib/ play yard) or failures of the tent fabric and zippers. Three of these 25 reports were reports of injuries; in one such case, a parent reported finding her child turning blue and entrapped between the product and the top rail of the play yard. Consumers should contact the store where the crib tent was purchased to receive either a refund or store credit, depending on the retailer.

**Bassinet Recalled By Kolcraft Due To Fall Hazard**

About 46,000 Kolcraft Tender Vibes & Light Vibes bassinets have been recalled by Kolcraft Enterprises Inc., of Chicago, Ill. The latches that attach the bassinet base onto the metal frame can appear to be locked in place but still remain unlocked. This allows the bassinet to become detached from the metal frame, causing the bassinet to fall and the infant to be injured. The CPSC and Kolcraft have received seven reports of latches that detached from the bassinet base. One infant suffered a bruised cheek when the bassinet detached from the metal frame and landed sideways on the floor with the infant inside.

This recall includes Kolcraft Tender Vibes bassinets with model numbers KB021-ARC, KB022-VER, and KB039-CMR1 and Light Vibes bassinets with model number KB043-BNT1. A label with the model/item number of the bassinet is located on one of the legs of the metal frame. The recalled bassinets were manufactured from July 2008 through May 2010. The words “Kolcraft Tender Vibes” or “Kolcraft Light Vibes” is located on the removable music box which is attached to the side of the bassinet.

The bassinets were sold at mass market and independent juvenile specialty stores nationwide and online from July 2008 through May 2012 for between $50 and $100. Consumers should immediately stop using the recalled bassinets and contact the firm by phone or on-line to receive a repair kit and instructions for securing the latches to the metal frame. In the meantime, parents are urged to find an...
Toilet and Cabinet Locks have been recalled by Dorel Juvenile Group (DJG) Inc., of Columbus, Ind. Young children can unexpectedly disengage the toilet locks and gain access to water in the toilet, posing the risk of drowning. The cabinet locks are being recalled because young children can disengage the lock, posing the risk of injury from dangerous or unsafe items stored in the cabinet.

DJG has received 110 reports of toilet locks that did not adequately secure the lid, including eight reports of children, under the age of two, who were able to disengage or break the lock. In addition, DJG has received 278 reports of cabinet locks that did not adequately secure the cabinet, including 71 reports of children between the ages of eight months and five years old who were able to disengage the cabinet locks. In one of the reported incidents, a 13-month-old boy swallowed small, toxic beads from a craft kit. The child was admitted to the hospital, observed overnight and released the next day.

This recall involves Safety 1st Sure Fit toilet locks with model numbers 48003 and 48103. The toilet lock is attached to the tank behind the lid and is intended to prevent a child's access to the toilet bowl. This recall also involves Safety 1st cabinet slide locks with model numbers 12013 and 12014. The cabinet slide lock is attached to cabinet knobs or handles to prevent access to the contents of the cabinet. Model numbers can be found on the back of the locks. They were sold at Bed, Bath and Beyond, Burlington Coat Factory, Great Beginnings, Home Depot, Target and Walmart from January 2005 through April 2010 for between $8 and $20 for the toilet locks, and from January 2000 through March 2009 for between $2 and $11 for the cabinet locks. Amazon.com sold both locks through April 2012.

Consumers should immediately remove the recalled locks and contact DJG for a free replacement lock of a different model. When removing the recalled locks, consumers are urged to immediately store dangerous items out of reach of children and to prevent unsupervised access to bathrooms. For additional information, you can contact DJG toll-free at (877) 416-8105, or visit the company's website at www.djgusa.com. In March 2012, 900,000 Safety 1st Push ‘N Snap cabinet locks were recalled due to lock failure.

**Manhattan Group Recalls Baby Rattles Due To Choking Hazard**

Manhattan Group LLC, of Minneapolis, Minn., has recalled its Whoozit® Starr Time Rattle. The clear spheres on each end of the rattle can break, releasing small parts, posing a choking hazard to small children. Manhattan Group has received two reports of rattles breaking. No injuries have been reported. This recall involves Whoozit® Starr Time baby rattles. The plastic rattles feature three colored (orange, aqua blue and purple) stars stacked front to back between two clear spheres on a flexible stem. The rattle measures about 5-1/2 inches long. Each clear ball, located at the end of the rattle, measures 1-3/4 inches in diameter. The clear rattles contain small multi-colored beads and a white plastic disc featuring a blue smiling character face inside. The name of the product is printed on the hang tag.

The rattles were sold at specialty toy and baby stores nationwide, in Canada, and online at www.manhattantoy.com from September 2011 through March 2012 for about $15. Consumers should immediately take these rattles away from young children and return them to the store where purchased for a full refund. For additional information, contact Manhattan Group toll-free at (800) 541-1345 between 8 a.m. and 5 p.m. CT Monday through Friday, or visit the company’s website at www.manhattantoy.com.

**Gerber Recalls Instant Knife Due To Laceration Hazard**

About 3,000 Gerber® Instant™ Knives have been recalled. The locking mechanism on the spring-assisted blade can fail to engage properly, causing the blade to fold during use, posing a laceration hazard. The recalled knives are spring-assisted clip knives with a black retractable 3.18” blade which can be folded into the textured black handle when the knife is not in use. The black handle has four diagonal slots on both sides. When closed, the knife measures 4.5” in length and when open, it measures 7.75”. The Gerber “sword and shield” trademark appears in silver, on one side of the blade, close to the handle. The name “Gerber®” is written in silver on the knife’s pocket clip. This recall involves model numbers 30-000435 and 31-001101. The different model numbers refer to the same knife sold in a box (30-000435) and in a blister pack (31-001101). The model number is printed on the original packaging.
underneath the barcode. It is not printed on the knife.

The knives were sold at sporting goods stores nationwide from February 2012 through March 2012 for about $50. Consumers should immediately stop using the recalled Instant Knives and contact Gerber Legendary Blades to receive a free replacement. For additional information, please contact Gerber Legendary Blades toll-free at (877) 314-9130 between 9 a.m. and 5 p.m. PT, Monday through Friday, or visit the company’s website at www.gerbergear.com.

**Circulon 13-Piece Cookware Set Recalled By Meyer Corporation**

Meyer Corporation U.S., of Vallejo, Calif., has recalled about 4,600 Circulon Cookware Sets. The glass lid used with the 5-qt covered sauté pan can crack, break or shatter, posing a laceration hazard to consumers. Meyer has received 65 reports of broken or shattered lids. No injuries have been reported. The defective lid is 11 inches in diameter with a rubber and stainless steel handle and a metal rim. The code "1MCP1108" is stamped on the outside of the metal rim. The lid is part of the 13-Piece Circulon Premier Professional cookware set. The cookware is aluminum and stainless steel with rubber and stainless steel handles. In addition to the covered sauté pan, the sets include: 1-quart and 3-quart saucepans, a 4-quart saucetop, an 8-quart stockpot, 8.5-, 10- and 12-inch French skillets and four additional glass lids.

The sets were sold exclusively at Costco retail stores and Costco.com from about October 2011 through March 2012 for about $200 for the complete set. Consumers should stop using the 11-inch glass lid and contact Circulon customer service to receive a replacement lid. For additional information, contact Circulon customer service at (800) 326-5933, Monday through Friday between 7 a.m. and 5 p.m. PT, or visit the company’s website at www.circulon.com.

**Pet Food Recalled After 14 People Get Sick**

After 14 people got sick with salmonella, Diamond Pet Foods expanded the recall for certain batches of its Diamond Natural Lamb Meal & Rice dry dog food. The Centers for Disease Control and Prevention said it is investigating the salmonella outbreak that may be related to products from Diamond Pet Foods. CDC officials said the affected dog food was manufactured at a facility in South Carolina, but the illness has been detected in nine states. Investigators said it’s possible the people got sick after contact with dogs that ate the food. The recall affects several brands of food manufactured by Diamond Pet Foods and consumers can visit www.diamondpetrecall.com for a complete list.

Included in the expanded recall is one production run and four production codes of Chicken Soup for the Pet Lover’s Soul Adult Light formula dry dog food. According to the FDA, one bag of the product has tested positive for Salmonella. Diamond Naturals Small Breed Adult Dog Lamb & Rice Formula dry dog food has also been added to the list of pet food being recalled by Diamond Pet Foods. The company says the recall of its four production codes is a precautionary measure. It says no dog illnesses have been reported.

Pets with Salmonella infections may have decreased appetite, fever and abdominal pain. If left untreated, pets may become lethargic and have diarrhea or bloody diarrhea, fever and vomiting. Infected but otherwise healthy pets can be carriers and infect other animals or humans. If pets have consumed the recalled product and have these symptoms, a veterinarian should be contacted.

Individuals handling dry pet food can become infected with Salmonella, especially if they have not thoroughly washed their hands after handling contact with surfaces exposed to this product. Pet owners who are unsure if the product they purchased is included in the recall, or who would like replacement product or a refund, may contact Diamond Pet Foods at 800-442-0402, or by visiting diamondpetrecall.com.

**Poultry and Calf Feed Recalled Due To Threat Of Aflatoxin**

Cargill Animal Nutrition has recalled select regional poultry, calf, and whole and cracked corn products due to aflatoxin levels that were detected above the acceptable limit. The affected animal feed products were manufactured at Cargill’s Lecompte, Louisiana, facility between Sept. 6, 2011, and Dec. 1, 2011. Aflatoxin is a naturally occurring mold by-product. Animals that have consumed any of the recalled products and are experiencing adverse health effects should be seen by a veterinarian.

The Dumor and Producer’s Pride brands were manufactured by Cargill and distributed at Tractor Supply Company in 43 stores in southern Arkansas, Louisiana, southern Mississippi and eastern Texas. The product has been removed from store shelves and replaced with new product. All other affected products were distributed in Louisiana and southwest Mississippi. Retailers have already removed the products from store shelves and will replace product soon. Consumers are urged to return listed products—whether in opened or unopened packages—to their place of purchase for a full refund or replacement. For more information, including photos of products involved, consumers can go to http://www.cargill.com/feed/recall, or call toll free 1-855-225-1907.

**Homes Should Be Checked For Recalled Recreational And Home Products**

Finally, as we are now in the hot-weather months (even before summer officially arrives), before using spring-related products folks should check to see if the products used have been recalled. You can find out more about these recalls at www.cpsc.gov. Let’s take a brief look at the recalls.

- **Adventure Playsets** (240,000 units)
  The wood in the posts of the fort sections on the swing sets can weaken due to rotting, posing a fall hazard.

- **Pacific Cycle Dartmouth Swing Sets** (5,500 units)
  The swing-style swing seats can crack or split prematurely, posing a fall hazard to consumers.

- **Slalom Glider** (900 units)
  The Slalom Glider is a playground slide that lacks a transition platform on the top and sides on the chute. Children can fall when moving from the ladder to the slide and when descending the chute.
Uni-O Portable LP Gas Grills (4,530 units)
The regulator on the grill can leak gas, which can ignite, posing a fire and burn hazard to consumers.

Westinghouse Ceiling Fans (7,000 units)
The two 60-watt light bulbs included with the ceiling fans exceed the fan’s maximum wattage, which can cause the ceiling fans to overheat or fail. This poses fire and shock hazards to consumers.

Pourable Gel Fuel (2.5 million bottles)
The pourable gel fuel can ignite unexpectedly and splatter onto people and objects nearby when it is poured into a firepot that is still burning. This hazard can occur if the consumer does not see the flame or is not aware that the firepot is still ignited. Gel fuel that splatters and ignites can pose fire and burn risks to consumers that can be fatal.

Kiddieland Toys Fairies Plastic Racing Trikes (12,000 units)
The plastic fairy figures protrude from the top of the handle bar, posing a laceration hazard if a child falls on them.

Build-A-Bear Swimwear Set With Inflatable Inner Tube (19,720 units)
The inner tube accessory can be pulled over a small child’s head, posing a strangulation hazard.

American Honda Grass Trimmers (14,000 units)
The shaft can crack and cause the lower gear case and cutting attachment to detach, posing a laceration hazard to the operator and bystanders.

The U.S. Consumer Product Safety Commission is still interested in receiving incident or injury reports that are either directly related to this product recall or involve a different hazard with the same product.

As you can see there have been a good number of recalls since the May 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 we haven’t listed in this issue, 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.

XXIII.
FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

LISA HARRIS
Lisa Harris serves as Executive Director for our firm, which simply means she literally “runs the place.” Lisa, who has been with the firm for 21 years, took over her current duties in 1998. Since then she has been in charge of managing all daily activities of the firm. Lisa graduated from Auburn University Montgomery with a Business Administration degree. She has one daughter, Haley, who has just given birth to Lisa’s first grandchild, Lillian “Lilly” Faith Henderson. Lisa is a key employee in our firm. She has tremendous responsibilities and performs at a very high level. Lisa has the respect of our lawyers and non-lawyer employees because they all know our “boss” is competent, knowledgeable and extremely fair in all her dealings. We are blessed to have Lisa with the firm.

DAVID DEARING
David Dearing, who joined Beasley Allen in April, is working in the firm’s Mass Torts Section. He will be working primarily on cases in the Hormone Replacement Therapy (HRT) litigation. HRT, including drugs such as Premarin, Prempro and Provera, was prescribed to treat the symptoms of menopause until 2002, when a comprehensive women’s health study was halted as a result of increasing incidents of breast cancer. The drugs also were promoted for off-label uses, including prevention of cardiovascular disease and Alzheimer’s disease. Our firm is heavily involved in this litigation and David coming aboard will help us greatly.

David received his law degree in 1991 from Cumberland School of Law at Samford University, where he served as Associate Editor of the Cumberland Law Review. Prior to law school, David attended Furman University, earning a Bachelor of Arts degree in Economics.

David is from Jacksonville, Fla., and has been a trial lawyer for more than 20 years. He served four years as an Assistant State Attorney in both the Fourth and Eighth Judicial Circuits in Florida. Since leaving his work as a prosecutor, David’s practice areas included wrongful death, personal injury, products liability, workers’ compensation, and criminal defense. He was recently named one of Florida Trend Magazine’s 2011 Florida Legal Elite, and has the highest possible rating in both Legal Ability and Ethical Standards by Martindale-Hubbell.

David is a member of The Florida Bar Association; Florida Justice Association; American Inns of Court; The Million Dollar Advocates Forum; and The Christian Legal Society. He is admitted to the Federal District Court, Middle District of Florida.

David met his wife, the former Vicki Millo, in law school, and they have been married for 20 years. Vicki is a Professor of Law at Florida Coastal School of Law. They have two teenage children, and they are active members of New Grace Church, where they each teach Sunday School. David served as New Grace’s chancellor. Between their children’s various sporting events, David and Vicki enjoy travelling and spending time on the water. David has already moved to Montgomery and Vicki and the children will come after school is out. We are fortunate to have a lawyer with David’s ability and vast experience come with us.

WILL SUTTON
Will Sutton, a lawyer who currently works in an Of Counsel capacity in our Toxic Torts Section, graduated from Auburn University in 2007 with a B.A. in Political Science. Will obtained his Juris Doctor Degree at Thomas Goode Jones School of Law in 2010. While attending law school, Will was a member of the American Association for Justice. He also studied international criminal law abroad in the Netherlands. Will is the son of the late Jean Sutton and Goodloe Sutton, from Marengo County. Goodloe is the editor and publisher of The Democratic Reporter in Linden, Ala. He is a great newspaper man and is extremely well-respected by his peers.

Will began working as a law clerk for our firm in the Consumer Fraud Section while he was in law school. During that time, he assisted lawyers with Fair Labor Standards Act (FLSA) litigation. He also worked in various other civil fraud cases in the Toxic Torts Section. In October 2010, after passing the Alabama Bar Examination, Will began work as a lawyer in our firm’s BP Litigation.

Will is a hard worker and he is doing a very good job in the BP litigation. Because of his involvement in this litigation, Will realizes the true importance of our firm’s work for clients who have been damaged by the oil spill. We are fortunate to have Will with the firm.
SHANNON RATTAN

Shannon Rattan currently serves in a dual role with our firm, working as Julia Beasley’s Legal Secretary and also as her Legal Assistant, and she does great work in both roles. Shannon was previously employed at the firm in the Accounting Department from 2001-2002. When she came back to work with us in February 2006, she was a Clerical Assistant in our Personal Injury Section. She became Julia’s secretary in 2007.

Shannon has three boys, Sean (9), Cade (7), and Anthony (1) who are her pride and joy. In her free time, Shannon enjoys painting wall murals and canvases. Shannon is a very good, hard-working employee who is dedicated to her work. She cares deeply about the clients and their cases that she works on. We are fortunate to have Shannon with the firm.

XXV. FAVORITE BIBLE VERSES

Anne L. Marovich, who is Director of Alumni Relations at Cumberland School of Law, sent in some verses for this issue. Anne said she finds comfort and guidance in so many—she couldn’t really select a single favorite. As a result, Anne sent in some verses that she says are good for teenagers and for their peace, strength, growth and protection. I agree that these verses will make teenagers feel secure and confident and able to resist the many temptations that the teen years can pose. Incidentally, Anne says she enjoys reading the Report each month.

Don’t let anyone look down on you because you are young, but set an example for the believers in speech, in conduct, in love, in faith and in purity.
1 Timothy 4:12

Walk in obedience to all that the LORD your God has commanded you, so that you may live and prosper and prolong your days in the land that you will possess.
Deuteronomy 5:33

Whatever you do, work at it with all your heart, as working for the Lord, not for human masters, since you know that you will receive an inheritance from the Lord as a reward. It is the Lord Christ you are serving.
Colossians 3:23-24

Do nothing out of selfish ambition or vain conceit. Rather, in humility value others above yourselves.
Philippians 2:3

The verse below came from Anne Graham Lotz. As I have written in prior issues, Anne does tremendous work in her ministry. She has been called the “best preacher in the family” by her father Billy Graham. Anne speaks around the world. She leads read alouds. She has written many books.

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For as the heavens are higher than the earth, So are My ways higher than your ways, And My thoughts than your thoughts. For as the rain comes down, and the snow from heaven, And do not return there, But water the earth. And make it bring forth and bud, That it may give seed to the sower And bread to the eater, So shall My word be that goes forth from My mouth; It shall not return to Me void, But it shall accomplish what I please, And it shall prosper in the thing for which I sent it. For you shall go out with joy, And be led out with peace; The mountains and the hills Shall break forth into singing before you, And all the trees of the field shall clap their hands.

Isaiah 55:9-12

Gary Wilkerson, who is with World Challenge, Inc. and is the son of the late David Wilkerson, also furnished two verses for this issue. I am pretty sure many of our readers may recall the tremendous work done by David Wilkerson in New York City.

But by the grace of God I am what I am, and His grace toward me was not in vain; but I labored more abundantly than they all, yet not I, but the grace of God which was with me.

1 Cor. 15:10

These things I have spoken to you, that in Me you may have peace. In the world you will have tribulation; but of good cheer, I have overcome the world.”

John 16:33

Dick Leggett, who serves as president of Prince Ministries, furnished a verse for this issue. As you may know, Derrick Prince, the founder of the organization, died in 2003. This ministry does a very good job of telling the good news of Jesus Christ.

A good man deals graciously and lends; He will guide his affairs with discretion. He has dispersed abroad, He has given to the poor; His righteousness endures forever; His born will be exalted with honor.

Psalm 112:5 & 9

Willa Carpenter, who serves as our firm’s Human Resource Liaison, supplied some timely verses this month. Willa says God leads her to encourage others on a daily basis. I can verify that she does this and is
an inspiration to all of the folks at Beasley Allen.

Then Jesus said to them again, Most assuredly, I say to you, I am the door to the sheep. I am the door. If anyone enters by Me, be will be saved, and will go in and out and find pasture (security and safety). The thief does not come but to steal, and to kill, and to destroy. I have come that they may have life and that they may have it more abundantly (overflowing, rich, and full). I am the good shepherd. The good shepherd gives His life for the sheep. I am the good shepherd: and I know my sheep, and am known by my own. My sheep hear my voice, and I know them and they follow me. And I give them eternal life, and they shall never perish; neither shall anyone snatch them out of my band. 

My Father (God) who has given them to me, is greater than all; and no one is able to snatch them out of my Father’s band.

John 10: 7, 9-11, 14, 27-29

Chad Cook’s grandmother, Tessie Cook, who turned 92 recently, took the time to furnish a verse this month. Chad says she really loves it.

This is the day the Lord has made; let us rejoice and be glad in it.

Psalm 118:24

Corky Hawthorne, a Montgomery lawyer, sent in a verse for this issue. Corky and I have been very good friends for a long time. He is a devoted follower of—and advocate for—Jesus Christ. Corky not only talks-the-talk, but he walks-the-walk and his walk affects lots of folks in a positive manner.

I can do all things through Christ who strengthens me.

Philippians 4:13

XXVI.
CLOSING
OBSERVATIONS

Even though election day in the general election is still months away, we are already being bombarded on television by blistering political attacks masquerading as “issue ads.” These ads are being paid for by the SuperPACs. An example of the ads is one in Missouri in the United States Senate race that ends with: “Call Claire McCaskill. Tell her Missouri doesn’t need government-run health care.” This ad, and more like it, was sponsored by none other than the United States Chamber of Commerce. Interestingly, the Chamber claims that it is merely “educating voters about the issues” rather than telling them “how to vote.” If you believe that line, you are a prime candidate for buying beach front lots in New Mexico.

It should be noted that just a few weeks ago a federal judge handed down a ruling that should have dealt a blow to this system of so-called issue ads. In his decision, the judge required that the donors for these sort of ads must be publicly disclosed. Interestingly, that’s exactly what Congress intended in its 2002 campaign finance law. But, as you may already know, the Federal Election Commission incorrectly applied the intent of the law and changed the rules. The question now is “will the Chamber of Commerce, which sponsors more political advertising than any other group, follow the clear language of the court order and begin revealing the names of its donors?” What do you think? Or maybe we should ask, “What do you believe the Chamber should do?”

Unfortunately, secrecy is at the core of the Chamber’s political strategy. It’s obviously worried that the public might learn which companies are paying for the barrage of negative ads which obviously are political in nature and designed to affect elections. For one thing, the Chamber knows disclosure would allow the public to decide whether they should take their business away from those companies. Also, they know disclosure would tell voters whose money the Chamber was using in their efforts to elect candidates.

R. Bruce Josten, the Chamber’s executive vice president for government affairs, speaking at a Washington breakfast recently, had a response and here is what he had to say: “We’re not going to pull back from anything we’re doing. It’s full steam ahead.” That tells the world that the Chamber is going full bore with its agenda, which is bad news for the vast majority of Americans.

The New York Times wrote about the Chamber’s involvement in the political arena in a recent editorial. I am enclosing a portion of that editorial below:

Mr. Josten noted that the court order applies only to issue ads, known legally as “electioneering communications.” It doesn’t apply to old-fashioned “independent” political ads, the kind that say vote for Senator A or against Congressman B, and be

suggested the chamber is considering going in that direction to avoid disclosing donors. It’s true that the law permits secret donors to certain independent groups that sponsor political ads, one of the biggest flaws in a campaign regulation system that has almost completely broken down. Unless a check to the chamber is explicitly earmarked for political purposes as opposed to dues or the general fund—something no check writer would do—it can be kept secret.

The only good news is that the chamber’s highly partisan loyalties will now be fully exposed. It has always claimed that it is not a Republican or Democratic group, but simply one that supports the interests of American business. But the $33 million it spent in the 2010 elections on issue ads was almost entirely in support of Republicans and against Democrats, as will be the estimated $50 million it may spend this year. When the chamber is overtly advocating the election of Republicans—rather than hiding behind phony issue ads—it will be impossible to deny that it has become a very well-financed arm of the party. And companies that contribute to the chamber will be unable to claim that they are paying dues to an independent business league.

Disclosing the source of a political ad’s financing, despite the chamber’s fears, isn’t about encouraging boycotts of donors. It is about giving voters more information to evaluate the truthfulness of an ad’s claims. Any company that helps pay for the ads run by the chamber ought to step up and disclose its contributions.

New York Times
May 28, 2012

I totally agree with the views of the editorial writer. The American people—when they go to the polls this Fall—deserve to know what individuals and corporations are paying, not only for the Chamber ads, but any ads where the identity of the paying party is kept secret and hidden from the public view. If those who run the SuperPACs are afraid to let folks know where their hundreds of millions of dollars are coming from, there must be something very sinister and dangerous going on at the Chamber of Commerce and with those men running the SuperPACs.
PARTING WORDS

The American people will be facing some extremely important elections this Fall, including the race for the White House. There will also be some very important Congressional races throughout the country. Hundreds of millions of dollars will be spent by the candidates and by what are now being called the Super-PACS. There are lots of good men and women, as well as some who are not so good, who will be seeking our votes. It will be very important to find out what the candidates really stand for, what their true character is, what their motivations for holding office are, and who all is financing their campaigns. All of these are certainly good things to know and things voters should know before deciding on a candidate.

But there is something else we can all do that also is very important. We can pray daily for all of the candidates and for their families. In fact, that might be the most important of all. Politics in the U.S. has developed into contests to see who among the candidates can be the most negative—who can be the meanest, who can be the most deceptive, and who can be the most “slick.” That’s a sad commentary on our political times in this country. We really don’t seek out the best person, based on character, ability, vision and qualifications, as our choice in many instances to hold an elected position.

While I have my personal preferences among the current crop of candidates, I intend to pray, not only for those candidates, but also for those I don’t intend to vote for. It may be hard for me to do this as the elections heat up—but with God’s help—I can do it.

Hopefully, our readers and their families will make the very same pledge and then carry it out. If we all followed this course between now and election day, and then continued to pray for the winners after the elections are over, I believe the United States of America would be a better place.
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.