I. **CAPITOL OBSERVATIONS**

**RSA HAS BEEN VERY GOOD FOR ALABAMA**

Lots of folks in my state have taken for granted the positive effect of the Retirement Systems of Alabama. In my opinion, the investments in Alabama by the RSA have been very good for our state and have benefited all Alabama citizens. The decision to invest approximately 10% of RSA’s assets in Alabama over two decades has paid off extremely well.

Dr. David Bronner, Executive Director of RSA, said in the July 2012 Advisor that investing in Alabama helps investment staff members feel a personal connection to the choices they are making, because they know it will affect “their own backyard.” He reports that 90% of RSA’s investments in common stocks, international stocks, and fixed income outperformed the benchmark in each year during the last ten years.

The RSA commissioned two economic impact studies that took a look at the impact of RSA investments and the RSA itself on the State of Alabama. The studies were conducted by economists at Auburn University Montgomery and The University of Alabama. The bottom line is that RSA investments netted $28.0 billion of additional GDP for the state, $14.3 billion of earnings (payroll) for Alabamians, and 282,564 full-time equivalent jobs in the last 22 years. The studies revealed for every $1 the RSA invested in Alabama, the state gained an additional return of $1.57. RSA-owned investments in the state accounted for nearly 2% of the state’s GDP in 2007. It’s significant that RSA assets total nearly $30 billion.

A key RSA economic development engine in Alabama is the Robert Trent Jones Golf Trail. The Trail is the largest golf course construction project ever attempted. It’s a collection of 468 holes of championship golf on 11 different sites across Alabama. I am told by some of my buddies who are golfers that the courses are notoriously challenging. In fact, the Trail was called “some of the best public golf on Earth” by the New York Times. The courses have hosted nationally acclaimed tournaments. Dr. Bronner estimates the Golf Trail alone generates about a $300,000 a month, or $3.6 million a year, return for RSA. It is important that all the courses are located in close proximity to each other.

This makes it possible for visitors to golf across the entire state.

Going hand-in-hand with the Trail is a series of world-class resorts located in Montgomery, Hoover, Mobile, Point Clear, Prattville, Opelika, and Florence, Alabama. These resorts encourage golfers—and their families—to stay, and shop, and eat, which all adds up to more dollars in the pockets of Alabama merchants and communities. The Resort Collection on the RTJ Golf Trail, as it is known, and the properties’ respective restaurants, spas, meeting facilities and other amenities, are a multimillion-dollar operation for RSA. The hotel group is operated through RSA’s PCH Hotels & Resorts arm.

The Trail also raises Alabama’s visibility on the national and world map. The Montgomery Business Journal reported RSA has provided more than $670 million in advertisement benefits, which contributed to growing the state’s tourism industry from $1.8 billion to more than $9.5 billion. The Trail gives people a reason to stop in Alabama, instead of just passing through. Not only does the RTJ Golf Trail bring visitors to the state and boost tourism revenue, it also raises the profile of the state in the eyes of outsiders. The extra exposure helps attract new businesses and industries to the state.

It’s quite obvious that the economic impact of the RSA investments on Alabama’s economy has been tremendous. It’s widely believed by folks who keep up with that sort of thing that no pension fund in the country has done more to help its citizens or its home state than has the RSA. Dr. David Bronner and his excellent staff are to be commended for all that they have done for Alabama.

**AMERICANS PAID THE LOWEST TAX RATES IN 30 YEARS TO FEDERAL GOVERNMENT**

It has been reported that Americans paid the lowest tax rates in 30 years to the federal government in 2009. This is due in part to the tax cuts President Obama sought to combat the Great Recession. This revelation comes from information released by Congressional budget analysts. A sharp decline in income—especially among the wealthiest Americans, who pay the highest tax rates—also played a role, according to the report by the nonpartisan Congressional Budget Office.

Household income fell 12% on average from 2007 to 2009, with income among the top 1% of earners decreasing by more than a third. Interestingly, during the very time the anti-tax movement was emerging, which some believe to have become the most powerful force in American politics, the data show that folks were sending the smallest portion of their income to the federal government since 1979. You may recall it was then that Republicans took control of the U.S. House of Representatives and the “no new taxes” message played a key role.

The average tax rate paid by all households during President Obama’s first year in office fell to 17.4%, down from 19.9% in 2007, according to the CBO. The 2009 rate was significantly lower than the previous low of 19.4% in 2003 and well below the 30-year average of 21%. The CBO reported that the tax burden—which includes all forms of federal levies, including income,
Taxpayers and corporate taxes—lightened for households across the board, the result in part of President Obama’s signature “Making Work Pay” tax credit and other tax cuts passed as part of the 2009 economic stimulus package. That’s something that has largely been ignored by the media and the cable talk-show hosts.

The lowest fifth of earners benefited the most, according to the CBO, sending just 1 percent of their before-tax income to the federal government in 2009, compared with 5.1% in 2007. The top fifth of earners paid 23.2%, compared with 24.7% in 2007. The average federal income tax rate also reached a new low, settling at 7.2% in 2009—two points lower than in 2007, the CBO said. Although detailed data are available only through 2009, the CBO said more recent estimates suggest that effective tax rates remained at historically low levels in 2010 and 2011.

Tax rates have never been lower than under President Obama. But that doesn’t mean the government doesn’t need more revenue—it clearly does—and the need is quite evident. We have fought two of the longest and most expensive wars in U.S. history on borrowed money. Also, under the Bush Administration in 2003, Medicare Part D was passed by Congress, but with no accompanying funding source to pay for it. That created a $15.6 trillion unfunded liability for the federal government. This sort of thing was commonplace during that era. President Obama has pledged to let the George W. Bush-era tax cuts expire for the roughly 2% of households that make more than $250,000 a year. The President has urged lawmakers to extend the cuts through 2013 for the vast majority of households and to do it now. The cuts, enacted in 2001 and 2003, are scheduled to expire in January.

The President has fought hard to cut taxes for the middle class by a total of $3,600 a year. Because Americans are still fighting to make ends meet, Congress should do the right thing and extend the tax rates for the middle class. Hopefully, a miracle will happen, and the GOP leadership in Congress will act in a bi-partisan manner, do the right thing on this critically important issue, and help the economic outlook for all Americans. If they don’t, the voters should remember it in November.

Source: Washington Post

II. A REPORT ON THE GULF COAST DISASTER

GROWING CONFIDENCE IN THE DEEPWATER HORIZON ECONOMIC SETTLEMENT CENTER

Any fears that the Deepwater Horizon Economic Settlement Center would not gain traction on the Gulf Coast have been put to rest. In just over a month since its opening, the settlement center has received 35,498 claims. Of those claims, the largest share of filings were attributed to individual economic loss (35%), with business economic loss claims falling in second place (19%). Filings are sure to grow in the coming weeks, as 41,491 claimants had either registered to file claims, or were in the process of registering to file claims. When you consider that many claimants have multiple claims they will likely submit, claim filings could easily swell over 100,000 by October based on just the current claimants registered to file.

For those who qualify, the settlement facility will likely be the best opportunity Gulf Coast claimants have to receive compensation for future uncertainty and to recoup past losses. Punitive damages will likely not be available to most businesses and individuals impacted by the spill, and proof of “future” losses or uncertainty associated with the spill is an extremely difficult burden in cases like this. The claims process seeks to provide both.

In addition to the amount of compensation claimants receive, the claims facility has already begun issuing determinations on some claims. Given the Limitation Stay on all lawsuits arising from the Deepwater Horizon explosion and spill pending a ruling from the court on liability, it is likely that claimants will not have their individual cases set for individual resolution for at least the next two years. Timing certainly favors the settlement for most qualifying folks and their businesses.

Lawyers in our firm continue to file claims on behalf of a variety of clients, and we have begun receiving determinations on those claims. We are pleased to report that so far, the determinations we have obtained from our clients have been encouraging. If you have any questions about the settlement process, please contact Parker Miller, a lawyer in our firm, at Parker.Miller@beasleyallen.com, or by telephone at 800-898-2034.

ALL GULF COAST STATES BUSINESSES MAY BE ENTITLED TO COMPENSATION FROM BP

The new Deepwater Horizon Claims Center, as explained above, has opened and is very busy processing claims. One thing many folks, including some lawyers, don’t seem to know is that any business in any part of Alabama, Mississippi and Louisiana, or the west coast of Florida (all the way to Key West), may qualify for compensation. Generally speaking, any private business in one of these areas which had an aggregate revenue decrease of 15% or more over a consecutive three-month time period between May and December 2010, and had at least a 10% aggregate revenue increase for the same three months in 2011, is entitled to compensation. You can get more information on this subject by contacting Sandra Walters at 800-898-2034 or by email at Sandra.Walters@beasleyallen.com.

REPORT SAYS BP HAD “MULTIPLE SAFETY MANAGEMENT DEFICIENCIES”

The U.S. Chemical Safety Board has reported that oil giant BP needed to focus
less on the routine personal safety of its employees and more on the potential hazards of deepwater drilling. According to the Board’s report, released last month, BP and Transocean, one of the partners in the drilling project, “had multiple safety management system deficiencies that contributed to the Macondo incident.” That confirms what lawyers in our firm have learned in the ongoing litigation against BP and other responsible parties.

The report said the company was concerned, and rightly so, with personal safety such as scaffolding, falls and labeling of tanks, but that BP needed to be more aware of the potential risks inherent with deepwater drilling, particularly when partnering with other companies. The Board also faulted BP for its focus on “production performance without significant focus on major accident metrics.” It is quite clear that BP’s primary goal was to get the well into production with far too little attention being paid to safety. In fact several warnings of impending doom were ignored.

Source: AL.com

**RESTORE Act Becomes Law**

The RESTORE Act, a major legislative initiative for the Alabama Gulf Coast, was signed into law by President Obama on July 6th. This will provide for economic relief and should not be subject to the whims of future Congresses. This agreement demonstrates the conference committee’s commitment to restoring the Gulf Coast, one of our nation’s most valuable economic and ecological assets. Communities affected by the Deepwater Horizon oil spill have waited long enough for relief and should not be subject to the whims of future Congresses.

Members of Congress in other parts of the country had to be convinced that Congress should change the law to allow those Clean Water Act fines to go directly to the five coastal states instead of going to the general U.S. Treasury. Finally, they did the right thing and allowed the legislation to pass and be sent to the President.

Now comes the next challenge and that’s figuring out how to spend that money. Officials in the five states affected—Alabama, Florida, Louisiana, Mississippi and Texas—have some time to weigh which projects and programs will best help the Gulf Coast recover from the nation’s worst environmental disaster. The first payments from the fines imposed by the federal government, which could be as high as $20 billion, aren’t expected until at least early next year. If a settlement is reached before the start of the trial, scheduled for February of 2015, the money could arrive sooner.

Thirty percent of the money will be controlled by the 11-member Gulf Coast Ecosystem Restoration Council, which will develop a comprehensive restoration plan. Members include all five governors (or their designees), the secretaries of the Agriculture, Commerce, Homeland Security and Interior departments, the secretary of the Army and the administrator of the Environmental Protection Agency.

- Sixty-five percent of the money will be controlled by state and local governments for such things as tourism, the environment and the economy. Of that, 35% will be distributed equally among the five states for economic and ecological recovery. The rest will be distributed to the states based on a formula that takes into account factors such as miles of beachfront and population.

- The remaining 5% of the fine money will finance research, with half going to the Gulf States Marine Fisheries Commission and half going to a “center of excellence” in each state.

The RESTORE Act had broad support from business interests, environmental groups, the seafood industry and tourism organizations in the Gulf Coastal states. Passage of the RESTORE Act in its final form was an absolute necessity and it will provide badly-needed funds to the five states that were so seriously hurt by BP and the other responsible companies.

Source: AL.com

**More Research Needed on Oil Spill Dispersants**

The Government Accountability Office is absolutely correct when it says more research is needed on possible environmental problems that could result from using dispersants to break up oil spills. This is what BP did after the disastrous 2010 spill in the Gulf of Mexico. The GAO found that very little testing had been done on the dispersants before they were used in the Gulf. The GAO was asked to investigate the use of dispersants following BP’s catastrophic oil well blowout that killed 11 workers and caused the largest offshore spill in our nation’s history.

BP was allowed to spray dispersants on the Gulf to break up the oil in an effort to combat the spill. While the use of dispersants has been controversial, most folks don’t know what was used, or how much. The GAO report said 1.84 million gallons of dispersants were used and 771,000 gallons were sprayed deep underwater at the wellhead. According to the report, federal agencies have spent more than $15.5 million on research involving dispersants since 2000, but that few of those studies looked at the effects of using dispersants underwater or in the Arctic Ocean. The GAO Report said:

Little or no prior testing had been done on the effectiveness and potential adverse environmental consequences of a subsea dispersant use, let alone at those volumes.

The report recommended conducting more research into the use of dispersants below the sea and in the Arctic environment. Hopefully that will happen. We certainly can’t depend on the giant oil companies to do the right thing. Neither can we afford to have the weak regulation of the industry that we have experienced over the past ten years.

Source: Claims Journal

**Study Says Gulf Oil Spill Had Dramatic Impact On Microscopic Life**

New research by an Auburn University professor and other scientists found that significant changes on Alabama beaches have taken place in creatures too small to be seen by the naked eye. According to Professor Ken Halanych, those changes bear further study and could have big impacts that might not become apparent for years. Even if there isn’t any oil visible on the beaches, the researchers found a microscopic “community change” and hidden effects.

Professor Halanych and scientists from the University of New Hampshire, the University of California Davis Genome Center, and the University of Texas at San Antonio, published their work in the scientific journal *PLoS ONE*. They wrote in the paper:

"More than a decade later, the plume continues to spread --- and it's not just oil that's having damaging effects. The researchers found problems with microscopic life and genes that are typically identified as "community change" and hidden effects."

Source: Claims Journal
Based on this community analysis, our data suggest considerable (hidden) initial impacts across Gulf beaches may be ongoing, despite the disappearance of visible surface oil in the region.

According to Professor Halanych, the long-term effects are unknown, but potentially dramatic. That’s because the organisms that lost ground after the spill form the base of the food chain. Professor Halanych pointed to the collapse of the herring population in Prince William Sound after the Exxon Valdez oil spill in Alaska. That collapse, which did not occur until several years after the 1989 spill, has been traced to changes at the microscopic level. It was noted that “when you change the ecosystem, all these things have a ripple effect. Some of these effects can take years to develop.” There was a vast difference in the Valdez spill and the BP spill in the Gulf, the latter being much worse.

Patricia Sobecky, the chairwoman of the Biological Sciences Department at the University of Alabama, said the study sheds new light on a Gulf environment that many scientists contend has received too little attention. The work of Professor Halanych and others is important for establishing a baseline to track changes over time. While the presence of microorganisms attracted to hydrocarbons may have helped break down the oil faster, the questions now are—do those organisms remain and what will the effect be? That’s much harder to tell, according to Dr. Sobecky.

Other large-scale oil spills—like the Valdez—don’t offer a conclusive explanation because the environments are so different from the Gulf. It will take time to find out if the referenced study is on target. Different from the Gulf. It will take time to find out if the referenced study is on target.

III. DRUG MANUFACTURERS FRAUD LITIGATION

**McKesson To Pay $151 Million To Settle Drug-Pricing Suit**

Twenty-nine states have reached a $151 million settlement in a lawsuit alleging one of the country’s largest drug wholesalers inflated prices for hundreds of prescription drugs. The agreement with San Francisco-based McKesson Corp. settles allegations that the company deliberately inflated drug prices by as much as 25 percent, causing the states’ Medicaid programs to overpay millions of dollars in reimbursements. An investigation by state and federal agencies found that McKesson inflated the prices of more than 1,400 brand-name drugs, including these commonly prescribed medications such as Adderall, Allegra, Ambien, Celebra, Lipitor, Neurontin, Prevacid, Prozac and Ritalin.

California, where the alleged overpayments went on from August 2001 to December 2009, will receive about $24 million of the settlement. California Attorney General Kamala Harris announced the settlement. She had this to say:

*In these difficult budget times, it is crucial that California’s scarce public resources support the urgent needs of our state. We cannot allow dollars meant for patients to be diverted to inflate corporate profits.*

The settlement results from a 2005 whistleblower lawsuit that was filed under federal and states’ false claims statutes. It was alleged that McKesson inflated average wholesale prices reported to First Data Bank, which many state Medicaid programs, including Alabama, use to set payment rates for pharmaceutical reimbursement. The federal government settled its portion of the lawsuit for more than $187 million in April of this year. Unfortunately, the Alabama Supreme Court has given the drug companies a “get-out-of-jail-free pass” in the Medicaid fraud (AWP) litigation. New York will receive $64 million in restitution as part of this settlement. New York Attorney General Eric Schneiderman was correct when he said:

*Pharmaceutical distribution companies are not above the law. This settlement holds McKesson accountable for attempting to make millions of dollars in illegal profits.*

Besides California and New York, states covered in the settlement include Arkansas, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Maine, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Pennsylvania, South Dakota, Tennessee, Texas, Vermont, Washington, West Virginia and Wyoming. The District of Columbia also was covered. The wrongful and fraudulent conduct involving the overpricing of drugs is considered to be “fraud” by the courts in all states with the lone exception of Alabama, which is very hard to understand.

Source: Associated Press

**GlaxoSmithKline Agrees To Pay $3 Billion In Fraud Settlement**

GlaxoSmithKline (GSK) has agreed to plead guilty to three criminal charges and pay an unprecedented $3 billion in criminal and civil fines arising from allegations of illegal promotion of some of its drugs, failure to report safety data and alleged false price reporting. According to prosecutors, GSK illegally promoted Paxil for treating depression in children, even though it was not approved by the FDA for anyone under 18. The company also promoted its drug Wellbutrin for weight loss, the treatment of sexual dysfunction, substance addictions and ADHD when it was only approved for major depressive disorder. In addition, GSK allegedly failed to report safety data about the diabetes drug Avandia to the FDA. In addition to the fines, the company has agreed to be monitored for five years by government officials to attempt to ensure the company’s compliance.

The multi-billion settlement is the largest in U.S. history for healthcare fraud and adds to a string of other settlements with pharmaceutical companies. Critics argue that these large fines are not enough to deter drug companies from unlawful behavior. Since the penalties are considered just part of their operating costs, combined with their huge profits, the critics may be correct. Having dealt with the politically powerful drug industry, I can say without reservation that the FDA must be given more authority to control the drug companies. If the American people knew how weak and ineffective regulation of the drug industry really is, they would demand that Congress make some badly-needed changes. But that would require “running over” the powerful drug industry lobby.

Sources: New York Times and USA Today
The American People Are Catching On To How The Drug Industry Operates

It is my hope that the American people are starting to find out how the powerful drug manufacturing industry has played fast and loose with the development and marketing of their drugs. A New York Times reporter, Katie Thomas, in a June 2012 article, exposed Pfizer documents that reveal a culture of doubt and deception in the development and marketing of that company’s drugs. Ms. Thomas reported on how Pfizer and its partner, Pharmacia, marketed Celebrex, its arthritis drug, as being a safer alternative to other drugs in lowering risks of perforations, ulcers and stomach bleeds.

After a study came out supporting the effectiveness of Celebrex, a research director at Pfizer wrote in an email to a colleague that “They swallowed our story, hook, line and sinker.” That’s shocking to say the least. But unfortunately it’s an indication of how the drug industry operates. Celebrex was no better at protecting the stomach from serious complications than other drugs and Pfizer knew it. It appeared to be better only because Pfizer and its partner, Pharmacia, presented the results from the first six months of a year-long study rather than the whole thing.

The research chief’s e-mail sent in 2000 is among thousands of pages of internal documents and depositions unsealed by a federal judge in a long-running securities fraud case against Pfizer. Other documents suggest that officials made a strategic decision during the early trial to be less than forthcoming about the drug’s safety. In one email, an associate medical director at Pharmacia (which was later bought by Pfizer) disparaged the way the study was being presented as “data massage,” for “no other reason than it happens to look better.”

In another, a medical director at Pfizer described it as “cherry-picking the data” even as officials were publicly boasting of the study’s success. Dr. M. Michael Wolfe, a gastroenterologist who at the outset had cautiously praised the study in a medical journal, said after reviewing the new documents that he always tries to give “investigators the benefit of the doubt,” but that these “communications make it quite challenging” for him.

The decision by Pfizer and Pharmacia to withhold crucial data became widely known in 2001. The withheld data also led to a lawsuit, filed in 2003, by several pension funds that charged that by handling the results the way they did, Pfizer and Pharmacia had misled investors and were responsible for a drop in Pharmacia’s stock value when the full results were revealed. After describing the decision to use the limited results as “data massage,” Dr. Arbe, a Pharmacia medical director, wrote, “I wouldn’t feel too comfortable presenting a fudged version of the facts.”

Is doubt and deception the way a drug company should conduct business? I believe we all can agree it’s totally unacceptable. But it doesn’t just hurt investors in pension funds. It also affects costs of drugs to consumers. Citizens and governments are concerned about rising healthcare costs. How many billions have been spent on a drug that studies appear to suggest is no more effective than over-the-counter pain medications and may not reduce stomach adverse events as marketed? It’s possible that health insurance carriers have missed out on fraud claims for paying for drugs that were improperly marketed. But it’s highly probable that the consuming public has been badly hurt—because of high costs and also from a safety perspective.

Source: New York Times

Pfizer Pulls Breast And Colon Health Claims From Centrum Labels

Pfizer, after being accused of deceptive advertising, has agreed to remove the “breast health” and “colon health” claims from the labels of Centrum vitamins. The Center for Science in the Public Interest (CSPI), a consumer advocacy group, had threatened to sue Pfizer. CSPI said a news release that “those claims of breast and colon health implied that the supplements would prevent breast and colon cancer—disease prevention claims that supplement manufacturers can’t legally make.” CSPI points out that “breast health” and “colon health” appear on different Centrum products. Other Centrum vitamins have labels claiming they promote “heart health,” as well as having wording that implies the vitamins provide an energy boost.

Pfizer also agreed to change the wording on the labels containing the heart and energy claims. The company will add “Not a replacement for cholesterol-lowering drugs” along with the “heart health” wording, and on packages with statements about energy, there will be additional information to make it clear that the product does not boost energy. CSPI litigation director Steve Gardner said in a statement:

For many consumers, a daily multivitamin is an expensive insurance policy to make sure that one’s getting the recommended daily amounts of important vitamins and minerals. But supplement manufacturers must not mislead consumers into thinking that these pills will help ward off cancer.

Pfizer said in a statement that it disagrees with CSPI, but that the company agreed to make the changes to resolve the matter. If the statements or the labels were actually true—and not false or misleading—I have to wonder why Pfizer would make these very significant changes. What do you think?

Source: ABC News

Drug Companies Should Not Be Allowed To Advertise Prescription Drugs

I have yet to hear anybody give a rational defense or even a good explanation for why drug makers are allowed to advertise their products on television in the U.S. All of us have seen the drug companies’ television commercials promoting prescription drugs. We see folks in the ads enjoying life, having taken a company’s drug, “proving” that this latest “miracle drug” has done its work. And each ad ends with what advertisers refer to as the “call to action,” a directive to the viewer to “ask your doctor” for this drug. Even in the best of cases, it may not be the healthiest nor safest idea to have patients going to doctors asking for specific drugs. I don’t believe the old saying that “the customer is always right,” applies when it comes to doctors prescribing drugs for their patients. These are decisions that doctors must make. When the patient is calling the shots, it’s sort of like the tail wagging the dog!

When it comes to prescription medicine, there may be something more effective, or less costly on the market. But the drug companies spend all that money on advertising for a reason and I don’t believe there is any doubt as to what that reason is. The commercials all show healthy, active people who are really enjoying life to the fullest. Unfortunately, we don’t really hear much on the slick commercials about potentially harmful results—dangers that sometimes far outweigh any benefits we may get from the drug. We just don’t get past the visuals in the ad. The discussion of side effects is sparse and done in a manner so that the viewer really doesn’t get that message.
IV.
PURELY POLITICAL
NEWS & VIEWS

AN EARLY LOOK AT THE 2014 ELECTIONS IN ALABAMA

Even though Robert Bentley is just in his second year as Alabama’s governor, it has become most evident there will be a “Riley candidate” for Governor in Alabama in 2014. The question is—who will it be? Many political observers had believed that former Gov. Bob Riley would be a candidate. But a recent poll revealed that Gov. Bentley wouldn’t just beat Riley in a potential 2014 contest for the GOP’s gubernatorial nomination—he would win by a landslide, or as the pollster put it, “by a country mile.” The poll found that 49.5% of Republican voters would choose Gov. Bentley compared to only 27.6% for Riley. There were 23.9% who said they would either vote for another candidate or were undecided. Perhaps the most interesting finding from the poll was Gov. Bentley’s 76% favorable rating.

While the results of the poll had to be discouraging for the Riley camp, several Capitol insiders don’t believe it will deter them in their efforts to make Bentley a one-term Governor. They say the intense dislike for the current Governor by some in the Riley camp will almost certainly guarantee him an opponent in 2014. But I suspect the poll results aren’t the only reason the Riley candidate won’t be Bob Riley. From reports, it appears the former Governor is making way too much money to give up his lobbying job. That leaves as potential gubernatorial candidates Rob Riley, House Speaker Mike Hubbard and former Senator Bradley Byrne who lost a tough race to Bentley in 2010.

The same Capitol insiders tell me the Riley camp has been working full time placing road blocks in the path of Bentley administration programs. If that’s true, shame on them. That sort of thing can’t be good for Alabamians. In any event, it will be most interesting to watch things progress as the path in Alabama to 2014 becomes clearer.

THE ONE-PERCENT FLOCK TO $50,000 PER PERSON ROMNEY FUNDRAISERS

The Romney campaign last month held another of its fundraisers restricted to the Super-Rich at David Koch’s mansion in the Hamptons. The $50,000-per-plate fund-raiser was typical of similar events held by Gov. Romney. There is no doubt that billionaires like the Koch brothers and Sheldon Adelson intend to buy themselves a President. Unfortunately, unless ordinary folks wake up, they may be successful. But I have to believe that the message from events like this one will eventually sink in to working men and women and retirees, many of whom have been actually voting for candidates like Romney, and against their own economic interests. When that message is heard and understood, I predict you will see the momentum swinging strongly in favor of President Obama.

Gov. Romney—even when dressed out in his starched and obviously new blue jeans—simply doesn’t understand the problems and concerns of ordinary folks. His 1% agenda is driven by men like the Koch brothers and others and offers little—if anything—to the vast majority of Americans. If the Obama campaign doesn’t sell this message, it will be their own fault. They have a golden opportunity to turn a close election into one that won’t be that close but they must stay on a strong message that turns loose the power of the American people between now and election day in November. I will take “people power” anytime over the big money men who have to like the 1% Romney agenda because they formulated it.

I don’t believe there will be many folks voting for President Obama who can afford to pay $50,000 for a meal with their candidate. But the candidate whose agenda excludes 99% of the American people hasn’t had much trouble attracting those who can afford to give millions and they are pumping huge sums of money into the Romney campaign and into the SuperPACs. Any person who believes that the billionaires bankrolling Gov. Romney have any interest in helping the 99% who will be left behind in the event Romney becomes President will learn the hard way that they are badly mistaken. But unfortunately for them—and actually for the country—it will be too late to do anything to rectify their mistake.

SPOTLIGHT ON UPCOMING UNITED STATES SENATE RACES

While most of the media attention has focused on the Obama-Romney race, there will be a number of Congressional races that are extremely important. There are 33 United States Senate races being contested in November. Currently, the Democratic Party holds a 53 to 47 majority over the Republicans. The Senate races this year may prove to be some of the most important in the last few decades. Some political pundits are predicting that the key issue in many of these Senatorial elections will be the health care bill known as the Affordable Care Act.

The states that have Senate seats most in play, at the present time, appear to be Massachusetts, Missouri, Montana, Nevada, North Dakota, Virginia and Wisconsin. Those advocating for a Republican majority are campaigning primarily on a “repeal” of what they call Obama Care. Under normal Senate rules it would still require a 60 vote super majority to override a filibuster and repeal the Affordable Care Act. There are some, however, who believe that the simple majority (51 votes) under a budget reconciliation maneuver could in fact repeal the health care bill in its entirety. That would be a blow to ordinary folks in this country.

Of the 60 Democrats and Independents who voted to approve President Barack Obama’s Affordable Care Act, 15 are now up for re-election in November. Based on some recent polling, Republican candidates are leading in Missouri and Montana, whereas other states appeared to be a “toss up.”

Although it is too early to tell which party will have a majority in the U. S. Senate, it is abundantly clear that the health care debate will be an issue. A recent poll shows that 56% of Americans, and that includes this writer, are ready for the health care debate to be over and behind us, and for the country to move forward. But there will be a number of political consultants, with Karl Rove topping the list, who will direct campaigns designed to further divide our nation. But I hope reason will prevail and the campaigns will focus on issues that will help—and not hurt—our nation and make it stronger. That should be the prayer of all Americans.

V.
COURT WATCH

SUPREME COURT RULES ON ARIZONA’S IMMIGRATION LAW

It didn’t come as much of a surprise to the legal community when the U.S. Supreme Court ruled that the federal government has the sole power to enforce the laws against illegal immigration. The High Court struck down three key provisions of Arizona’s first-in-the-nation law designed to literally run all undocumented residents
out of that state. The Justices did allow for state officials to begin enforcing a provision in Arizona that calls on police, when making lawful stops, to check the immigration status of people who may be in the country illegally. While that’s not a bad thing, these status checks cannot “result in prolonged detention,” according to the Court. Justice Kennedy, writing for the majority, said: “Federal law makes a single sovereign responsible for maintaining a comprehensive and unified system to keep track of aliens within the nation’s borders.”

The opinion said that if Arizona could arrest and hold immigrants for not carrying papers, “every state could give itself independent authority to prosecute federal registration violations.” Chief Justice John G. Roberts Jr. and Justices Ruth Bader Ginsburg, Stephen G. Breyer, and Sonia Sotomayor joined with Justice Kennedy in this opinion that gives states little new authority to enforce immigration law on their own.

The Obama Administration went to court and argued these state laws conflicted with the federal government’s power to enforce the nation’s immigration laws. Previously, a federal judge in Phoenix and the U.S. 9th Circuit Court of Appeals had blocked four key parts of Arizona’s law from going into effect. All other states with laws like Arizona’s have absolutely no chance of having their laws upheld.

Source: Los Angeles Times

SUPREME COURT RULES IN MONTANA CASE

The U.S. Supreme Court has issued another ruling that allows huge corporations to spend as much money as they want in their efforts to take over our democracy. In summarily striking down a Montana law that limited corporate electioneering in Big Sky Country, the Supreme Court doubled down on its assertion in Citizens United v. Federal Election Commission that corporations have a right to distort our elections by spending without limit for the sake of securing the allegiance of politicians and policy makers.

It’s very clear that the make-up of the current Supreme Court will not overturn Citizens United. That is why people have to overturn the Court. That’s where Public Citizen—and its hundreds of thousands of supporters across the country—comes in. Public Citizen called for a constitutional amendment to overturn Citizens United shortly after the High Court handed down the opinion in January, 2010. Despite the Supreme Court’s denial of reality when it comes to the impact of independent spend-

ing on elections, the work Public Citizen is doing has taken the idea of a constitutional amendment from “doubtful” to “doable.”

Momentum around the country appears to be growing daily. The more folks find out about the effect Citizens United has had on the political scene, the more they dislike what’s happening.

The fight to preserve democracy is being spearheaded by Public Citizen activists around the country. While passage of the amendment in both the House and Senate is still considered an uphill fight, I believe Public Citizen and the American people will prevail. Defending our nation from a hostile corporate takeover is too important and I don’t believe the American people will let this effort fail. Unfortunately, there are still too many folks in this country who don’t even know about Citizens United. Fortunately, the word is getting out and those folks are waking up.

When one reads about the billions of dollars being raised by the SuperPACs in an effort by the super rich to buy a President, the seriousness of the battle is put in perspective. I believe the American people love their democracy too much to let it be bought or even leased by Corporate America or by the super rich who currently control the GOP. We will find out if I am correct when the voters elect a President and members of the U.S. House and Senate in November. The decisions made then will be the most important and a very long time will determine whether the middle-class will survive in our country.

VI. THE NATIONAL SCENE

FAMILY OF SOLDIER SUES SECURITY FIRM OVER HIS DEATH

The family of a California soldier killed in Afghanistan has sued a military contractor for rehiring an Afghan national as a security guard after he allegedly threatened to attack U.S. troops and eventually killed two service members and wounded four others. The wrongful death lawsuit, filed in federal court, claims Tundra Strategies failed to document threats made by Shir Ahmed and failed to tell U.S. military officials about the danger he posed before the March 2011 attack at Forward Operating Base Frontenac. Tundra Strategies, based in Ontario, Canada, was hired in November 2009 by the U.S. government to screen and monitor private security guards at nine military installations.

The shooting was a factor in improved screening of Afghan nationals hired to provide security for U.S. and coalition forces. Among those killed was medic Rudy Acosta, 19, of Santa Clarita, Calif., whose family filed the lawsuit along with three survivors. Tundra failed to adhere to basic duties in dealing with Ahmed, who was first hired by the company in May 2010. It appears he was fired two months later after being accused of threatening to kill U.S. and coalition troops. But, in a bizarre move, the firm rehired Ahmed in early 2011, despite concerns by a Tundra manager. Within days of being rehired, Ahmed opened fire on U.S. troops using an AK47 assault rifle furnished by Tundra.

Security companies that hire Afghans are required to vet an applicant by checking their identities, work history and other personal information, as well as conducting checks with police and taking fingerprints and iris scans. Contractors also have to report individuals who turn out to be security risks. After the shooting, U.S. military officials beefed up the process by doing random checks of private security companies, but they have warned the added safeguards won’t eliminate the problem.

Michael Doyle, the lawyer who represents the Plaintiffs in the case, said the lawsuit was filed to hold military contractors accountable for their role during wartime. He is absolutely correct when he says that “if there aren’t any consequences, it’s a continuing danger to the troops and that’s not acceptable.” This case, which should be successful, will be watched with great interest by the American people.

Source: Associated Press

VII. THE CORPORATE WORLD

FIGHTING CORPORATE FRAUD THROUGH QUI TAM ACTIONS

As most Americans are finding out, in recent years corporate fraud in the United States has reached unprecedented heights and devastated millions of lives. Given the countless examples of corporations cheating individuals out of their life savings, there is good reason for the distress and outrage felt by Americans. And to make matters worse, consider the rising number of cases where corporations perpetrate
true, how do the bank’s bosses think or at least larger than the public was being led to believe. At press time, JPMorgan had already lost $5.8 billion on the trades. That figure may climb by another $1.7 billion in a worst-case scenario, according to Dimon. We will continue to monitor this situation and hope that members of Congress will do the same.

**More on the JPMorgan Debacle**

We wrote last month about some terrible and extremely risky business practices by JPMorgan. It appeared then that the losses incurred were slightly over $2 billion. While that was bad, the worst was yet to come. Now the losses, from what is being described as “trading blunders,” may rise to $7.5 billion. That’s according to Jamie Dimon, JPMorgan’s CEO, who has been doing damage control over the past weeks.

The botched trades by a JPMorgan unit that Dimon had pushed to boost profit were masked by weak internal controls. That decision will now saddle the bank with a loss much greater than originally thought or at least larger than the public

**Qui tam** actions typically begin with an employee witnessing his/her employer defrauding the government. The employee may later consult with an attorney on another matter, but convey their knowledge of false information being given to the government. Attorneys need to be on the lookout for such information and recognize potential claims.

It takes vigilance and courage for these private individuals, commonly referred to as “whistleblowers,” to report fraudulent activity, but without them the vast majority of fraud against our government would go undetected. Recognizing the perils faced by whistleblowers, legislators have passed laws protecting individuals who take a stand against fraud. Specifically, 31 U.S.C. § 3730 prohibits discrimination and retaliation against whistleblowers and imposes strict penalties, including double back pay with interest, on violators.

As we have written previously, in a qui tam action is successful, the whistleblower receives between 10% and 30% of the government’s recovery. Damages under the FCA include penalties and “3 times the amount of damages which the Government sustains” due to the fraud. 31 U.S.C. § 3729(a)(1)(G). In short, the law protects and rewards whistleblowers for their instrumental role in exposing and prosecuting fraud. Lawyers in our firm have waged war against corporate fraud for over 30 years and would welcome the opportunity to assist with any qui tam actions that any of our readers may have. If you need more information on this subject, we will be glad to help and look at any potential cases. You can call 800-898-2034 or email Chad.Stewart@beasleyallen.com or Andrew.Braslier@beasleyallen.com.

**JPMorgan Settles Credit Card Lawsuit**

JPMorgan Chase has agreed to pay $100 million to settle a lawsuit filed by customers who said that the bank increased monthly minimum payments due on credit cards to generate more fees. The settlement, if approved by the court, will end a federal lawsuit filed three years ago in San Francisco.

The lawsuit accuses JPMorgan of improperly increasing cardholders’ minimum payments due to 5% of balances, from 2% in 2008 and 2009. Credit card customers contended that the bank increased payments on borrowers who could not afford to pay more, ultimately creating more income from late fees. JPMorgan claimed that the increase in monthly payments was both “reasonable” and “sensible.” But if that were true, how do the bank’s bosses explain to shareholders the $100 million settlement being paid?

Source: New York Times

**Bank of America Settles Mortgage Fraud Lawsuit With Bond Insurer Syncora**

Bank of America Corp. has agreed to pay $375 million to settle a lawsuit brought by bond insurer Syncora Guarantee over toxic mortgage-backed securities, which were at the center of the 2008 financial crisis. Syncora sued Bank of America in 2009 to recover losses on securities transactions based on home loans made by Countrywide Financial, which was bought by Bank of America in 2008. According to Syncora, it was duped into insuring the mortgage-backed securities. Syncora, a unit of Syncora Holdings Ltd., contended that Countrywide misrepresented the quality of the underlying mortgages.

As we all now know, home loans such as those issued by Countrywide were at the center of the financial crisis. As loans became delinquent, mortgage-backed securities like those insured by Syncora collapsed. This helped to trigger a wider market meltdown. In its lawsuit, Syncora claimed “a significant percentage” of mortgage loans underlying the securitizations did not comply with Countrywide’s representations and warranties. The bond insurer sued for fraudulent inducement and breach of contract, seeking to recover money paid out on its policies as a result of the bad loans.

It was alleged that “Countrywide, consistent with its business practices at the time, systematically ignored its own underwriting guidelines and made imprudent loans that no reasonable underwriter would have made.” As of May 2010, when an amended lawsuit was filed, Syncora had already paid more than $145 million in claims and had been given notice of another $257 million. Rulings in the Syncora case and a similar lawsuit brought by bond insurer MBIA Inc. have set precedents for what bond insurers need to show to prove insurance fraud and breach of contract. Syncora Guarantee has also sued other banks over false and misleading statements in connection with mortgage-backed securities, including JPMorgan Chase & Co. over Bear Stearns & Co. transactions. The case is Syncora Guarantee Inc. v Countrywide Home Loans Inc., New York State Supreme Court, New York County.

Source: Insurance Journal

**Capital One Bank Pays $210 Million To Settle Charges**

Capital One Bank has agreed to pay $210 million to settle federal charges that it tricked credit card customers into buying costly add-on services like payment protection and credit monitoring. Most of the money will go directly to refund customers who were led to believe the services were free or mandatory or offered more benefits than they did. The order against Capital One is the first enforcement action by the Consumer Financial Protection Bureau,

which was set up a year ago to protect consumers from excessive or hidden fees and other financial threats. Hopefully, this is a preview of what we can expect from the Bureau in the future.

Under its agreement with the CFPB, Capital One will pay about $150 million to 2.5 million customers and will pay an additional $25 million penalty. Capital One will also pay a $35 million penalty to the Office of the Comptroller of the Currency, a separate federal agency, which has the responsibility to oversee its banking operations. The refunds will go to customers who bought add-on card services between August 2010 and January 2012. They will receive the full amount of fees they paid and any other related costs.

The charges were based on the consumer bureau's findings that Capital One's call-center vendors were "deceptive" in selling the add-on services. The CFPB can charge companies engaged in "unfair, deceptive or abusive practices" and that's good for all consumers and would also help businesses that don't cheat their customers.

In a statement, Richard Cordray, the agency's director, said the agency is "putting companies on notice that these deceptive practices are against the law and will not be tolerated." Ryan Schneider, Capital One card division president, not only agreed to settle, but also in a statement apologized to customers. He admitted that Capital One is "accountable for actions that vendors take" on its behalf. The consumer bureau, which was created under the Obama Administration's financial overhaul law, is the first federal regulator focused on protecting consumers, rather than on just making sure that banks are stable and profitable. I believe that's a very good thing for the American people.

Source: Associated Press

FINRA Fines Merrill Lynch $2.8 Million

The Financial Industry Regulatory Authority (FINRA) has fined Merrill Lynch, Pierce, Fenner & Smith, Inc. $2.8 million for supervisory failures that resulted in overcharging customers $32 million in unwarranted fees. Merrill Lynch has paid $32 million in remediation, plus interest, to the affected customers. FINRA enforcement chief Brad Bennett had this to say:

Investors must be able to trust that the fees charged by their securities firm are, in fact, correct. When this is not the case, investor confidence is threatened.

According to FINRA officials, Merrill Lynch failed to have an adequate supervisory system to ensure that customers in certain investment advisory programs were billed in accordance with contract and disclosure documents. As a result, the firm overcharged nearly 95,000 customer accounts fees of more than $32 million. Merrill Lynch has since returned the unwarranted fees, with interest, to the affected customers. Merrill Lynch also failed to provide timely trade confirmations to customers in certain advisory programs due in what was described as "computer programming errors." As a result, from July 2006 to November 2010, Merrill Lynch failed to send customers trade confirmations for more than 10.6 million trades in over 250,000 customer accounts. All of this is inexcusable and Merrill Lynch is now paying for it.

Source: Corporate Crime Reporter

FORMER AIG AND GENERAL RE EXECUTIVES ADMIT TO REINSURANCE FRAUD

Five former executives of American International Group Inc. and Berkshire Hathaway Inc. unit General Reinsurance have admitted to conducting a fraudulent reinsurance transaction as part of a deal to end a years-long criminal case against them. All five entered into deferred prosecution agreements, meaning their indictments will be dismissed in a year if they stay out of trouble. They also agreed to fines ranging from $100,000 to $250,000.

The settlement brings to an end a high-profile case that has worked its way through the courts since May 2006.

In 2008, former Gen Re Chief Executive Ronald Ferguson, Chief Financial Officer Elizabeth Monrad, Senior Vice President Christopher Garand and Assistant General Counsel Robert Graham, as well as AIG Vice President Christian Milton, were convicted of engineering a reinsurance deal to fraudulently boost AIG’s reserves. In August 2011, a federal appeals court threw out the convictions and ordered a new trial, citing errors by the trial judge in the case. The five had been sentenced to anywhere from one to four years in prison. Last February, a new judge overseeing the case set a January 2013 date for their retrial. When you consider what these individuals did and now have admitted to, their punishment doesn't appear to be very severe.

Source: Insurance Journal

THE FEDERAL GOVERNMENT FILES SUIT AGAINST WYNDHAM OVER DATA BREACH

U.S. regulators have filed a complaint against Wyndham Worldwide Corp and three subsidiaries, alleging that a failure by the hospitality company to safeguard consumers’ personal information led to more than $10 million lost to fraud. According to the Federal Trade Commission, repeated failures to secure consumer data led to hundreds of thousands of consumers’ payment card information being exported to an Internet domain address registered in Russia. Wyndham, which operates several hotel brands, including Days Inn and Super 8, is one of a large number of organizations that acknowledged in the past three years that they had been hacked by people seeking either financial gain or intellectual property.

Other victims have included entertainment giant Sony, the International Monetary Fund, Google, Lockheed Martin and Citigroup. In its complaint, the FTC alleged that fraudulent charges on Wyndham’s consumer accounts totaled more than $10.6 million following three data breaches in less than two years. The breaches occurred in April 2008, March 2009 and in late 2009, according to the FTC. It was further alleged by the FTC in the complaint:

Even after faulty security led to one breach... Wyndham still failed to remedy known security vulnerabilities; failed to employ reasonable measures to detect unauthorized access; and failed to follow proper incident response procedures.

The FTC brought the complaint based on its belief that Wyndham violated its own privacy policy by failing to safeguard data. That failure violated the FTC Act which bars unfair and deceptive practices. In its request for relief, the FTC asked the court to require Wyndham to live up to its privacy policies, provide restitution or refund money that customers paid, and to pay the FTC’s costs incurred in the lawsuit. The case is Federal Trade Commission v. Wyndham Worldwide Corporation, et al., U.S. District Court for the District of Arizona.

Source: Reuters

SEC SUES FALCONE AND CLAIMS FUND MISUSE

Philip Falcone, the billionaire hedge-fund manager who founded Harbinger Capital Partners, LLC, has been sued by the U.S. Securities and Exchange Commission. It was contended that Falcone misappropriated client assets, favored certain investors...
over others, and illegally manipulated bond prices. The SEC is seeking disgorgement of ill-gotten gains, unspecified financial penalties, and a bar prohibiting Falcone from serving as an officer or director of any public company, according to a statement by the agency. The SEC has settled with Harbert Management Corp., a Birmingham investment firm, which was formerly affiliated with Falcone. SEC Enforcement Director Robert Khuzami said in a statement:

"Today's charges read like the final exam in a graduate course in how to operate a hedge fund unlafully. Clients and market participants alike were victimized as Falcone unscrupulously used fund assets to pay his personal taxes, manipulated the market for certain bonds, favored some clients at the expense of others, and violated trading rules intended to prohibit manipulative short sales."

The SEC action is the second blow in less than two months for Falcone, who built a $26 billion hedge fund by 2008 with a successful bet against subprime mortgages. Having suffered $23 billion in losses and withdrawals from the peak, Falcone is now in a battle, fighting to keep control of his empire. LightSquared Inc., Harbinger Capital's biggest investment, filed for bankruptcy in May. Falcone in 2009 took out a $113 million loan from his Special Situations fund to pay personal taxes. The loan was disclosed in the fund's annual financial statement the following March.

At the time Falcone borrowed the money, clients were barred from pulling money from the fund. Falcone subsequently repaid the loan with interest. That same year, with client capital locked up, Harbinger, according to reports, allowed Goldman Sachs Group, Inc., which at the end of 2008 had $1 billion invested in two Harbinger funds, to redeem some money from the firm. In April 2011, Harbinger told clients that the government was looking into whether it had engaged in market manipulation in its trading of the debt securities of an undisclosed company from 2006 to 2008. The company whose debt Harbinger traded was said to be MAAX Holdings, a Canadian maker of bathroom fixtures.

Source: The Birmingham News

**Privacy Breach Results In $22.5 Million Fine Against Google**

Google will pay a $22.5 million fine to resolve allegations that it broke a privacy promise by secretly tracking millions of Web surfers who rely on Apple's Safari browser. The settlement had to be approved by the FTC's five commissioners. The $22.5 million penalty is the largest the agency has ever imposed on a single company. But it should be noted that Google earns that much every five hours and that will likely continue. Google was said to use a special code that "tricked" Apple's software. To say that $22.5 million is a "slap on the wrist" for Google may be a stretch, but it may be just that. I am not sure the penalty fits the wrongdoing in this case.

Source: Associated Press

**Credit Card Companies Agree To Pay $6 Billion To Settle Fee Fixing Claims**

Visa, MasterCard and a number major banks have agreed to pay retailers at least $6 billion to settle a long-running lawsuit that alleged the card issuers conspired to fix the fees that stores pay to accept credit cards. As part of the settlement, stores like Rite Aid and Kroger will be allowed to charge customers more if they pay using a credit card. The settlement, which is being hailed as the largest antitrust settlement in U.S. history, is seen as a major victory for merchants. They have been fussing for a long time about the billions of dollars in so-called "swipe" or "interchange" fees paid to banks for purchases made using credit cards.

But at a time when shoppers increasingly are using credit and debit cards, merchants will now have to decide if they can afford to charge shoppers extra for using the cards. I don't believe most folks will want to pay more for purchases when they use a credit card instead of cash. Time will tell how this will work out.

The dispute between stores and banks began in 2005. That's when large retailers, including Kroger Co., Safeway Inc. and Walgreen Co., began filing price-fixing lawsuits against Visa, MasterCard and other banks. The retailers claimed the credit card issuers worked together to fix the fees that stores pay to accept credit and debit cards. The fees, which vary depending on the type of store and the type of card, average about 2% of the price of a purchase.

Visa and MasterCard make money on the fees that stores pay for each customer who uses credit or debit cards for their purchases. The fees are set by card processing networks, but collected by, and divided with, the banks that issue the cards. For years, the card companies have been defending the fees they charge stores. They say stores benefit from being able to accept credit and debit cards from customers, who often spend more when they're using "plastic" instead of cash or checks. That may well be true. While that may help our economy, it also results in more credit card debt for consumers.

Retailers wanted to charge an extra amount to customers who use credit cards for their purchases. The ability to charge customers who use the cards more for their purchases would reduce the retailers' costs for accepting the cards. But up until now, Visa and MasterCard have banned stores from charging more to customers who use credit cards. But merchants have been allowed to offer customers discounts if they pay with cash. As part of the settlement, credit card companies have agreed to reduce swipe fees for eight months.

The temporary reprieve on fees is valued at $1.2 billion. The settlement does not apply to debit cards, which have grown in popularity for small-value transactions. A number of consumer groups are not very happy with this settlement, contending that it will result in purchasers who pay by credit card being hurt. They complain that neither the card issuer nor the merchant will feel the pain. While this settlement appears to be very good for the retailers, I have to wonder how good it really is for consumers. I suspect we will hear more on that aspect of the settlement.

Source: Associated Press

**U.S. Senate Report Faults HSBC**

A recently released report reveals that global banking giant HSBC and its U.S. affiliate exposed the U.S. financial system to a wide array of money laundering, drug trafficking, and terrorist financing risks due to poor anti-money laundering (AML) controls. The report was released on July 16th by the Senate Permanent Subcommittee on Investigations. Sen. Carl Levin, D-Mich., Subcommittee Chairman, had this to say:

"In an age of international terrorism, drug violence in our streets and on our borders, and organized crime, stopping illicit money flows that support those atrocities is a national security imperative. HSBC used its U.S. bank as a gateway into the U.S. financial system for some HSBC affiliates around the world to provide U.S. dollar services to clients while playing fast and loose with U.S. banking rules. Due to poor AML controls, HBUS exposed the United States to Mexican drug money, suspicious travelers cheques, bearer share corporations, and rogue jurisdictions."

BP PAYS $5.2 MILLION TO SETTLE FALSE CLAIMS ACT CHARGE

BP America Inc. has paid a $5.2 million civil penalty for submitting false, inaccurate, or misleading reports for energy production that occurred on Southern Ute Indian Tribal lands in southwestern Colorado. The case was brought by the Department of the Interior's Office of Natural Resources Revenue (ONRR). Paul A. Musserden, Deputy Assistant Secretary for Natural Resources Revenue Management, stated:

This civil penalty demonstrates the expertise, skill and tenacity of the Tribal auditors and ONRR enforcement team members who discovered and pursued this repeated misreporting of royalty and production information, and underscores the value of our partnership with Tribal and State auditors under our cooperative agreements. ONRR remains committed to collecting every dollar due from energy production that occurs on Federal and American Indian lands, and vigorous enforcement of our regulations requiring accurate reporting is crucial to that effort.

ONRR's Office of Enforcement originally issued the civil penalty in June 2010. Although BP America initially requested a hearing on the civil penalty, it later elected to pay the penalty instead. ONRR received the payment on July 17th. In an interesting development that occurred on Southern Ute Tribal lands in southwestern Colorado. The case was brought by the Department of the Interior's Office of Natural Resources Revenue (ONRR), Paul A. Musserden, Deputy Assistant Secretary for Natural Resources Revenue Management, stated:

In 2010, HSBC was cited by its federal bank regulator, the OCC, tolerated HSBC’s weak AML system for years. If an international bank won’t police its own affiliates to stop illicit money, the regulatory agencies should consider whether to revoke the charter of the U.S. bank being used to aid and abet that illicit money.

HSBC set aside $2 billion to cover the cost of U.S. investigations and compensate. The Subcommittee on Currency (OCC), for multiple severe money laundering are followed.

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ONRR's Office of Enforcement originally issued the civil penalty in June 2010. Although BP America initially requested a hearing on the civil penalty, it later elected to pay the penalty instead. ONRR received the payment on July 17th. In an interesting observation, Musserden praised the work of Southern Ute Tribal auditors who initially discovered the errors. The Tribe’s audit was conducted as part of a cooperative agreement with ONRR. The Southern Ute Tribal auditors and ONRR found that BP reported incorrect “product codes” and “sales type codes” resulting in its use of incorrect royalty rates and prices for royalty reporting purposes. BP also reported well production to the wrong leases.

After receiving audit issue letters and an order, the company agreed with the auditors’ concerns and repeatedly promised to correct the problems, which they attributed to errors in their automated files. But ONRR and the Tribal auditors found the same errors in later reviews, prompting ONRR to issue the civil penalty. Having dealt with BP in the oil spill litigation, I am not at all surprised that the company would try to take advantage of the tribe.

Source: Corporate Crime Reporter
If you need more information on the Libor rate scandal or believe that you or a family member has been impacted by the scandal, contact Chad Stewart or Andrew Brashier, lawyers in our firm, at 800-898-2034 or by email at Chad.Stewart@beasleyallen.com at Andrew.Brashier@beasleyallen.com.


CORPORATE FRAUD IN THE U.S.

I am convinced that few folks realize how bad the conduct of a large number of huge corporations has been over the years. As a result, most Americans have no concept of how these giants in Corporate America operate. That is, unless they have been victims of corporate wrongdoing, and even then some don’t fully understand that the wrongdoing they experienced is widespread. But after reading the information relating to corporate wrongdoing set out above, I suspect most—if not all—of our readers may well conclude that:

- Corporate fraud—in many different forms—is a reality.
- Whistleblowers to report fraud are needed.
- The courts must remain open and available to consumers.
- The government must take an active role in combating the fraudulent conduct.

And the sad truth is that we have just reported on some of the larger settlements involving corporate fraud and wrongdoing. Unfortunately, there is much more fraud and wrongdoing in the corporate world. That’s why it’s so very important to keep the courts open and accessible to victims. If any of our readers wonder why Corporate America has pushed so hard to shut down the courts, perhaps this section of the Report may provide some insight on that subject.

VIII. CONGRESSIONAL UPDATE

PRESIDENT OBAMA SIGNS FLOOD INSURANCE REFORM BILL

President Barack Obama has signed the “Biggert-Waters Flood Insurance Reform and Modernization Act of 2012” into law. The law extends the National Flood Insurance Program (NFIP) for five years and makes needed reforms to the program. The Senate and House passed the legislation as part of a conference report package along with the Surface Transportation Act of 2012 and an extension of the Federal Direct Stafford Student Loan program. The reforms include:

- phasing out subsidies for many properties,
- raising the cap on annual premium increases from 10% to 20%,
- allowing multifamily properties to purchase NFIP policies,
- imposing minimum deductibles for flood claims,
- requiring the NFIP administrator to develop a plan for repaying the debt incurred from Hurricane Katrina, and
- establishing a technical mapping advisory council to deal with map modernization issues.

The new law will require the Government Accountability Office to conduct a study on the prospect of adding business interruption and additional living expenses coverage to the NFIP and also will require the Federal Insurance Office to study and submit a report to Congress on natural disaster insurance issues and possible legislative solutions. Several members of Congress worked hard on the measure, including Sen. Richard Shelby and Rep. Spencer Bachus from Alabama and their work paid off for millions of homeowners and businesses across the U.S. who are threatened by flooding.

Source: Insurance Journal

DISCLOSE ACT FAILS AGAIN IN THE U.S. SENATE

The American people were the losers when the U.S. Senate failed to pass legislation that would have forced donors of groups that bankroll most election ads to be revealed. But Democrats, led by New York Senator Charles Schumer, have pledged to keep trying to pass this needed bill. The DISCLOSE Act, which was dealt the same fate in the Senate in 2010, failed to overcome a key procedural vote on partisan lines. The vote on the bill was 51-44. With 60 votes being needed to force a vote on the bill, it fell nine votes short.

Four Republicans and one Democrat did not vote on the bill, which would require corporate interest groups, unions and non-profits that spend $10,000 or more during an election cycle to disclose donors who give $10,000 or more. The new version of the bill, sponsored by Sen. Sheldon Whitehouse (D-R.I.) would have no longer required sponsors of electioneering ads to have a disclaimer at the end and would have pushed the effective date to 2013.

Since we are in an election year though, I can understand why this bill doesn’t have broad, bipartisan support even though the American people favor openness and full disclosure of political donations. That is according to all polling results that I have seen. Unfortunately, Republicans stood with the big banks, drug companies, oil companies, and other powerful special interests that virtually control what happens in Congress. Those groups certainly don’t need more clout in Washington. Outside spending groups, including super PACs, party committees and groups such as corporations and unions have—at press time—spent well over $175 million so far during this election cycle. This is according to the Center for Responsive Politics. A large portion of that money goes toward sponsoring election ads.

It has become evident that a handful of billionaires willing to contribute huge sums—in the nine figures—are trying to sway what may well be a very close presidential election. It’s believed that roughly 60% or more of these outside dollars are coming from about 15 individuals. Hopefully, the DISCLOSURE Act, which is so badly needed, will have a chance to pass next year. If you agree let your U.S. Senators know and ask them to support this legislation.

Source: politico.com

REPEAL OF THE HEALTHCARE LAW

In a move that was nothing more than election-year politics, the U.S. House of Representatives passed a bill, with the voting along party lines, to repeal The Affordable Care Act. Nobody in the House, including the Speaker and others in the...
**Arkansas Rice Farmers Sue Texas Company Over Hybrid Rice**

A group of Arkansas rice farmers have sued RiceTec Inc., a company that produces hybrid seed, claiming that the company supplied them with seed that produced an inferior crop and sometimes didn’t grow well enough to be harvested. The claims— in the form of countersuits—were filed July 16th in response to RiceTec suing a Greene County farmer who didn’t pay his bill after he claimed the Texas-based company didn’t reimburse him for his costs after selling him inferior seed. That farmer countersued, and 32 other farmers have now joined the lawsuit. The farmers claim there are two major problems with the seed:

- Some seed is so defective that farmers were forced to replant entire sections of their fields, and
- RiceTec’s hybrids as a whole produce an inferior product.

The lawsuit is pending in Greene County Circuit Court. The farmers allege that they are seeking lower prices for their rice because RiceTec’s hybrid rice grows with less bran around the kernel, and it doesn’t mill as well as non-hybrid long-grain rice, which has more bran. The farmers claim that the RiceTec varieties chip and don’t cook as well, leading to less demand and lower prices. RiceTec claims on its packaging that its seed will bring a higher yield than conventional long-grain rice seed.

Many farmers sought hybrid seed after non-hybrid rice was contaminated with a genetically-modified strain starting in 2006. The contamination of traditional long-grain rice had a severe economic impact on Arkansas rice growers, who produce about half the nation’s rice. Growers saw prices plunge after European nations would no longer buy U.S.-grown rice because of the genetic modification, which had not been approved for human consumption.

The contamination was linked to Bayer CropScience, which produces conventional long-grain rice seed. The company reached a $750 million settlement with rice farmers last year. The RiceTec hybrid is popular because it resists panicle blight, a disease that takes hold when nighttime temperatures are high and can hurt conventional long-grain yields. On its website, RiceTec bills itself as “a technology-based rice company focused on high-value products, RiceTec is the first company to commercialize hybrid rice seed in North and South America.”

**Mass Torts Update**

**Andy Birchfield Appointed To The Zoloft PSC**

Andy Birchfield, who heads up our firm’s Mass Torts Section, has been appointed to the PSC in the Zoloft Products Liability Litigation. U.S. District Court Judge Cynthia M. Rufe made the appointment on July 13th. The cases in this MDL are pending in the U.S. District Court for the Eastern District of Pennsylvania. Our firm represents over 100 individual clients against Pfizer, the manufacturer of Zoloft. We have filed a number of lawsuits and are currently investigating numerous potential claims.

As you probably know, Zoloft is a potent antidepressant. It has been the number one used anti-depressant on the market. Unfortunately, the drug has caused a number of birth defects. If you need more information on the Zoloft litigation, contact Andy Birchfield at 800-898-2034 or by email at Andy.Birchfield@beasleyallen.com.

**An Update On Plavix Litigation**

Sanofi-Aventis and Bristol-Myer Squibb, the manufacturers of Plavix, have received several FDA warning letters regarding false and misleading statements made in promotional materials for the blood thinner. These FDA letters clearly indicate that the manufacturers were more concerned with increasing sales and profits, at the expense of providing fair and accurate information to consumers and doctors. At the time Plavix was developed, the makers’ own studies demonstrated that the drug was not any better than Aspirin at preventing heart attacks and strokes.

Through proper evaluation of clinical trials, the limited benefits as opposed to the increased risk of heart attacks, strokes, internal bleeding and even death should have been apparent. There has been a great deal of Plavix litigation around the country. The FDA asked the manufacturers on
several occasions to change their misleading statements and stop promoting unproven uses of the medication. But nothing was done. Finally, the new Plavix warning has a black box, the FDA’s most severe warning.

Anyone who has taken Plavix and suffered a heart attack or had a family member who died after taking the drug can contact Melissa Prickett, a lawyer in our Mass Torts Section, to find out if there is a potential claim. Melissa can be contacted at 800-898-2034 or by email at Melissa.Prickett@beasleyallen.com.

**DOCTORS CONCERNED ABOUT PRADAXA SIDE EFFECTS**

A new report suggests some doctors are concerned about Pradaxa side effects, which reportedly include an increased risk of death due to bleeding. Concerns have been raised that patients who are given Pradaxa can suffer from uncontrollable bleeding, which puts them at a risk of death even after a relatively minor fall. A case in point involved Loraine Franklin, a Houston resident, who died less than 24 hours after falling on her kitchen floor. Reportedly, she died from an intracranial hemorrhage that could not be stopped. Ms. Franklin had been taking Pradaxa for atrial fibrillation. Unlike with Coumadin, doctors reportedly have no way of stopping the bleeding when Pradaxa patients suffer a traumatic event. This makes something as minor as a fall a life-threatening situation.

It was reported by Reuters in June that some doctors are growing concerned about the risk of bleeding associated with Pradaxa, going so far as to recommend thorough monitoring of patients who are prescribed the medication. Pradaxa was approved by the U.S. Food and Drug Administration in 2010 as an alternative to warfarin in the treatment of atrial fibrillation. According to the Institute for Same Medication Practices, approximately 540 reports involving death linked to Pradaxa were made to the FDA in 2011, with 3,781 serious adverse events in total. That is in comparison with only 72 deaths and 1,106 reports overall linked to warfarin. Although warfarin is linked to an increased risk of brain hemorrhages, it appears doctors are able to stop traumatic bleeding with an antidote when the patient has taken warfarin.

A number of lawsuits have been filed against Boehringer Ingelheim, maker of Pradaxa, alleging that patients died as a result of using the medication and that the drug maker did not adequately warn about the risks associated with Pradaxa. Meanwhile, the European Medicines Agency (EMA) has requested updated warnings to the Pradaxa label, including information on avoiding bleeding risks when using the medication. Although the EMA noted that the drug’s benefits outweighed the risks—and that instances of fatal bleedings were lower than in clinical trials—it stated that more information about the risks should be included on the label. If you need more information contact Roger Smith at 800-898-2034 or by email at Roger.Smith@beasleyallen.com.

**TERBINAFINE CAN CAUSE LIVER FAILURE**

A few years ago, the Food and Drug Administration issued a public health advisory about a drug called terbinafine. There were cases in which this drug caused liver failure, including 11 deaths and two patients who needed liver transplants. There are a few things consumers should know about terbinafine:

- It’s marketed—heavily, under the brand name Lamisil.
- The drug is used to treat toenail fungus infections.
- The FDA approved it without discovering a potentially fatal flaw.
- The FDA still allows the drug to be sold.

It’s sort of hard to imagine a person—being treated for a toenail fungus—and then dying of liver failure! This is another example of how bad drugs slip through the cracks at the FDA.

**FDA PANEL SEES LITTLE USE FOR METAL-ON-METAL HIPS**

Government health experts have said there are few reasons to continue using metal-on-metal hip implants, amid growing evidence that the devices can break down early and expose patients to dangerous metallic particles. The Food and Drug Administration recently asked its 18-member panel to recommend guidelines for monitoring more than a half-million patients in the United States with metal hip replacements. As we have written in prior issues, the devices were originally marketed as a longer-lasting alternative to older ceramic and plastic models. But recent data from the U.K. and other countries suggest they are more likely to deteriorate, exposing patients to higher levels of cobalt, chromium and other metals.

While the FDA has not raised the possibility of removing the devices from the market, most panelists said there were few, if any, cases where they would recommend implanting the devices. For decades nearly all orthopedic implants were coated with plastic or ceramic. But in the last ten years some surgeons began to favor all-metal implants. This came after laboratory tests suggested the devices would be more resistant to wear and reduce the chances of dislocation. But recent data gathered from foreign registries shows that the devices fail at a higher rate than older ceramic and plastic implants. There have been nearly 17,000 reports to the FDA of problems with the implants. In many cases invasive surgery is required to replace them. The pain and inflammation reported by patients is usually caused by tiny metal particles that seep into the joint, damaging the surrounding tissue and bone. At this juncture, the long-term effects of elevated metal levels in the bloodstream are not clear. However, some studies have suggested links to neurological and heart problems.

Each year, about 400,000 Americans get a hip replacement to relieve pain and restore motion affected by arthritis or injury. Metal hips accounted for about 27% of all hip implants in 2010, down from nearly 40% in 2008. Doctors have begun turning away from the implants because of several high-profile recalls, including J&J’s recall of 93,000 metal hips in 2010. According to the FDA’s experts, patients complaining of pain and other symptoms should get regular X-rays and blood testing for metal levels. But as the panelists pointed out, there are problems with the accuracy of blood tests. Also, there are difficulties interpreting the results. Unfortunately, there are no standard diagnostic kits on the market that test for chromium and other metals.

For patients who are not experiencing pain, annual X-rays are sufficient to monitor their implants, according to the panelists. If the FDA ultimately follows the group’s advice, U.S. recommendations would be less involved than those already in place overseas. Earlier this year, U.K. regulators recommended that all people who have the implants get yearly blood tests to make sure no dangerous metals are seeping into their bodies. FDA regulators have suggested they want to take more time to sort out the differences between various implants and patient groups before making recommendations.

Women and folks who are overweight are among the groups that are more likely
to have an implant failure. With little definitive data on U.S. hip implants, the FDA has asked manufacturers like Johnson & Johnson, Zimmer Holdings Inc. and Biomet Inc. to conduct long-term, follow-up studies of more than 100 metal-on-metal hips on the U.S. market. It would have been helpful if there had been adequate pre-marketing testing of these devices before they hit the market.

If you need more information on this issue, contact Navan Ward, a lawyer in our Mass Torts Section who is handling hip cases, at 800-898-2034 or by email at Navan.Ward@beasleyallen.com.

**SMITH & NEPHEW RECALLS METAL-ON-METAL HIP IMPLANTS**

Smith & Nephew recently recalled a metal liner used in its R3 Acetabular System. Smith & Nephew cites dissatisfaction “with the clinical results of the component” as the reason for the recall. Approximately 7,700 R3 metal liners have been implanted in patients worldwide since its introduction in 2007. This recall adds the Smith & Nephew R3 metal-on-metal acetabular system to a laundry list of other problematic metal-on-metal hip systems we have written about, including the DePuy ASR, DePuy Pinnacle with Ultamet (meta) liner, Zimmer Durom Cup, Wright Conserve, and Biomet M2A-Magnum hip implant systems.

The R3 system is similar to the DePuy Pinnacle Acetabular System in that liners made of different materials can be chosen for implantation. The R3 liner is manufactured in polyethylene, ceramic and metal. It should be noted that only the R3 metal liner is subject to the recall. The R3 Acetabular System with the R3 metal liner can lead to various complications, similar to other metal-on-metal hip implants. These complications include pain in the groin, thigh or hip, rash, fatigue, and incoordination. Anyone with either the Stryker Rejuvenate or ABG II modular-neck stem components should have their case investigated to determine its merits. If you need more information, contact Navan Ward at 800-898-2034 or by email at Navan.Ward@beasleyallen.com.

**JURY AWARDS $5.5 MILLION IN VAGINAL MESH CASE**

A jury in Bakersfield, California, awarded a couple $5.5 million recently against C.R. Bard Medical, the maker of Avaulta Mesh, a medical implant. Christine Scott has had severe complications ever since she had a vaginal mesh surgically implanted. Mrs. Scott and her husband sued C.R. Bard Medical, contending the company knew its product was unsafe. After hearing the evidence, the jury awarded Mrs. Scott $5 million and her husband $500,000.

Mrs. Scott’s case has been in court for about four years and she has been under court-ordered silence during that time. An active runner, she got the implant to correct a leaky bladder. But the device began cutting her colon, and tissue grew and continues to grow through the tiny holes in the mesh. This resulted in her having eight surgeries. Mrs. Scott’s doctors don’t know how many more surgeries will be required.

To date almost 50,000 women have had the mesh implanted, and 650 lawsuits have been filed and are pending. The maker advertised the mesh as having been approved by the FDA. But that wasn’t true since the FDA has never approved the mesh for this use. C.R. Bard Medical stopped selling the Avaulta Mesh on July 1, 2012 in the United States, saying it was because the FDA wanted more clinical trials done. But the dangerous mesh is still being sold in other countries. Mrs. Scott’s doctors say that she will continue to deal with complications from the mesh. But now this brave lady will be able to be a voice for other women. She wants to help get the message out to other women, hoping they won’t become victims and have to go through the same ordeal that she has endured.

There will likely be an appeal in the case. But Mrs. Scott says she’s just happy to no longer have the court-ordered silence, so that she can talk about what happened to her and why. In fact, she wants to start a support group for women. Bakersfield lawyer Gene Lorenz and Elaine Houghton, a lawyer from Tacoma, represented the Plaintiffs. They did a very good job in this most significant case.

**CLIPS USED IN KIDNEY SURGERY LINKED TO DEATHS**

Surgical clips used in kidney donor surgery have been linked to injuries and deaths, prompting questions about warning labels by manufacturer Teleflex Medical. A hospital in Texas recently settled a lawsuit with the family of Florida Gotcher, who bled to death shortly after laparoscopic surgery to donate a kidney to her brother in 2011. As some of our readers may already know, in order to perform kidney donor surgery, surgeons must cut the renal artery and then close it up. Some surgeons use staples and others use surgi-
cal clips to close the artery. Although the surgical clips are used in many types of surgeries, they can slip off the renal artery and lead to internal bleeding.

Between 2001 and 2005, three deaths and 12 injuries were reported to have been caused by use of the clips in kidney surgery. In April 2006, Teleflex sent letters to hospitals and added a contraindication on its instructions, but failed to add warnings about use in kidney transplant surgery on its packaging or on the clips themselves. A number of surgeons have sought these warnings. In May 2011, the FDA and Health Resources and Services Administration issued a joint safety communication that said there had been three more kidney-related deaths since the 2006 contraindication.

The agencies reminded urologists, surgeons and hospital staff not to use the Weck Hem-o-lok Ligating Clips for laparoscopic living-donor kidney transplant surgeries. University Medical Center in Texas, which settled with the Gotcher family, had received the letters in 2006 at a time when the hospital did not purchase the clips. By the time it purchased them years later, the letters appeared to have been misplaced and/or forgotten.

Source: Lawyers USA Online

XI. BUSINESS LITIGATION

Pfizer Sued By Retailers For Generic Lipitor Delay

Five big U.S. retailers have filed an antitrust lawsuit against Pfizer Inc. and India’s Ranbaxy Laboratories Ltd, accusing the companies of conspiring to delay sales of generic versions of Lipitor, the best-selling drug in history. Walgreen Co., Kroger Co., Safeway Inc., SuperValu Inc. and HEB Grocery Co., the Plaintiffs in the suit, have accused the Defendants of running an “overarching anticompetitive scheme” to keep generic versions of the cholesterol drug off the market until November 30, 2011, 20 months after the original patent expired. Plaintiffs allege that the Defendants did this by obtaining a fraudulent patent, engaging in sham litigation, entering a price-fixing agreement to delay cheaper generics, and entering arrangements with pharmacy benefit managers to force retailers to buy more Lipitor, whose chemical name is atorvastatin calcium.

The Plaintiffs allege that “because of Defendants’ scheme to delay and suppress generic Lipitor competition, in whole or in part, Plaintiffs have paid hundreds of millions of dollars more for atorvastatin calcium than they would have paid.” The Plaintiffs are seeking triple damages and other remedies. The lawsuit was filed in federal court in Trenton, New Jersey.

Source: Reuters

Facebook And Yahoo Settle Lawsuits

Facebook Inc. and Yahoo Inc. have agreed to forge a broad Internet advertising and licensing partnership, putting to rest their dueling patent lawsuits. The pact settles accusations of technology patent infringement that began under the stewardship of ex-Yahoo CEO Scott Thompson. As you may recall, Thompson was ousted after a scandal erupted over inaccuracies in his resume. According to Reuters, interim CEO Ross Levinsohn is now the front runner for the top job at Yahoo. Facebook’s and Yahoo’s strategic deal—which expands an existing multi-year tie-up that involved mainly allowing Facebook users to share Yahoo content—encompasses cross-licensing of patents and collaboration on advertising offerings during major media events such as the Olympics and the annual Super Bowl.

Yahoo’s lawsuit had invited some criticism that it was trying to force a settlement from a company about to go public in what has been described as “Silicon Valley’s largest coming-out party.” Yahoo sued Facebook in March, claiming the number one social networking company infringed ten patents including several that cover online advertising technology. In its lawsuit, Yahoo said Facebook was considered “one of the worst performing sites for advertising” prior to adopting Yahoo’s ideas. Facebook, which went public in May, filed a countersuit of its own against Yahoo a month later. It called Yahoo short-sighted for its decision to prioritize “litigation over innovation.” Reportedly, Facebook has been very active beefing up its patents arsenal. In April, it announced a deal to pay Microsoft Corp. $550 million for hundreds of patents that originated with AOL.

Source: Claims Journal

$147.2 Million Verdict In Wireless Patent Lawsuit

A California jury returned a verdict of $147.2 million last month against Research in Motion Ltd. in a lawsuit involving a patent dispute. The suit, filed by Mformation Technologies, Inc., was over a remote management system for wireless devices. This verdict, returned in a San Francisco federal court, comes at a bad time for RIM, whose stock has fallen more than 70% in the past year. Customers have moved to Apple’s iPhone and a number of devices using Google Inc.’s Android software. As a result, Blackberry sales have suffered.

The jury directed RIM to pay an $8 royalty for every BlackBerry device connected to RIM’s enterprise server software, which brings the total award to $147.2 million. The verdict only covers U.S. sales through the date of trial, and not future or foreign damages. According to Research In Motion, it has worked hard to develop its leading-edge Blackberry technology.

Mformation, based in Waterloo, Ontario, sued RIM in 2008, bringing claims on a patent for a process that remotely manages a wireless device over a wireless network. According to its web site, Mformation helps corporations manage their smart phone inventory. The company also says it helps telecoms operators, such as AT&T and Sprint, with remote fixes and upgrades for users’ gadgets. RIM claimed that Mformation’s patent claims are invalid because the processes were already being used when Mformation filed its patent application. The case, filed in the U.S. District Court, Northern District of California, is Mformation Technologies Inc. vs. Research In Motion Ltd.

Source: Reuters

Apple Claims $2.5 Billion Damages In Samsung Patent Case

Apple Inc., which has been pretty active in the courts lately, has filed suit against Samsung Electronics Co. The suit, over patents for technology used in smartphones and tablets such as the iPhone and iPad, seeks $2.525 billion in damages. The world’s largest consumer electronics companies were scheduled to start a trial on July 30th in U.S. District Court in San Jose, California. Since this issue went to the printer on that same day, we don’t know if the trial started or if the matter was settled. In this suit, Apple accused Samsung of infringing its patents by making its popular Galaxy phone and computer tablets “work and look” like Apple products, enabling the South Korean company to overtake it as the world’s largest maker of smart phones.

Samsung countered by saying that it simply developed its own “unique” products in a bid to “best the competition.” Samsung says Apple actually owes it money
for using its patented technology. Apple alleged that Samsung owes “substantial monetary damages” because it illegally “chose to compete by copying Apple.” Apple said Samsung has been “unjustly enriched” by an undisclosed amount—presumably $2 billion—and has deprived Apple of $500 million of profit and $25 million of reasonable royalty damages. Apple still plans to pursue a permanent injunction to stop future violations.

Suzo said Apple was trying “to stifle legitimate competition and limit consumer choice to maintain its historically exorbitant profits.”

Source: Insurance Journal

APPLE PAYS $60 MILLION TO SETTLE CHINA iPAD TRADEMARK DISPUTE

In another case, Apple Inc. has paid $60 million to Proview Technology (Shenzhen) to end a dispute over the iPad trademark in China that saw the world’s most valuable technology company engaged in a protracted legal tussle with a near-bankrupt Chinese firm. The lawsuit had hampered some sales and delayed the launch of the new iPad in China. Prior to the launch, Proview Technology, the Chinese company, requested Chinese authorities in a number of Chinese cities to order re-sellers to take all iPads off their shelves. The court-mediated settlement, announced on the website of the Higher People’s Court of Guangdong province, will allow Apple to get on with selling its popular tablet PC in one of its most important markets. Obviously, China is a very important market for Apple and this settlement is good for the company.

Source: Insurance Journal

XII. AN UPDATE ON SECURITIES LITIGATION

HEDGE FUND MANAGER TO PAY $405 MILLION TO MADOFF VICTIMS

A settlement announced recently will result in $405 million being paid to victims of Bernard Madoff’s historic investment scam. The clients of hedge fund manager J. Ezra Merkin will receive $405 million from the settlement. New York state will get $5 million to cover the cost of the settlement worked out by Attorney General Eric Schneiderman. The victims include New York Law School, Bard College, Harlem Children’s Zone, Homes for the Homeless and the Metropolitan Council on Jewish Poverty. The Attorney General called the agreement “a victory for justice and accountability,” and had this to say about the settlement:

Many New Yorkers entrusted their investments to Mr. Merkin, who then steered the money to Madoff while receiving millions of dollars in management and incentive fees. By holding Mr. Merkin accountable, this settlement will help bring justice for the people and institutions that lost millions of dollars.

Merkin, a former NASDAQ chairman, had managed investments for hundreds of investors in four funds: Ariel Fund Ltd., Gabriel Capital L.P., Ascot Fund Ltd. and Ascot Partners L.P. According to the Attorney General’s office, many of the investors are New York residents and charitable organizations. Most investors will get more than 40% of their losses, but only up to $5 million. Those who lost more could receive additional payments, depending on the number of investors who seek reimbursement.

Source: Washington Post

FLORIDA SUIT AGAINST REGIONS CAN PROCEED

A Florida lawsuit against Regions Bank, which seeks class-action status over the bank’s partnership with an unregistered investment firm, can move forward as the result of a ruling that the statute of limitations had not run. A judge in U.S. District Court in Miami ruled that the suit can proceed on behalf of 14,000 investors who put up about $250 million through a company named U.S. Pension Trust Corp. that partnered with Birmingham-based Regions. U.S. Pension Trust has already been sanctioned after being found guilty of unlawfully engaging in the sale of securities as an unregistered dealer. It had to pay back $62 million to investors and forfeit $50 million in civil penalties.

In 2009, Regions agreed to pay $1 million to settle a Securities and Exchange Commission case over the matter. Regions is defending the Florida suit which seeks class-action status for the bank’s part in the unregistered U.S. Pension Trust Corp. investment program. It’s alleged in the suit that Regions was the trustee of the plan, which swept up investment money mostly in Latin American nations for investment in U.S. mutual funds through the Birmingham bank.

Regions claimed that the statute of limitations had run on the claims. The investment plans were sold from 1995 through 2008. But the judge in the case disagreed with Regions, ruling that the starting date for the statute of limitations was September 2009, when Regions settled with the SEC.

The lawsuit, seeking class-action status and repayment of money invested, says Regions performed a wide variety of tasks in support of the unregistered investment plan. Those tasks included, the suit alleges, the use of Regions’ name and logo on sales materials, production of a marketing video, training to USPT sales representatives, and sharing fees with USPT. Regions, based in Birmingham, operates about 1,700 branches in 16 states.

Source: The Birmingham News

BANKS & INSURERS COLLUDE TO OVERCHARGE ON FORCE-PLACED INSURANCE

Lawyers in our firm are involved in cases against major banks and insurance companies related to the placement of “force-placed” property insurance against homeowners and other owners of real property. Standard mortgage loans require borrowers to purchase and maintain property insurance (typically hazard, flood, and/or wind coverage) on the secured property to protect the lender’s interest in the property. To ensure that the lender’s interest in the secured property remains protected, standard mortgages allow the lender or third-party servicer to “force-place” insurance when the owner fails to maintain the property insurance. Any amounts disbursed for the procurement of such insurance, which is for the benefit of the lender, are passed on to the borrower and charged to the borrower’s escrow account and become additional debt owed by the borrower.

Force-placed insurance is always more expensive than standard insurance coverage, even costing up to ten times more than standard policies purchased by a borrower. Lenders and servicers claim that the higher cost of force-placed insurance derives from purportedly legitimate administrative costs, the costs of procuring insurance on
property without individual underwriting, and the higher risks associated with insuring properties that are not insured by the borrower. Borrowers, on the other hand, allege that the cost of force-placed insurance is artificially inflated to cover kickbacks, self-dealing, and secret profits shared between lenders, servicers, and the providers of force-placed insurance. “Behind banks’ servicing insurance practices lie conflicts of interest that align servicers and their insurer partners against borrowers and investors,” writes Jeff Horowitz in a November 9, 2010, article available at www.americanbanker.com. Diane Thompson, of counsel for the National Consumer Law Center, was quoted as having told Horowitz:

There’s no arm’s length transaction here, and that creates all sorts of incentives for the servicer to force- place excessive insurance and overcharge consumers for policies that provide minimal benefit. Servicers and insurers have turned this into a gravy train.

Lawyers in our firm are involved in litigation alleging that banks and insurers have engaged in unlawful, abusive practices with respect to force-placed insurance, including: providing force-placed insurance at unreasonably high costs to borrowers; engaging in “kickbacks” from insurers to banks in the form of purported fees, payments, commissions, and rebates; and forcing borrowers to pay for unnecessary and duplicative insurance. To learn more, or if you or a family member believe you have a force-placed insurance claim, contact Archie Grubb or Bill Hopkins, lawyers in our firm at 800-898-2034 or by email at Archie.Grubb@beasleyallen.com or Bill.Hopkins@beasleyallen.com.

XIV. EMPLOYMENT AND FLSA LITIGATION

WELLS FARGO SETTLES BIAS LAWSUIT

Wells Fargo & Co., the largest U.S. mortgage lender, will pay $125 million and set up a $50 million assistance fund to settle U.S. allegations that it discriminated against minority borrowers. The bank says it will stop using outside brokers to create mortgages. The accord settles accusations that Wells Fargo put creditworthy Hispanic and African-American borrowers into more expensive subprime loans from 2004 to 2007, and that mortgage brokers through 2009 added charges that caused minority borrowers to pay higher fees, costs and interest than similar white borrowers. It appears senior officials knew that this wrongdoing was occurring.

The settlement with Wells Fargo is the second largest fair-lending accord ever reached by the Justice Department. The largest was a record $335 million paid by Bank of America Corp. last year. Nationwide, acquired by Bank of America in 2008, assessed higher fees and interest rates on more than 200,000 black and Hispanic borrowers. The Justice Department investigation of Wells Fargo uncovered “systemic discrimination” in the bank’s lending practices. About 34,000 borrowers in total were affected.

In some cases, Wells Fargo steered many borrowers into adjustable-rate mortgages with so-called teaser rates when they qualified for more standard loans, such as those with 30-year fixed rates, the U.S. said in its complaint. The bank created financial incentives by sharing the higher revenue with employees and brokers, the government said. The settlement ends litigation filed in Illinois and a complaint from Pennsylvania, according to the bank. Wells Fargo also agreed to commit $50 million in direct payments for down-payment assistance in eight U.S. regions where the U.S. alleges the discrimination practices had a significant impact.

Source: MSNBC

IDAHO MAN AWARDS $888,000 IN DISCRIMINATION LAWSUIT

A federal jury has awarded nearly $888,000 in damages to a man who said his Idaho employer discriminated against him because he is Hispanic. Ricky Garcia began working for PSI Environmental Systems in Twin Falls, Idaho, in 2005. He left to take another job in 2007, and filed a complaint with the Idaho Human Rights Commission. He said he had been passed over for raises and told him that Hispanic workers would never be promoted. In February 2009, the commission found PSI had discriminated against Garcia, and a federal jury has now agreed.

Source: Insurance Journal

U.S. DEFENSE DEPARTMENT GETS TOUGHER ON ABUSIVE LENDING

I am pleased to report that the U.S. Department of Defense will strengthen rules designed to curb abusive lending to service members. This comes as Congress considers changes to a 2006 law that regulates small loans. The Senate Armed Services Committee has approved amendments to the Military Lending Act as part of its annual review of defense policy. One of the amendments would tighten the definition of payday loans to cover other high-interest products. The changes would also require the Pentagon to study and regulate installment loans aimed at members of the military.

In written testimony to the Senate Banking Committee, Colonel Paul Kantwill said: “The legislation has been extremely effective in stamping out abuses involving these types of credit.” According to Col. Kantwill, who is director of legal policy in the Department of Defense’s Office of the Undersecretary for Personnel and Readiness, the Department may publish advance notices of proposed rulemaking once it is clear what changes “may be included” in the final legislation.

Congress passed the law in response to complaints from the Pentagon that so-called payday loans were often harmful to service members and affected troop readiness. The law effectively banned payday lending to members of the military by limiting the loans to an interest rate of 36%. Payday loans are a form of short-term, high-interest credit in which borrowers leave a post-dated check in return for a loan that is due a few weeks later. Annual interest rates can rise as high as 512%, according to the Consumer Financial Protection Bureau.

Advocacy groups, including the Consumer Federation of America, have continued with good reason that some lenders have evaded the law by redefining their products without lowering the interest rates. Holly Petraeus, assistant director of the Consumer Bureau for Servicemember Affairs, said in written testimony:

I hear from financial counselors on the installations about the prevalence of payday-like products that are specifically marketed to military families—often with patriotic-sounding names and the American flags
PNC BANK WILL PAY $90 MILLION TO RESOLVE OVERDRAFT LAWSUIT

PNC Bank, a unit of PNC Financial Services Group Inc., will pay $90 million to settle a lawsuit accusing it of improperly manipulating customers’ debit card transactions to generate excess overdraft fees. The lawsuit, part of litigation involving more than 30 banks, is pending before U.S. District Judge James Lawrence King in Miami. The customers claimed in the lawsuit that PNC Bank’s computer system resequenced the actual order of debit card and ATM transactions by posting them in highest-to-lowest dollar amount instead of the actual order in which they were initiated. That led to excess overdraft fees.

• The PNC isn’t the only bank that has done this sort of thing and gotten caught. Other banks have reached settlements:
  - Toronto-Dominion Bank, Canada’s second-largest bank, entered in May a preliminary agreement to pay $62 million to settle overdraft claims.
  - In April Citizens Bank agreed to pay $137.5 million.
  - In February JPMorgan Chase & Co., the biggest U.S. bank by assets, reached an agreement for $110 million.

Robert C. Gilbert, a lawyer with the Florida firm of Grossman Roth, represented the customers in the PNC litigation. He said in a statement that the settlement will be presented to Judge King for preliminary approval later this summer. Bobby and his firm did a very good job in this case. The case is In re Checking Account Overdraft Litigation, 09-md-02036, U.S. District Court, Southern District of Florida (Miami).

Source: Business Week

XVI. PREMISES LIABILITY UPDATE

$7.5 MILLION SETTLEMENT FOR VICTIM’S FAMILY IN PROPANE EXPLOSION

The family of a Blackstone electrician who was killed in a propane blast two years ago has entered into a $7.5 million settlement. William Nichols, 46, was working on a heating and air conditioning system in Norfolk, Va., in July 2010 when a propane tank exploded without warning. The blast was traced to a gas leak that could not be detected because there was no odorant, which is the additive that allows folks to smell leaking gas. The lawsuit alleged that EnergyUSA under-filled a new propane tank, causing the chemical odorant which had been added to fade. This made the leaking propane odorless and undetectable. Smolinsky Plumbing and Heating allegedly failed to tighten a connection that led to the leak. Investigators said the propane had “virtually no odorant.”

Nichols suffered burns over 80% of his body. His family and two other people who were injured in the explosion reached the settlement with Energy USA and Smolinsky Brothers Plumbing for a total of $22.5 million. The state fire marshal’s office is now proposing new regulations including training for anyone handling propane—and that includes those who use gas grills. These regulations should increase public awareness about the potential safety threat of un-odorized propane in commercial and residential settings. Leaking propane gas, especially when the odorant fades out of the gas, can cause a serious explosion.

Justice Leslie King, in a dissent joined by two other Justices, said the Court record showed there had been other incidents in the parking lot of this Kroger store. There was testimony at trial that Kroger had security personnel on duty, but that guards in the parking lot were unarmed. Justice King wrote in his dissent:

"But unless Kroger was on notice of an atmosphere of violence in its parking lot, it had no duty to place an armed guard there. And because Knox failed to present sufficient evidence on this point, we must reverse and render."

Justice Dickson in a dissent joined by two other Justices, said the Court record showed there had been other incidents in the parking lot of this Kroger store. There was testimony at trial that Kroger had security personnel on duty, but that guards in the parking lot were unarmed. Justice King wrote in his dissent:

"Whether this was sufficient to give Kroger notice of an atmosphere of
violence and whether Kroger owed a duty to Knox and other patrons to utilize the armed security personnel in the parking lot is a question of fact to be resolved by the jury. By returning a verdict for the Plaintiff, the jury clearly found (there was) such a duty.

Two Justices did not participate in the ruling. Perhaps that gives some hope for future cases of this sort in Mississippi. But these cases are always challenging and this decision does nothing to change that reality.

Source: Claims Journal

ER To Pay $1 Million In Woman’s Death

A settlement has been reached by the family of a woman killed in a drug-related shooting. The family will receive $1 million from the property owner in the wrongful death lawsuit. Danielle Melton, who was 19 years old, was an innocent bystander who was gunned down August 20, 2011, as she sat outside an apartment complex.

It was alleged in the lawsuit that the property owner failed to provide security at the crime-ridden apartment complex even though it was in a high crime area. Two men were killed in the shooting and a young infant recovered from a gunshot to the head. The lawsuit was filed by Michelle Rockett, the victim’s mother, who is the guardian of the victim’s twin boys. Fred Tromberg represented the family and did a very good job.

MULTIPLE ELECTROCUTIONS OCCURRED IN JULY

There were five tragic occurrences reported last month, in which youngsters were electrocuted while being engaged in recreational pursuits. The first involved an 11-year-old girl who was electrocuted in Florida while playing mini golf at a south-west Orange County time share. The child, Ashton Jojo, was electrocuted of the mini golf “water feature” after the incident and found a number of possible electrical violations. Electrical breakers had apparently been improperly replaced. Ground-fault interrupter breakers are required for such water features that have submerged pumps. But it appears in this case that non-GFI breakers were used.

Incidentally, GFI breakers are also required for hot tubs and swimming pools.

Four other children were killed in a pair of separate electrocution incidents at lakes in Tennessee and Missouri. Nathan Lynam, 11, and Noah Winstead, 10, who were swimming companions at Cherokee Lake, located outside Knoxville, were electrocuted on July 4th. It’s believed that a faulty houseboat electrical cord was the problem there. The boys had been swimming from one houseboat to another. Investigating officers believe that the metal of the boat was energized. The children were electrocuted when they touched the metal ladder to get in the boat.

Seven other people were also injured by the electricity in Cherokee Lake—four adults and three children—and were taken to area hospitals for medical attention. They were trying to help the two boys, and in doing so they put their own lives on the line. It appears there were serious problems with the marina’s electrical system. Tennessee state officials have given the marina 30 days to correct these problems. I understand there were some 20 electrical issues that needed corrective action.

Two other children, who were swimming in a Missouri lake, also were electrocuted on the holiday. Alexandra Anderson, 13, and his brother Brayden, 8, were killed while swimming near a private dock in the Lake of the Ozarks. There were a number of sources for the electricity at the dock. At press time, we had not learned exactly what caused these deaths.

Electricity can’t be seen and it can be destructive. It’s extremely important to have expert assistance when installing any type of equipment at any location when water is involved. It’s also essential to maintain all systems properly after they are installed with scheduled maintenance and monitoring. It appears these five deaths could have been prevented.

Sources: ABC News and Orlando Sentinel

GOVERNMENT APPROVES NEW PLAY YARD SAFETY STANDARDS

The Consumer Product Safety Commission has approved new federal mandatory safety standards for children’s play yards. The requirements will include latches and locks that prevent the play yard from folding on a child when it is in use and minimum height requirements so children can’t get out on their own. The play yards will have to be tested to ensure they are stable and that a child can’t be trapped by an accessory attachment, in a flimsy floor or a top rail that folds down. The CPSC says it’s received reports of more than 2,100 incidents involving play yards, including 60 fatalities and 170 injuries, between November 2007 and December 2011. The new standards go into effect six months after the final rule is published in the Federal Register.

Source: Claims Journal

XVII. WORKPLACE HAZARDS

BP AGREES TO PAY $13 MILLION FOR TEXAS REFINERY PENALTIES

Oil giant BP has agreed to pay an additional $13 million to settle charges of failing to fix safety violations at its Texas City oil refinery after a 2005 explosion killed 15 workers. The settlement announced last month is the latest move toward resolving hundreds of violations at the plant found by the federal Occupational Safety and Health Administration. BP had already paid $50 million in 2010 to settle some of the OSHA violations. The government had been seeking a total of $80 million in penalties, the largest fine in its history.

The settlement resolves all but 30 of more than 700 violations discovered at the plant in 2009. The rest are expected to be litigated or settled in the future. Of the remaining citations, 110 were withdrawn and most of the others were reclassified as less severe under the settlement. The fines were assessed after OSHA said the company failed to comply with the original terms of a 2005 agreement to take corrective measures following the deadly blast four years earlier. OSHA also said BP had committed hundreds of new violations when it failed to follow industry practices in its pressure relief safety systems.

Under the terms of the settlement, BP must file a report by the end of the year showing that it has corrected all safety violations. Overall, the company has paid more than $2 billion to settle lawsuits and fines stemming from the 2005 explosion. It also has spent more than $1 billion on safety and infrastructure improvements at the Texas City refinery and another $500 million to make fixes under a 2010 settlement agreement with OSHA. BP is the second largest producer of oil and gas in the United States.

Brent Coon, a Texas lawyer, represented workers and families who sued BP after the
explosion. He commended OSHA for putting additional pressure on BP to speed up safety improvements at the refinery. But Brent said the Justice Department’s failure to prosecute management personnel individually “has allowed the company to act with less haste than it would have otherwise.” He added:

**BP unjustifiably failed to comply with well-established industry standards for safe operations in process safety management in order to save money, and at some point management itself should be forced to answer for it.**

One of the main sticking points until now had been BP’s failure to install a system for shutting down or controlling any leaks or other incidents at the refinery. The company has now begun installing a sophisticated program that meets OSHA’s expectations.

Source: wtvm.com

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**LOS ANGELES JURY AWARDS $8.5 MILLION TO FIRED REFINERY WORKER**

A Los Angeles jury awarded $8.5 million recently to a woman who was fired from a Wilmington refinery after being injured on the job. The jury found in favor of Michele Daniel, who began working at the Tesoro refinery in 1989, and who was a shift supervisor when she hurt her knee in 2005. Ms. Daniel was placed on extended leave by her employer and later fired. Her lawsuit claimed the company should have given her back her original job or another that would accommodate her disability. Tesoro’s lawyers claimed Ms. Daniel was fired in 2009 when her condition didn’t improve and she either couldn’t perform or was unqualified for the jobs she sought. The jury rejected those claims and found in favor of the fired worker.

Source: Claims Journal

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**TEXAS-BASED FEED MILL FINED $45,000 FOR SAFETY HAZARDS**

OSHA has cited Southwest Feed Mills Inc. with 12 serious safety violations for exposing workers to combustible dust, falls, unguarded machines and other hazards at the company’s Dallas facility. A December 2011 inspection was initiated as part of OSHA’s Regional Emphasis Program on Grain Handling Facilities. The proposed penalties total $45,000.

The violations include failing to provide fall protection equipment, train workers on the use of powered industrial trucks, ensure that moving machinery parts are guarded, ensure receiving-pit feed openings are covered by grates to prevent workers from falling into the pit, ensure that the bucket elevator is not jogged to prevent igniting combustible materials, ensure that electrical equipment is approved for locations containing combustible dust, implement a housekeeping program to control combustible dust, and develop confined space procedures.

As we have previously reported, 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. OSHA’s regional emphasis programs are intended to address hazards or industries that pose a risk to workers in a particular jurisdiction. The grain handling industry is a high-hazard industry in which workers can be exposed to many serious and life-threatening hazards. Some of the hazards include fires and explosions from grain dust accumulation, suffocation from engulfment and entrapment in grain bins, falls from heights, and crushing injuries and amputations from equipment.

Source: Claims Journal

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**LOUISIANA COMPANY CITED FOR WORKER’S DEATH**

Federal regulators have cited Migues Deloach Company, a Louisiana general contracting company, for alleged workplace safety violations stemming from an employee’s death. Jonathan Kyle West, a 23-year-old worker, was electrocuted at a Fort Polk construction site in January. OSHA concluded that company supervisors and employees failed to cut off power to overhead electricity lines or insulate the lines at the worksite. The victim was said to have been in a hydraulic lift basket when it touched an electrical line.

Source: Claims Journal

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**IOWA COURT UPHOLDS $1.2 MILLION FINE OVER DISABLED WORKERS’ PAY**

An appeals court has upheld a $1.2 million state fine for labor violations committed by a Texas labor broker who underpaid dozens of mentally disabled workers at an Iowa turkey processing plant. The Iowa Court of Appeals rejected arguments by Henry’s Turkey Service that the workers were not its employees. The decision upholds a fine imposed by Iowa Workforce Development to the company for failing to pay minimum wage, failing to provide pay statements and making improper wage deductions for room and board and care for 34 workers.

Interestingly, the men lived in a dilapidated bunkhouse in Atalissa while working at West Liberty Foods. A federal judge has ordered Henry’s Turkey Service to pay $1.76 million for similar violations. A lawsuit filed by the Equal Employment Opportunity Commission remains pending.

Source: Insurance Journal

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**LEGISLATION INTRODUCED THAT WOULD BLOCK RENTAL OF RECALLED CARS**

We wrote last month about a bill to be introduced in Congress that would keep rental car companies from renting out vehicles that have been recalled because of safety risks. The bill, “The Raechel and Jacqueline Houck Safe Rental Car Act of 2012,” has now been introduced in the U.S. House of Representatives. The bill, named after the two girls who died in a recalled car rented to them by Enterprise, would require companies to ground vehicles in their fleet that are under safety recall until they are repaired. Rep. Lois Capps, D.-California, one of the sponsors of the bill, had this to say:

*If a recall notice has been issued for a rented a car, that car should be taken off the road until it’s fixed—it’s that simple. Passing this straightforward bill will protect the public’s safety and ensure that what happened to Raechel and Jacqueline Houck will never happen again.*

We wrote last month about the background events leading up to this bill being introduced, but some of it needs to be mentioned again. Cally Houck, the mother of Raechel and Jacqueline, began pushing for legislative changes after her two daughters, aged 24 and 20, were killed in 2004. The Chrysler PT Cruiser they rented from Enterprise began leaking steering fluid and suddenly caught fire before crashing into an oncoming semi-tractor trailer. Even though the car was under a safety recall for the potential fire hazard, it was still rented to the sisters. The Houck family sued Enterprise, and after a lengthy legal fight, the
$2.5 Million Jury Award For Brain Injury Sustained In 2008 Crash

Kathleen Crockford, the former pastor of the Westerly-Pawcatuck Congregational Church, suffered a traumatic brain injury when her car was rear-ended by a tractor-trailer in 2008. She filed suit and was awarded $2.5 million in damages recently, following an eight-day trial in U.S. District Court in Bridgeport, Conn. The jury in her case found the truck driver was negligent, but not reckless, and awarded $1,273,500 in economic damages and $1,250,000 in non-economic damages to Rev. Crockford.

Rev. Crockford was returning to her home in Stonington after performing a wedding in Massachusetts on May 29, 2008. She was waiting to make a left turn when the tractor-trailer struck her car in the rear, slamming it into the car in front of her. Rev. Crockford suffered a brain injury in the crash. She continues to have symptoms, including headaches, dizziness, memory loss, slow mental processing, irritability and depression.

The truck driver, Larry Spencer, who was delivering a load of steel for Metals USA, claimed his brakes failed and that he attempted to use his emergency brake. The investigating officer determined the truck’s brakes were working and the emergency brake had not been deployed. Rev. Crockford, 59, has been unable to return to her work at the church and as a part-time book editor. The economic damages cover her past and future medical bills and her lost income of about $65,000 a year. The non-economic damages are for pain and permanent injury, disability and loss of enjoyment of life and activities.

Rev. Crockford said she intended to remain at the church for years to come so that she could marry the children she had baptized after arriving there in 2004. The lawyers for the driver and his employer admitted liability before the trial began. The Defendants’ own medical expert admitted that Rev. Crockford suffered a permanent injury. But the Defendants prevailed on the recklessness claim, which would have added punitive damages to the verdict. The Defendants offered $1 million to settle before the trial began and went to $1.4 million during the trial. Those offers were refused. Scott D. Carnassar represented the Plaintiff in this case and he did a very good job. Rev. Crockford says the jury did the right thing and that she is satisfied with the amount of its verdict.

Source: theday.com

$36.5 Million Injury Verdict Awarded In California Crash

A jury awarded a husband and wife from India nearly $36.5 million for injuries sustained in a car accident with an 18-wheeler in 2010. On a visit to relatives in the U.S. in 2010, Jaishree and her husband Prakash Sheth were passengers in a vehicle that was hit by a tractor-trailer owned and operated by Schneider National Carriers, Inc. The truck improperly tried to pass the Sheth vehicle and hit the vehicle, causing it to spin out and smash into the center divider and another vehicle.

The collision caused Jaishree Sheth, 58, who was described as being “once-active,” severe injuries, including loss of normal use of her bladder and bowels. She will be reliant on a wheelchair for the rest of her life. Testimony revealed that her life will never be the same, and that she had a very active life. Jaishree’s medical costs are significant. She was initially a quadriplegic after the accident and will require more surgery. The Defendants say they plan to appeal. Los Angeles lawyers Brian Panish, Tom Schults and Ryan Casey, represented the Plaintiffs. They did a very good job in this case for their clients.

Source: Claims Journal

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Source: Claims Journal

XIX. ENVIRONMENTAL CONCERNS

Shipping Company To Pay A $1.3 Million Fine In Mobile Case

An Italian shipping company has pleaded guilty in a federal court in Mobile, Ala., to a pollution-related charge and has agreed to pay a $1.3 million fine. The plea agreement came at the end of a day that was supposed to be the start of a criminal trial. The Bottiglieri Challenger’s chief engineer also worked out a plea bargain with prosecutors, as did another engineer. Both admitted their wrongdoing.

Giuseppe Bottiglieri, on behalf of his company, pleaded guilty to failure to maintain an accurate Oil Record Book. Under the agreement with prosecutors, the company will pay $1 million fine to the U.S. treasury and make a $300,000 “community service” payment to the National Fish and Wildlife Foundation.

This is the second case in less than a year in which a foreign shipping firm has pleaded guilty in Mobile to offenses related to false logs concealing pollution in international waters. Target Ship Management pleaded guilty in May and agreed to pay $1.2 million in fines and payments. Under federal law, prosecutors did not have to prove that the pollution occurred with its knowledge—only that it was done by someone acting within the scope of his employment and for the intended benefit of the company. A transcript of a phone call between Bottiglieri and the ship’s captain on the morning after the vessel arrived in Mobile indicates that the company owner was upset and angry that the policies of the business had not been followed. He reportedly said: “I will send the chief engineer to prison, because he is a rascal and a rogue.”

According to the transcript of the call, the Chief Engineer acknowledged that he had rigged a bypass on a pollution control system, but said it was done to save time, not to discharge oily waste.

Bottiglieri has acknowledged his company’s responsibility for his cargo ship pollution during a journey from Singapore to Brazil to the Port of Mobile. During that voyage, according to court records, senior engineers bypassed the vessel’s pollution control system six times to discharge oily waste directly into the sea. When the ship arrived in Mobile on Jan. 24, according to the plea agreement, crewmembers presented the Coast Guard with a false Oil Record Book that failed to note the dis-

Neglect And Inaction Caused Huge Michigan Oil Spill

The National Transportation Safety Board has approved the findings of its investigators that Canadian company Enbridge Inc.'s neglect of pipeline cracks and its slow response likely caused the most expensive "onshore oil spill" in U.S. history. The board on July 10 approved findings by its staff about the cause of a 2010 rupture in southwestern Michigan that dumped about 843,000 gallons of heavy crude into the Kalamazoo River and an tributary creek. According to investiga-

Source: The Detroit News

XX. THE CONSUMER CORNER

PUBLIC CITIZEN PROTECTS CONSUMERS

The Food and Drug Administration (FDA) has the responsibility of making sure drugs put on the market by the drug manufac-

Public Citizen warns consumers about bad drugs

VIOXX (rofecoxib). In April, 2001, Public Citizen issued a DO NOT USE warning for VIOXX. The drug was finally removed from the market—but only in September 2004 after it had done great damage to thousands of innocent and uninformed users.

REZULIN (troglitazone). Public Citizen warned its readers in March 1998 about Rezulin. It was withdrawn in August of 2001-over two years later.

BAYCOL (cerivastatin). Public Citizen warned its readers in March 1998 about BAYCOL. It was withdrawn in August of 2001-over two years later.

MERIDIA (sibutramine). In 1998 Public Citizen warned folks not to take this diet drug for safety reasons: it increases blood pressure and heart rate in many people (and weight loss is meager). In 2002, Public Citizen petitioned the FDA to remove the drug from the market, but it took 12 years (October 2010) for the manufacturer to pull the drug after finally being pressured by the FDA.

ZELNORM (tegaserod). Public Citizen warned readers about this drug in June 2004. The drug was withdrawn in April 2007-nearly three years later.

EPHEDRA. Public Citizen's health research group, which was founded by Dr. Sidney Wolfe 41 years ago, has done a much better job of protecting consumers in this country than has the FDA. Public Citizen has done that which the FDA does not always do and that is to protect consumers from unsafe or ineffective medications. Hundreds of thou-

www.BeasleyAllen.com
QUALITY, AFFORDABLE HEALTHCARE IN AMERICA

Now that the U.S. Supreme Court has upheld The Patient Protection And Affordable Care Act as being constitutional, folks are beginning to learn much more about the good features of this badly-needed law.

In my opinion, the Court’s decision was a good thing for America. President Obama has taken a stand on this issue and has given folks in our country healthcare protections and benefits that are badly needed. He accomplished that which many others before him tried to do and failed. Based on reliable estimates, the new law will not only protect the almost 50 million American citizens who are currently uninsured, it will, over time, reduce health costs for all citizens and will result in a much healthier population.

Providing affordable health care for all citizens is most important and without a doubt the right thing to do. Playing political games on the issue of healthcare may well backfire on those who recklessly move in that direction. Some of the talk show hosts who have been critical of the law have obviously never read it. Unfortunately, it appears that some of our elected leaders are also uninformed about the law. The U.S. House of Representatives on July 10th voted to repeal the law—with the vote falling along partisan lines. This was nothing more than a political ploy aimed at the general election. The bill will never pass the Senate.

This law—while not perfect—is certainly a step in the right direction. There is no way to justify having millions of our citizens without access to quality, affordable health care. I believe this is a right of all Americans and not merely a privilege. I find it most interesting that the GOP nominee for President—the man who provided the model for what is now referred to as “Obamacare”—is in favor of repealing the new law. Considering that “Romney-care” has worked very well in Massachusetts, with over 98% of that state’s citizens having health insurance coverage at affordable rates, it’s most interesting that the Republican Party leaders and the man who believed it was good—before he was told it was bad—want to deny quality, affordable healthcare for all American citizens.

We should thank President Obama for his courageous stand on this issue and give this law a chance to work. There has been a great deal of false and misleading information put out on what the new law does and doesn’t do, and most of it has come from those who have never even read the Act. Hopefully, President Obama and those who supported the law in Congress will now do a better job of explaining to the American people how the new law will affect them. Congress should not repeal the law, but instead improve it. Incidentally, all members of Congress currently have and enjoy excellent healthcare coverage. Any member of Congress who works to deny American citizens quality, affordable healthcare should be embarrassed. Shame on those who fall in that category!

GOVERNMENT FINES VOLVO $1.5 MILLION FOR DELAYING RECALL REPORTS

Volvo Car Corp., the Swedish carmaker now owned by China’s Zhejiang Geely Holding Group, has agreed to pay a $1.5 million fine to the federal government to settle claims that it delayed recalling vehicles. This was reported by the National Highway Traffic Safety Administration last month. David Strickland, the agency’s administrator, said in a news release that NHTSA “expects all manufacturers to obey the law and address automotive safety concerns without delay.” In the case of Volvo, NHTSA said those delays involved seven recalls covering a total of about 32,000 vehicles in 2010 and 2012.

The problems cited in the recalls included incorrect tire-pressure labeling, air bags that might not deploy properly and engines that could stall, among other flaws. Almost 16,000 of the vehicles were recalled for the more serious air-bag and stalling issues. In a settlement dated June 29 and announced last month, Volvo agreed to pay the fine. The automaker issued a statement in which it apologized and said it had “taken steps to improve the review process and analysis of potential quality and safety issues with our vehicles.”

Under federal regulations, after a manufacturer discovers a safety problem it has five business days to tell NHTSA of its plan for a recall or face civil penalties. According to NHTSA, Volvo failed to report all seven recalls in a timely fashion. The agency can fine an automaker up to $17.35 million, an amount consumer safety advocates commonly equate to only a “rounding error” for automakers.

According to a recent report by The Detroit News, that amount would double if a new transportation bill is enacted. But it should be noted that such punitive measures are rarely levied. NHTSA levied a $3 million civil penalty against BMW in February for failing to notify it promptly of plans to recall nearly 340,000 vehicles in 2010. Previously, in May 2010, Toyota agreed to pay $16.4 million to settle claims that it did not promptly act to correct sticking accelerator pedals on 2.3 million vehicles.

DEFECT PETITION FILED FOR 320,000 FORD ESCAPES

The Center for Auto Safety, a well-respected nonprofit consumer safety group, formally asked the National Highway Traffic Safety Administration in early July to investigate its claim that some cruise control cables on about 320,000 Ford Escapes were damaged during a repair for an unrelated recall, making the vehicles susceptible to unintended acceleration. In its defect petition, the safety group said the problem, which was said to exist among Escapes from the 2002-2004 model years, could have “lethal consequences.”

The original recall, which covered about 470,000 Escapes from 2002-2004 equipped with the 3-liter V-6 engine, was performed to prevent the accelerator cable from snagging on the accelerator pedal, which could have prevented the engine from returning to idle. In its petition the safety group argued that in October 2005, Ford sent a technical service bulletin to dealers cautioning mechanics to not damage the adjacent cruise control cable during the course of the recall repair. Any damage could allow the cable to snag on a ridge in the engine cover, causing unintended acceleration, the petition said. Ford has never formally informed the roughly 320,000 owners who had the repair performed that damage may have been caused to their vehicles’ cruise control, according to Clarence Ditlow, the group’s executive director.

The petition also cites the case of Saige Bloom, a 17-year-old who died in a crash in Payson, Ariz., in January. According to the petition, the Bloom family hired an expert who inspected the engine of the 2002 Escape driven by Ms. Bloom at the time of the accident and found the cable was snagged. Mr. Ditlow believes that Ford should conduct a new recall and the safety agency should pursue a civil fine, adding that “Ford knew there was a problem and knew the consequences.”

Under federal regulations, after learning of a safety problem, a manufacturer is required to inform NHTSA within five working days of its plan for a recall. There were 135 complaints on the NHTSA’s Web site from owners of 2002-4 Escapes who claimed they experienced sudden accelera-
tion. Some owners claimed their experiences occurred before the recall, raising the possibility that the speed-control cable could fail independent of a faulty repair. Other failures occurred on vehicles that were recalled, according to the petition. Interestingly, there is no indication on NHTSA’s web site that it investigated those complaints.

It should be noted that anyone can file a defect petition with NHTSA. The agency then must decide whether the petition has sufficient merit to begin a formal investigation. Late in 2009, the Center for Auto Safety filed a defect petition asking the agency to investigate its assertion that 1993-2004 Grand Cherokees were susceptible to catching fire when struck from behind. In 2010, NHTSA granted the request and in June the agency upgraded its investigation to an Engineering Analysis, indicating its heightened concern.

Source: New York Times

**NHTSA Opens Investigation Of Ford Escape And Mazda Tribute SUVs**

NHTSA opened an investigation last month into possible throttle control problems with an estimated 730,000 older model Ford Escape and Mazda Tribute small SUVs, according to NHTSA. There have been 13 crashes reported that are related to the issue that led to nine injuries and one fatality. NHTSA said it will investigate whether throttles remain open even after a driver has released the accelerator pedal. A NHTSA investigation is short of a recall, but may lead to recalls for the two vehicles, which are from the model years 2001-2004.

Source: Claims Journal

**NHTSA Opens Probes On Chrysler Vehicles**

NHTSA has opened defect investigations into Chrysler Group LLC’s 2012 Jeep Grand Cherokee and 2009-2010 Dodge Ram 1500. The agency is investigating potential power steering hose failures that could lead to under-hood fires in about 106,800 2012 Grand Cherokees. NHTSA also is investing potential rear differential failures that could lead to rear wheel lock-up and loss of vehicle control in about 230,000 2009-2010 Dodge Ram 1500 pickups.

According to NHTSA’s Office of Defect Investigation, the power steering hose on the 2012 Grand Cherokee could fail, resulting in power steering fluid leakage in the engine compartment. It said the fluid “may be ignited by hot surfaces in the engine compartment.” In the Dodge Ram investigation, NHTSA said it had received 12 complaints of alleged rear differential failures resulting in rear wheel lock-up, including “one resulting in a crash into a concrete barrier.”

Chrysler is an affiliate of Italy’s Fiat SpA. It should be noted that the Dodge Ram pickup is Chrysler’s top-selling vehicle this year and the Grand Cherokee is its second-best. Obviously, the Ram is an important money maker for Chrysler Group LLC. The company sold almost 377,000 of the trucks in 2009 and 2010, but some of those sales were from other model years. A Chrysler spokesman said any customers who are concerned about their vehicles should visit their dealers.

Source: MSNBC

**Banks Settle Overdraft Cases**

Birmingham-based BBVA Compass has agreed to pay $11.5 million to settle a lawsuit accusing the bank of improperly manipulating customers’ checking account transactions to generate excess overdraft fees. Also, U.N. Bank reached a settlement, agreeing to pay $55 million, in a suit pending in federal court in Miami. Both of these settlements are subject to court approval.

Consumers sued more than 30 banks, claiming the banks re-sequenced the actual order of transactions, posting them in highest-to-lowest dollar amount instead of the chronological order, leading to excess overdraft fees. Those cases were consolidated before U.S. District Judge James Lawrence King. PNC Bank reached a $90 million settlement in June. Toronto-Dominion Bank, Canada’s second-largest bank, entered in May a preliminary agreement to pay $62 million to settle overdraft claims. In April, Citizens Bank agreed to pay $137.5 million. In February, JPMorgan Chase & Co. reached an agreement for $110 million.

Source: The Birmingham News

**Walmart And Target To Pay Massachusetts For Overcharges**

Walmart Stores Inc. and Target Corp. will pay Massachusetts towns and cities $232,000 to settle claims that they overcharged public agencies for prescriptions covered by workers’ compensation insurance. Attorney General Martha Coakley announced the settlement. Walmart will pay $207,000 and Target will pay $25,000 under terms of the settlement. Both retailers will adopt measures to prevent future overcharges. The cities and towns included in the case were Amherst, Boston, Concord, Everett, Fall River, Framingham, Hingham, Lowell, Plymouth, Springfield and Worcester. The Attorney General’s office has recovered more than $8 million through similar investigations of companies that sell prescription drugs.

Source: Claims Journal

**Lawsuit Over Fire Gel Explosion Filed In Alabama**

A lawsuit has been filed arising out of the flash explosion from a small fire pot that badly burned Chris Kutsor, a young Alabamian, in May 2011. The lawsuit, filed in federal court in Madison County, names as Defendants Bird Brain Inc., the gel manufacturer, and Missouri-based Gerson Company, the fire pot maker. The suit also names Big Lots, which sold the fuel gel, and TJX, the parent company of Marshalls, T.J. Maxx and HomeGoods, which sold the fire pot as additional Defendants.

Fuel gel fires have injured at least 86 people in the U.S. and caused two deaths since 2010, according to the U.S. Consumer Product Safety Commission. In September 2011, the CPSC announced a recall of gel fuels by nine manufacturers, including Bird Brain Inc. The fuel pots have not been banned, but federal regulators are in the midst of rule-making that could lead to a ban, expanded warning requirements or changes in manufacturing standards.

The gel is designed to be poured into a pot, often a metal cup inside a small decorative form. Injuries have most often occurred, according to regulators, when someone is refueling a pot that has recently been in use and appears to have burned out. But the flame can be difficult to see and vapors from inside the gel container can be ignited by the flame, causing an explosion. Apparently, that’s what happened in this case. Eric Artrip, a Huntsville lawyer, is handling this case.

Source: The Huntsville Times and USA Today

**Jerky Treats From China Blamed For Pet Deaths**

Dog owners in eight states who believe contaminated chicken jerky treats from China sickened or killed their pets have filed a class-action lawsuit against Nestle Purina, the maker of two popular brands of...
the canine snacks, and several mega-stores that sell them. The suit was filed just as Food and Drug Administration officials refused to release results of inspections of Chinese plants that make the jerky treats blamed for at least 1,000 illnesses and deaths in U.S. pets.

Six pet owners in states around the county are suing, not only the treat maker, but also Wal-Mart, Target and Costco, three big retailers that sell the products. The Plaintiffs seek to join with a lawsuit filed in federal court last month by a Connecticut family whose two Boston terriers died after eating chicken jerky treats.

Three top brands of chicken jerky treats were among those most recently cited by pet owners and veterinarians in complaints of harm. The brands included Waggin' Train and Canyon Creek Ranch, brands produced by Nestle Purina, and Milo's Kitchen Home-style Dog Treats, produced by the Del Monte Corp. Import data compiled by the firm ImportGenius showed that Waggin' Train and Canyon Creek Ranch treats are produced and supplied by JOC Great Wall Corp. Ltd. of Nanjing, China.

The expanded lawsuit seeks to represent nearly all pet owners in the U.S. who bought any dog treat product made or sold by Nestle Purina containing chicken imported from China in the past four years. The dog owners are frustrated that the makers and distributors of the treats have failed to recall the products voluntarily, despite three federal warnings since 2007 about possible safety issues and nearly 1,000 reports to the FDA of dogs sickness or killed by the products. They also say the companies have violated implied warranties of safety and healthfulness of their products and commerce rules governing sale of sound merchandise.

Thousands of dog owners are calling for the recall of the chicken jerky treats and for more vigorous FDA efforts to identify the source of the problem. Many pet owners say they're reminded of the 2007 scare in which melamine-tainted pet food from China sickened and killed thousands of dogs in the U.S., leading to mass recalls and criminal indictments of Chinese and American pet food executives. It should be noted that the problem in 2007 wasn't detected immediately either.

Source: MSNBC

**CDC Final Report Says 47 Humans Sickened By Dog Food**

The Centers for Disease Control and Prevention has issued a final report on cases of Salmonella in humans caused by contact with contaminated dry pet food. As of July 20th, the CDC had confirmed 49 cases of Salmonella Infantis, 47 in the United States and two in Canada, due to contact with Diamond Pet Food. They did not, and do not, track the number of pets sickened by the food. According to the CDC, ten people were hospitalized because of Salmonella from contact with the food that was produced in a Gaston, S.C. processing plant. There were no human deaths reported.

According to efoodalert.net, 54 animals are known to have became ill from the food and eight died. The product affected is Diamond Naturals Small Breed Adult Dog Lamb & Rice Formula. Only samples, six pound, and 18 pound bag sizes are affected. The 47 reported cases of the illnesses were identified in Alabama, Arkansas, California, Connecticut, Georgia, Illinois, Indiana, Kentucky, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas, and Virginia. The two Canadian victims were residents of Quebec and Nova Scotia.

Source: Mobile Press-Register

**Battat Inc. Agrees To $400,000 Civil Penalty For Failing To Report Children’s Magnetic Toy Sets**

Battat Inc., of Plattsburgh, N.Y., has agreed to pay a civil penalty of $400,000. The penalty agreement has been accepted provisionally by the Consumer Product Safety Commission. Battat was alleged to have knowingly failed to report defects and hazards associated with Magnabild Magnetic Building Sets to the CPSC immediately, as required by federal law. The Magnabild was a magnetic building set labeled for ages three and up. Small magnets inside the building pieces can fall out, and if found by young children, can be swallowed or aspirated. If more than one magnet is swallowed, the magnets can attract to each other, connect, and cause intestinal perforations or blockages, which can be fatal.

Source: PRNewswire.com

**FDA Bans BPA From Baby Bottles And Sippy Cups**

The Food and Drug Administration says the controversial chemical BPA (bisphenol-A) can no longer be used in manufacturing baby bottles or sippy cups. The U.S. chemical industry’s chief association, the American Chemistry Council, had asked the FDA to phase out rules allowing BPA in such products in October, after determining that all manufacturers of bottles and sippy cups had already abandoned the chemical due to safety concerns. It is illegal for companies to use substances not covered by FDA rules. Hopefully, the FDA will continue to investigate BPA in other types of food packaging.

Source: CBS News

**XXI. RECALLS UPDATE**

Each month there are a number of safety-related recalls to be reported. This month is no different. Serious safety-related recalls have become commonplace. The following are some of the more significant recalls since those reported in the July issue. There continue to be a number of recalls by automakers. If more information is needed on any of the recalls mentioned below, readers are encouraged to contact Shanna Malone, the Executive Editor of the Report. We would also like to know if we have missed any safety recalls that should have been included in this issue.

**TOYOTA TO RECALL 154,000 LEXUS SUVs TO FIX FLOOR MAT**

Toyota is now recalling two more Lexus models due to the possibility of loose floor mats that could cause accelerator pedals to jam, leading the vehicles to surge out of control. The two models covered by the latest recall are the Lexus RX 350 and RX 450h hybrid, with a total of nearly 134,000 vehicles involved. The latest recall puts Toyota back into the spotlight after having spent the last several years trying to rebuild its reputation for high quality and reliability.

Owners of the involved vehicles will receive a safety recall notification by first class mail in August 2012. Lexus dealers will remedy the involved vehicles at no cost to the customers. Information and answers to questions are available at or www.lexus.com/recall and Lexus Customer Satisfaction (1-800-255-3987).

**ISUZU RECALLS RODEO SPORT AND AMIGO SUVs**

More than 11,000 Isuzu SUVs have been recalled because parts in the rear

suspension can rust and break away from the frame. The recall affects Amigo SUVs from the 1998 to 2001 model years and Rodeo Sport SUVs sold as 2001 and 2002 models. The National Highway Traffic Safety Administration posted the recall on its website. Isuzu said the rear suspension link brackets can rust and become detached from the frame. The problem can hurt the vehicle’s handling and cause a crash. I don’t know if there have been any wrecks or injuries.

The recall covers SUVs sold or registered in 21 states and Washington, D.C. Those are places where salt is used to clear the roads. Salt can cause metal to rust. Affected states include Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, West Virginia, Ohio, Indiana, Michigan, Illinois, Wisconsin, Minnesota, Iowa, Missouri and Kentucky. Isuzu dealers will inspect the suspensions and treat them with a rust-resistant compound or install a reinforcing bracket free of charge. In rare cases when the rust is so severe that the reinforcement bracket won’t work, Isuzu will buy the vehicles back based on the Kelley Blue Book private party sale price, the company said in a letter to NHTSA.

Isuzu is notifying owners by mail and started the recall last month. NHTSA acknowledged the recall in a letter to Isuzu. As you may recall, Isuzu Motors Ltd., famous for developing one of the first mid-sized sport utility vehicles and an ad campaign that featured a salesman telling lies, stopped selling new pickup trucks and SUVs in North America in 2009 due to financial problems. The company remains in the U.S. with commercial vehicles. The company has said that it will back its products and dealers for years to come, honoring all product warranties.

Honda Motor Co. has recalled certain CRV compact SUVs from the 2012 model year, and Acura ILX sedans from the 2013 model year to fix a flaw in their door-locking mechanisms. In a document filed with the National Highway Traffic Safety Administration the car maker said that if an occupant operates the manual or power door lock while someone is moving an interior front door handle, the cable connecting the door handle to the door-latch system may loosen. If this happens and the cable moves far enough from its proper position it could prevent the door from latching properly.

If the door is not completely latched it may open in a crash or during normal driving, increasing the risk of injury. The recall affects 172,837 vehicles. Under the recall, which is to begin this month, Honda dealers will replace the front door latch assemblies free of charge. Honda said it will also replace the interior front door handles in certain CR-Vs. Owners may contact the company at 800-999-1009.

**Ford Recalls 2013 Escape SUVs**

Ford Motor Co. has recalled thousands of 2013 Escape SUVs due to a potential problem affecting brake pedals. The automaker said the carpet padding is not positioned correctly in more than 8,000 vehicles which could prevent drivers from moving their feet from the accelerator to the brake pedal. Ford will fix the problem free of charge.

**Ford Escape Recalled For Throttle Trouble**

Ford has recalled 423,634 Ford Escapes from 2001-2004 equipped with 3.0-liter V6 engines and cruise control because a cruise control problem may cause the throttle to stick, resulting in “very high vehicle speeds.” NHTSA has been investigating the defect based on complaints, including the death of a 17-year-old girl in Arizona. “Inadequate clearance between the engine cover and the speed control cable connector could result in a stuck throttle when the accelerator pedal is fully or almost fully depressed,” NHTSA said in its recalls summary of the problem. “This risk exists regardless of whether or not speed control (cruise control) is used. A stuck throttle may result in very high vehicle speeds and make it difficult to stop or slow the vehicle, which could cause a crash, serious injury or death,” according to NHTSA.

Ford say that if drivers “experience what they believe is a stuck throttle in this, or any other vehicle, they should firmly and steadily apply the brakes, without pumping the brake pedal, shift to neutral, steer the vehicle to a safe location, shut the engine off after the vehicle is safely stopped and place the transmission in park.” The recall affects Escapes built from October 22, 1999 through January 23, 2004. NHTSA had been investigating the safety defect in the 2001-04 Escape and the 2001-04 Mazda Tribute.

The recall will begin on August 6th with parts being available in mid-August. Ford dealers will repair the vehicles by increasing the engine cover clearance. If parts are unavailable, dealers will disconnect the speed control cable as a temporary measure. Owners can contact Ford at 1-866-436-7332 for more information.

**Mazda Recalls 217,000 Tribute SUVs**

**JULY 30, 2012—ASSOCIATED PRESS—CLAIMSJOURNAL.COM**

Mazda will also recall about 217,000 Tribute SUVs to fix a problem that can cause the gas pedals to stick. It’s the same problem that Ford had since the Tribute and Escape are essentially the same vehicle. The Mazdas are from model years 2001 through 2008 and are powered by 3-liter V-6 engines. The cruise control cable can get snagged on the engine cover and cause the accelerator to stick if the driver has pushed the gas pedal close to the floor. Dealers will install fasteners to create more space between the cables and the cover. Parts are expected to arrive about the middle of the month. Mazda says if customers have concerns about their Tributes before that, dealers will disconnect the cruise control until the parts arrive.

**Nissan Recalling 11,000 Jukes To Fix Rear Seats**

Nissan has recalled about 11,000 Juke small SUVs to fix a problem with the rear seats. The company says a weak weld can cause the seat backs to come loose in a crash, increasing the risk of injury. The recall affects Jukes from the 2012 model year. Nissan says dealers will notify owners and replace a faulty part that holds the seat back in place. The company says the recall will start later this month. According to the National Highway Traffic Safety...
Hyundai issued two overlapping recalls on July 31st, both involving 2007 to 2009 Elantra sedans. The recalls are aimed at fixing sensor problems that could keep air bags from deploying in a crash. The first recall is to fix more than 188,000 Elantras from the 2007 to 2009 model years. They may have a faulty electrical connector for a sensor designed to deactivate the right front air bag under certain circumstances.

The second recall covers nearly 100,000 Elantras from the 2007-2008 model years. Those are the same vehicles covered by the first recall. This one will repair a sensor on the seat track of the driver's side that helps determine whether the air bag should deploy. The recalls are expected to begin in April.

Club Car Recalls Golf and Transport Vehicles Due to Fire Hazard

About 800 golf cars and transport vehicles have been recalled by Club Car LLC, of Augusta, Ga. The fuel hose can separate from the fuel tank, posing a fire hazard. Club Car has received one report of a fuel hose separating from the tank but it says no injuries have been reported. The recalled vehicles are various sizes, models and colors of 2012 gas-powered golf and transport vehicles used for short-distance transportation. The vehicles can be identified by model and serial number. The serial number is above and to the right of the accelerator pedal. Model names do not appear on the vehicles, but models can be identified by two-letter prefixes on the serial number. Club Car is printed on the front of each vehicle. A list of recalled models and serial numbers is set out below.

<table>
<thead>
<tr>
<th>Model</th>
<th>Serial Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>DS Gas Golf Car</td>
<td>AG 1232-298757 to AG 1238-314938</td>
</tr>
<tr>
<td>Villager 4 Gas</td>
<td>TG 1232-299285 to TG 1237-312956</td>
</tr>
<tr>
<td>XRT 850 Gas JZ</td>
<td>1233-300104 to JZ 1238-314710</td>
</tr>
<tr>
<td>XRT 800 Gas XJ</td>
<td>1233-300372 to XJ 1238-313369</td>
</tr>
</tbody>
</table>

Club Car is contacting its customers and repair of the fuel hose system. The firm is contacting its customers directly. For more information, contact Club Car at (800) 227-0739, ext. 3831, between 8 a.m. and 5 p.m. ET Monday through Friday, or visit the company's website at www.clubcar.com.

Continental Recalls Tires On 2008-2009 Ford F-250/F-350 Trucks

Continental Tire is recalling about 390,000 Contitrac tires supplied as original equipment on some of the 2008 and 2009 Ford F-250 and F-350 trucks. The recalled tires are as follows:

- Continental/Contitrac/LT275/70R18 125/122S
  Production Dates: 5/06/07-9/20/08
- Continental/Contitrac TR BSW/LT275/70R18 125/122S
  Production Dates: 5/06/07-9/20/08
- Continental/Contitrac TR OWL/LT275/70R18 125/122S
  Production Dates: 5/06/07-9/20/08

According to Continental Tire, some of the tires may experience uneven wear and vibration and, in some cases, separation between the belt edges, especially when overloaded or when the temperature is very high. Separation of the belt edges could lead to tread belt separation, increasing the risk of a crash. Tire separations are very dangerous and can cause vehicles to roll-over and crash resulting in serious injuries and death. Continental Tire will notify owners and replace the affected tires free of charge. Owners may contact Continental Customer Service toll-free at 1-888-799-2168.

Michelin Recalling 841,000 Tires

Michelin has recalled about 841,000 BFGoodrich and Uniroyal tires produced at plants in Tuscaloosa and in Woodburn, Ind. The company said about 145, or 0.017%, of the recalled BFGoodrich and Uniroyal tires made between April 2010 and July 2012 and sold in the U.S., Canada and Mexico experienced tread loss and/or air loss caused by tread belt separation. “This condition may increase the risk of a vehicle crash,” Michelin said in a news release.

Michelin said no deaths or injuries have been reported in connection with the tires being recalled. The recall, which affects about 799,900 tires in the U.S., is for two sizes of both BFGoodrich Commercial T/A A/S and Uniroyal Laredo HD/H tires. The tires, sold only as replacements, are typically found on commercial light trucks and full-sized heavy duty vans and are no longer being produced, according to the company.

Dealers and tire owners are being notified about the recall. Owners will be able to take their vehicles to authorized dealers where the tires will be replaced at no cost. Owners can identify tires on their vehicles by finding the U.S. Department of Transportation codes on the tires’ sidewalls.

For more information on the recall, visit BFGoodrich’s voluntary safety recall page, visit Uniroyal’s voluntary safety recall page or call 1-800-637-5527 between the hours of 8 a.m. and 8 p.m. ET Monday-Friday and between 8:30 a.m. and 4:30 p.m. ET Saturday.

Stryker Orthopaedics Recalls Two Hip Implant Models

Orthopedic device manufacturer Stryker Orthopaedics has recalled two of its hip implant models over concerns the devices are prone to “fretting and corrosion” that could trigger pain, swelling, and other complications in patients. The recall involves Stryker’s Rejuvenate Modular and ABG II modular-neck stem devices, devices that incorporate a femoral stem and femoral head ball connection that are both made of metal. Stryker advises patients who have been implanted with one of the recalled devices to contact their physician. Meanwhile, the company has stopped global production of the devices.

Trampolines Recalled by Panline USA Due To Fall Hazard

Panline USA Inc., Northvale, N.J., has recalled about 8,000 Alex® Model
786X Little Jumpers Trampolines. The handlebar can break, causing a fall hazard. The product is a small, toddler-sized trampoline with a yellow and blue colored handlebar over the top of the trampoline for toddlers to hold on to while jumping. The trampoline has a blue mat and orange pads with different colored circles printed onto the pads, yellow legs and blue feet. A white label is sewn onto the underside of the orange pads which has “786X Little Jumpers Trampoline” printed above the bar code. This recall involves trampolines with the codes 21011-P0003070, 21011-P0003246, 25511-P0003071, 27811-P0003372, 29811-P0003573 and 34211-P0003575. This code is printed underneath the barcode.

The trampolines were sold at independent specialty toy and retail stores from January through March 2012 for about $100. Consumers should stop using the product immediately and contact the firm for instructions on receiving a replacement trampoline. For additional information, contact the firm at (800) 666-2539 between 9 a.m. and 5 p.m. ET Monday through Friday, or visit the company’s website at www.alltrade2.com/safety.

**Kawasaki Cordless Drill Recall**

Alltrade Tools, Inc., has recalled about 45,000 Kawasaki Cordless Drills. These drills were sold at Costco stores nationwide from May 2011 through February 2012. The trigger switch on the drill can short and generate excess heat, posing a burn hazard. Alltrade Tools has received 33 reports of incidents, including one minor burn injury.

The recall involves Kawasaki Cordless Drills, model 691761, sold in green and black color combination, with a 19.2v battery pack. “Alltrade Tools LLC” and “Made in China” are printed in white lettering on the left side of the drills. The drill’s model and serial numbers are located on a label on the right side of the drill. The recalled drills have the following serial numbers: From 11050 30201 to 11050 35565; From 11040 0001 to 11040 17120; From 11060 0001 to 11060 07540; From 11070 0001 to 11070 05984; and From 11070 16801 to 11070 20640.

Consumers should immediately stop using the recalled drills and register at www.alltrade2.fox-international.com to receive a free drill. Consumers should not return the drills to the store where they purchased it. Alltrade Tools is also directly contacting consumers who purchased the recalled drills. For more information, contact Alltrade Tools toll-free at (800) 727-7420 between 8 a.m. and 5 p.m. Monday through Friday, or visit the company’s website at www.alltrade2.fox-international.com.

**Exhaust Fans Sold At Lowe’s Stores Recalled Due To Fire Hazard**

About 68,000 Harbor Breeze Bath Fans with Heater and Lights have been recalled by Delta Electronics (Dongguan) Co. Ltd., of China. The fan’s heater blades can fail to rotate properly, causing the fan to overheat and posing a fire hazard. The firm has received 11 reports of the fan overheating with smoking or flames within the fan housing, including three reports of minor property damage. This recall involves plastic Harbor Breeze bathroom fans with a center light and a heater. The fans are white and measure about 11 x 17 inches. Model number 7109-01-L, Lowe’s item number 194492 and UPC code 820653985358 are printed on the fan’s packaging. A date code beginning with either 0, 11, 12 or 13 is printed on the fan’s housing, which indicates the fan was manufactured between August 2010 and March 2011.

The fans were sold exclusively at Lowe’s stores nationwide and at www.lowes.com from September 2010 through March 2012 for about $90. Consumers should stop using the recalled bathroom exhaust fans immediately and contact Delta Electronics Dongguan to schedule a free repair by a trained service technician. For additional information, contact Delta Electronics Dongguan toll-free at (888) 301-6578 between 9 a.m. and 5 p.m. ET Monday through Friday, or visit the company’s website at www.heaterfan-recall.com.

**Bath Petals Recalls Soy Candles Due To Fire And Laceration Hazards**

Bath Petals Inc., of Gardena, Calif. has recalled their Soy Candles. The candle can burn with a high flame, causing excessive heat. This poses a fire hazard. The heat and flame can cause the glass candle holder to shatter. This poses a laceration hazard. The firm has received one report of a candle burning with a high flame and shattering the glass holder. No injuries or property damage were reported. The candles are 7.5 oz. soy candles sold in four colors and scents: Australian Foothill Ranch, Calif. The placement of internal wires near the circuit board can cause electrical short-circuiting and sparking, posing a fire and a burn hazard to consumers. Innovage has received 11 reports of short circuiting. This includes three reports of lamps catching fire, which led to property damage. No injuries have been reported, according to the company.

This recall involves Discovery Kids Animated Marine and Safari Lamps that feature rotating films with marine or safari scenes. The words “Discovery Kids” are printed on the front top-left corner of the product. The recalled products have both an 11-digit batch number that begins with either 584894 or 10128 and a model number of 1628626, 1642433, 1641522, 1641523, 1645729, or 1645853. Batch numbers can be found imprinted in the plastic underneath the lamps and on the bottom of the packaging. Model numbers can be found on stickers placed underneath the lamps and on the bottom of the packaging near the barcode.

The lamps were sold at Bed Bath & Beyond, Bonton, JCPenney, Kohls, Toys “R” Us stores nationwide as well as the online retailers Amazon, Ideeli, JCPenney, Kohls, Macy’s and Overstock from June 2010 through March 2012 for between $10 and $20. Consumers should immediately stop using the lamps and contact Innovage for instructions on how to obtain a full refund. For additional information contact Innovage toll-free at (888) 232-1535 between 9 a.m. and 5 p.m. PT Monday through Friday, visit the company’s website at www.innovage.net, www.lamprecall.org or e-mail info@lamprecall.org.

**Innovage Recalls Discovery Kids Lamps Due To Fire And Burn Hazards**

About 300,000 Discovery Kids™ Animated Marine and Safari Lamps have been recalled by Innovage LLC, of
Eucalyptus, California Rose Garden, French Alpine and Thai Lemongrass Ginger. “Bath petals” and the scent name are printed on the glass candle holder.

The following UPC codes are on the bottom of the box: 6-10696-55269-3, 7-97734-03754-8, 7-97734-03755-5 and 7-97734-03758-6. The candles were sold at TJ Maxx and Marshalls in the U.S. from February 2012 through April 2012 and at Homesense, Winners and Marshalls in Canada in April 2012 for about $10. Consumers should stop using these candles immediately and contact Bath Petals for a full refund. For additional information, contact Bath Petals toll-free at (855) 772-7258 between 9 a.m. and 5 p.m. PT Monday through Friday or visit the company’s website at www.bathpetals.com.

Nikon Recalls Rechargeable Battery Packs Sold With Digital SLR Cameras Due To Burn Hazard

Nikon Inc., of Melville, N.Y., has recalled its Nikon digital SLR camera battery packs. This includes about 5,100 in the United States, 1,100 in Canada and an additional 195,000 worldwide. The battery packs can short circuit, causing them to overheat and melt, posing a burn hazard to consumers. Nikon has received seven reports of incidents outside of the U.S. and Canada of the recalled battery packs overheating. No incidents have been reported in the U.S. or Canada. No injuries have been reported.

This recall involves Nikon EN-EL15 rechargeable lithium-ion battery packs with lot numbers E and F. The battery pack was sold with the Nikon digital SLR D800 and D7000 model cameras. The battery pack’s model number “EN-EL15” and “7.0V 1900mAh 14Wh” are printed on the back of the battery pack. Only battery packs with an “E” or “F” in ninth character of the 14-digit lot number located on the back of the battery pack are included in this recall.

The camera packs were sold at camera, office supply and mass merchandise stores, in catalogs and on various websites nationwide. They were sold with the digital SLR camera in Canada from February 2012 through March 2012 and in the U.S. from March 2012 through April 2012 for between $1,200 and $3,000. Consumers should stop using the recalled battery packs immediately, remove them from the camera and contact Nikon for a free replacement battery pack. For additional information, contact Nikon at (800) 645-6687 between 8 a.m. through 12 midnight ET Monday through Friday, or visit the company’s website at www.nikonusa.com.

Peg Perego Recalls Strollers Due To Risk Of Entrapment And Strangulation

Peg Perego USA Inc., of Fort Wayne, Ind., has recalled about 223,000 strollers due to a risk of entrapment and strangulation. A six-month-old baby boy from Tarzana, Calif. died of strangulation after his head was trapped between the seat and the tray of his Peg Perego stroller in 2004. Another baby, a seven-month-old girl from New York, N.Y., nearly strangled when her head became trapped between the seat and the tray of her stroller in 2006.

Entrapment and strangulation can occur, especially to infants younger than 12 months of age, when a child is not harnessed. An infant can pass through the opening between the stroller tray and seat bottom, but his/her head and neck can become entrapped by the tray. Infants who become entrapped at the neck are at risk of strangulation. The recall involves two different older versions of the Peg Perego strollers, Venezia and Pliko-P3, manufactured between January 2004 and September 2007, in a variety of colors. They were manufactured prior to the existence of the January 2008 voluntary industry standard which addresses the height of the opening between the stroller’s tray and the seat bottom. The voluntary standard requires larger stroller openings that prevent infant entrapment and strangulation hazards.

Only strollers that have a child tray with one cup holder are part of this recall. Strollers with a bumper bar in front of the child or a tray with two cup holders are not included in this recall. The strollers were sold at various retailers nationwide, including Babies R Us and Buy Buy Baby from January 2004 through September 2010 for between $270 and $330 for the Pliko P-3 stroller and between $350 and $450 for the Venezia stroller. They were manufactured in Italy.

Consumers should immediately stop using the recalled strollers and contact the firm for a free repair kit. Do not return the stroller to the retailers as they will not be able to provide the repair kit. For additional information, call Peg Perego at (888) 734-6020 anytime or visit the company’s website at www.PegPeregoUSA.com. CPSC and Peg Perego warn consumers that these strollers may be available on the secondhand market, in thrift stores or at yard sales. Consumers should not buy or sell these recalled strollers until the repair kit is installed.

Bosch Recalls SkilSaw Miter Saws Due To Laceration Hazard

Approximately 22,149 Saws have been recalled by Robert Bosch Tool Corporation of Mount Prospect, Ill. The lower guard can break and contact the blade during use, posing a laceration hazard to users. The company has received no reports of incidents or injuries. The recalled product is the SkilSaw® 10-inch compound miter saw, with model number 3316 and date codes 111, 112, 201, 202, 203 or 204. The model number and date code are on the lower right side of the name plate located on the motor housing. The SkilSaw logo appears at the top of the upper blade guard and on the dust collection bag. The saws were sold at Lowe’s Home Centers nationwide and OC Tanner from January 2012 to April 2012. Consumers should immediately stop using the miter saw and contact Robert Bosch Tool Corporation for a free lower guard replacement kit. For additional information, contact the company toll-free at (888) 727-6109 between 7 a.m. and 7 p.m. CT Monday through Friday, or visit the company’s website at www.skiltools.com.

Chicco Polly High Chairs Recalled Due To Laceration Hazard

Artsana USA Inc., of Lancaster, Pa., has recalled Chicco Polly High Chair. Children can fall on or against the pegs on the rear legs of the high chair, resulting in a bruising or laceration injury. The firm is aware of 21 reports of incidents in which a child fell against the peg and received injuries, including four laceration injuries requiring medical closure (stitches, tape or glue) and one scratched cornea. This recall involves a range of Chicco Polly high chair holders.

TROXEL RECALLS FLEXIBLE FLYER SWING SETS DUE TO FALL HAZARD

The Troxel Company, of Moscow, Tenn., has recalled Flexible Flyer Swing Sets. This includes about 100,500 in the United States and about 4,900 in Canada. The see-saw seats can break away from the bolt fasteners during use, posing a fall hazard. The firm received 1,232 reports of see-saw seats breaking resulting in 13 injuries to young children that included bumps, bruises and lacerations. The Flexible Flyer swing sets come in 11 different models, each with a see-saw attachment along with swings, bars or a slide. The model number can be found on a sticker located underneath the center of the top bar of each swing set unit. The sets were sold by Walmart, Toys R Us, Academy and at other specialty stores, and online retailers from December 2011 through May 2012 for between $130 and $280. Consumers should stop using the see-saws immediately and contact Troxel to receive a free repair kit. For additional information, contact Troxel at (888) 770-7060 between the hours of 9 a.m. and 5 p.m. CT Monday through Friday or visit the company’s website at http://www.regcen.com/flexible-flyer.

FLEXIBLE FLYER SWING SETS DUE TO FALL HAZARD

Downeast Concepts Inc. has recalled more than 15,000 children's folding beach chairs. These chairs were sold at Home Goods and others stores nationwide from June 2011 through June 2012. The recalled chairs have exposed, sharp metal rivets that pose a laceration hazard. Downeast Concepts has received one report of an injury to a 21-month-old girl who fell on the chair's metal rivets and cut her forehead, which required stitches.

The recalled children's folding beach chairs have white aluminum tube frames and pink, yellow, blue or purple fabric seats and chair backs with fish, palm trees or mermaid decorations. The chairs measure 13 inches wide by 18 inches high by 20 inches deep. Consumers should immediately stop using the chairs and return them to Downeast Concepts for a full refund. For additional information, contact Downeast Concepts at (800) 343-2424 between 8:30 a.m. and 5 p.m. ET Monday through Thursday and between 8 a.m. and 4:30 p.m. on Friday, or visit the company's website at www.downeastconcepts.com.

MOLENAAR RECALLS FOLDING STEP STOOLS DUE TO FALL HAZARD

Molenaar LLC, of Willmar, Minn., has recalled about 3,700 Folding Step Stools. The folding step stools can break or collapse unexpectedly when in use, posing a fall hazard to consumers. No incidents or injuries reported were reported. This recall involves 13-inch high folding step stools. The step stool is plastic and has a handle for carrying the stool when it is folded. The stools have a single step and come in beige with a brown top. The stools, which were used as promotional products, have various company logos imprinted on the side panel beneath the top of the stool.

The recalled stools were distributed free by various companies as promotional products between March 2012 and May 2012. Consumers should immediately stop using the step stools and return them to the business printed on the step stool to receive a different promotional item. Businesses who purchased the product from Molenaar should return them for a refund or credit. Consumers or businesses can contact Molenaar LLC for more information. For additional information, contact Molenaar at (877) 719-4442 between 8 a.m. and 4:30 p.m. CT Monday through Friday or visit the company’s website at www.moline.com where a link to this recall will be posted.

MOLENAAR RECALLS FOLDING STEP STOOLS DUE TO FALL HAZARD

And electrical shock hazard

TROXEL RECALLS FLEXIBLE FLYER SWING SETS DUE TO FALL HAZARD

The Troxel Company, of Moscow, Tenn., has recalled Flexible Flyer Swing Sets. This includes about 100,500 in the United States and about 4,900 in Canada. The see-saw seats can break away from the bolt fasteners during use, posing a fall hazard. The firm received 1,232 reports of see-saw seats breaking resulting in 13 injuries to young children that included bumps, bruises and lacerations. The Flexible Flyer swing sets come in 11 different models, each with a see-saw attachment along with swings, bars or a slide. The model number can be found on a sticker located underneath the center of the top bar of each swing set unit. The sets were sold by Walmart, Toys R Us, Academy and at other specialty stores, and online retailers from December 2011 through May 2012 for between $130 and $280. Consumers should stop using the see-saws immediately and contact Troxel to receive a free repair kit. For additional information, contact Troxel at (888) 770-7060 between the hours of 9 a.m. and 5 p.m. CT Monday through Friday or visit the company’s website at http://www.regcen.com/flexible-flyer.

FLEXIBLE FLYER SWING SETS DUE TO FALL HAZARD

Downeast Concepts Inc. has recalled more than 15,000 children’s folding beach chairs. These chairs were sold at Home Goods and others stores nationwide from June 2011 through June 2012. The recalled chairs have exposed, sharp metal rivets that pose a laceration hazard. Downeast Concepts has received one report of an injury to a 21-month-old girl who fell on the chair’s metal rivets and cut her forehead, which required stitches.

The recalled children's folding beach chairs have white aluminum tube frames and pink, yellow, blue or purple fabric seats and chair backs with fish, palm trees or mermaid decorations. The chairs measure 13 inches wide by 18 inches high by 20 inches deep. Consumers should immediately stop using the chairs and return them to Downeast Concepts for a full refund. For additional information, contact Downeast Concepts at (800) 343-2424 between 8:30 a.m. and 5 p.m. ET Monday through Thursday and between 8 a.m. and 4:30 p.m. on Friday, or visit the company’s website at www.downeastconcepts.com.
the serial number plate on the back of the units.

Model numbers with “N” are not included in this recall. The air movers’ plastic housing measures about 18 inches high by 18 inches long by 18 inches deep and has a 25-foot yellow electrical cord. Users should immediately stop using the blowers and contact EDIC for a free repair kit. For additional information, contact the company toll-free at (888) 289-8720 between 8:30 a.m. through 4 p.m. PT Monday through Friday, or by fax at (323) 667-0144, by email at recall@edic-usa.com or visit the company’s website at www.EDIC-USA.com.

IKEA RECALLS TRACK LIGHTING SYSTEM DUE TO ELECTRIC SHOCK HAZARD

IKEA North America Services LLC, of Conshohocken, Pa., has recalled its IKEA 365 + SANDA track, 28” and 45”. The ground connection in the track is defective, posing an electric shock hazard. This recall involves white, straight track systems used to hold and power light fixtures. The recalled tracks are model numbers 00149242 and 10149246, supplier number 21338 and date stamp 1134 through 1213. The brand name IKEA, 365+ SANDA, supplier number and date stamp are printed on a white label attached to the side of the track. The recalled tracks are 28” and 45” long.

The lighting systems were sold exclusively at IKEA stores nationwide from September 2011 through March 2012 from $15 to $20. Consumers should immediately stop using the track and return it to any IKEA store for a replacement unit or a full refund. For additional information, contact IKEA toll-free at (888) 966-4532 anytime, or visit the company’s website at www.ikea-usa.com.

ISI NORTH AMERICA RECALLS TWIST’N SPARKLE BEVERAGE CARBONATION SYSTEM DUE TO EXPLOSION HAZARD

About 162,700 Twist’n Sparkle Home Beverage Carbonation System plastic bottles have been recalled by ISI North America Inc., of Fairfield N.J. The plastic bottles can explode under pressure, expelling plastic parts, resulting in an injury hazard to anyone nearby. The company is aware of nine incidents involving exploding plastic bottles including three in which consumers received cuts to various parts of their upper body. The products are plastic bottles used as a part of the ISI Twist’n Sparkle Beverage Carbonation System. The recalled bottles were sold in the Starter Set model number 1005 with one reusable bottle and the Bottle Set model number 1006 with two reusable bottles. The model numbers are printed on the bottom of the box. The recalled plastic bottles are available in one size and two colors of caps/bottoms, white or gray.

The bottles were sold at Williams-Sonoma, QVC and other national retailers and websites from June 2010 to March 2012 for approximately $50 for the Starter Set and $50 for the Bottle Set. Consumers should immediately stop using the recalled products and either contact ISI or the place of purchase for instructions on returning the product for a refund or store credit. For products purchased online, contact the online retailers for instructions on how to ship the returns and receive a refund or credit. Note that the US Postal Service does not accept CO2 gas chargers for shipment by mail. For additional information, contact ISI at (800) 645-3595 anytime or visit the company’s website at www.twistnsparkle.com.

CHILDREN’S PAJAMAS RECALLED BY ISHTEX TEXTILE PRODUCTS DUE TO VIOLATION OF FEDERAL FLAMMABILITY STANDARD

About 6,000 Gabiano Collection Boys and Girls Pajamas, Sets and Gowns have been recalled by Ishtex Textile Products Inc. of Duluth, Ga. The pajamas fail to meet the federal flammability standards for children’s sleepwear posing a risk of burn injury to children. The garments were advertised and sold as children’s sleepwear. This recall involves all styles of boys and girls 100% cotton pajamas, including sets (tops and bottoms), one-piece suits and gowns in a variety of colors and designs in sizes 2 through 14. “Gabiano” is printed on a tag sewn into the center back neckline of the tops and gown and at the center back of the bottoms. This recall includes style numbers GB201, GB204, GB205, GB207, GB208, GB213, GB215, GB220, GB225, GB230, GB245, GB250, GB260, GB275, GB2001, GB2002, GB2011, GB2012, GB2021, GB2022, GB2031, GB2032, GB2041, GB2042, GB3001 and GB3011. The style number is only printed on the sales tag and does not appear on the garments.

The pajamas were sold at children’s clothing and specialty retailers nationwide and online including at The Pajama Princess in Austin, Texas, Anklebiter’s in Roswell, Ga., Cute As A Button in Tarboro, N.C., Bumbles in Winder, Ga., and www.bumbles.com, from February 2010 to December 2011 for between about $20 and $50. Children should stop wearing the recalled sleepwear immediately and consumers should return it for a refund, exchange or store credit. For additional information, contact Ishtex Textile Products toll-free at (800) 935-0914 between 9 a.m. and 5 p.m. ET Monday through Friday or by e-mail at info@ishtex.com or visit the company’s website at www.ishtex.com.

POSSIBLE METAL FRAGMENTS IN WINN-DIXIE SKILLET DINNERS

Winn-Dixie has recalled the grocery store chain’s brand of Cheeseburger Macaroni Skillet Dinners. There is a possibility that the product contains small, metal fragments. The recall affects the 5.8 oz packages with a UPC code of 2114018080, and a sell-by date of May 14, 2013. There have been no reports of any issues associated with the product at this time. The product was sold in Winn-Dixie stores in Alabama, Florida, Georgia, Mississippi and Louisiana. Anybody who has the recalled item should immediately discard the product or bring it back to a Winn-Dixie store and request a full refund. To receive the refund, present proof of purchase through a receipt or the product packaging label. Consumers with questions about the recalled products may contact the Winn-Dixie Guest Service Center toll free at 1.866.WINN-DIXIE (866.946.6349).

PEDIASURE DOG FOOD RECALLED BECAUSE OF POTENTIAL CHOKING RISK

Some Pedigree weight management canned dog food products are being recalled due to a potential choking risk. Affected products may contain small pieces of blue plastic, which entered the food during the production process. The source of the plastic has been identified and the issue

resolved, according to Mars Petcare which manufactures the food. Only cans of Pedigree weight management canned dog food varieties with the production codes shown below are included in the voluntary recall. Each product will have a lot code printed on the end of the can that begins with 209, 210, 211 or 212 and a Best Before date that falls between 2/24/2014 and 3/23/2014. The UPC numbers are:

- 2310034974—Pedigree Healthy Weight Premium Ground Entrée in Meaty Juices
- 2310001913—Pedigree Weight Management Meaty Ground Dinner Beef & Liver Dinner in Meaty Juices
- 2310023045—Pedigree Weight Management Meaty Ground Dinner Chicken & Rice Dinner in Meaty Juices

No other Pedigree products are affected. Consumers who have purchased the affected products are encouraged to discard the food or return it to the retailer for a full refund or exchange. The company has not received any reports of injury or illness associated with the affected product. The recalled food was distributed to retail customers throughout the United States. For more information, call 1-877-720-3335 or visit www.pedigree.com.

There were so many recalls last month that we weren’t able to include all of them in this issue. We tried to include those of the most importance and urgency. If you need more information on any of the recalls listed above, 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. If so, please let us know. As indicated at the outset, you can contact Shanna Malone at Shanna.Malone@beasleyallen.com for more recall information or to supply us with information on recalls.

XXII. FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

BEN BAKER

Ben Baker is a lawyer in our firm who primarily handles product liability lawsuits. Ben, who graduated from the Cumberland School of Law in 1993, began his law practice in Birmingham. He became a partner in the firm of Hogan, Smith & Alspaugh before leaving to join us. Although Ben’s practice has always focused on products liability and crashworthiness cases, his secondary specialties are in the areas of aviation crashes, construction site injuries and nursing home litigation.

Ben has frequently lectured on legal topics for various organizations including: the Alabama Association for Justice, the Birmingham Bar Association, the Cumberland School of Law, the National Business Institute, the Southern Trial Lawyers Association and Jones School of Law.

Ben has been involved in a number of high profile cases. He recently obtained a $2.75 million verdict against Ford Motor Company in a wrongful death case tried in Montgomery. In 2009, Ben’s client received a $3.5 million verdict in a wrongful death case tried in Chilton County, Ala. Ben was also part of the trial team that obtained a $4.1 million verdict in Montgomery County against Wal-mart in a defective tire case. Ben has also obtained a $12 million record verdict in a crashworthiness case against a cab guard manufacturer. He has also settled a number of crashworthiness cases which have resulted in multi-million dollar recoveries for his clients.

Ben has been selected for inclusion in Super Lawyers in 2010, 2011 and 2012, published by Business Alabama magazine. In December 2010, Ben was selected as our firm’s Lawyer of the Year for the Product Liability Section. Ben is a prior member of the Executive Committee for the Alabama Association for Justice. He previously was elected to serve on the Executive Committee for the Young Lawyers Section of the Birmingham Bar Association. Ben was once selected “Boss of the Year” by Birmingham Magazine.

Ben, who was raised in Ozark, Ala., is married to the former Kimberly Strag who is from Philadelphia, Pa. They have one daughter and two sons. Ben is a board member of the Paseo movement in Alabama which is a worldwide movement of the Christian Church. Ben and his wife are members of the Christchurch, an Anglican Parish in Montgomery. Ben is also a past board member of the Landmarks Foundation of Montgomery, a non-profit organization committed to preserving historic structures.

Ben is a dedicated lawyer who works very hard for his clients and cares deeply about them. Ben is not only a very competent lawyer, but also a very good person. We are truly blessed to have him with our firm.

KAY COX

Kay Cox, who came to the firm in August of 2003, is a legal assistant to Mike Andrews. Kay has worked in the legal field for 24 years. She received a legal assistant certification from Auburn University at Montgomery in 1994. In the firm, Kay helps with the drafting and filing of pleadings and discovery in cases, organizing documents for trial, obtaining and organizing medical records, and corresponding with clients and experts. Kay also keeps up with case deadlines and scheduling.

Kay has twin daughters, Erin and Jessica, who are 18 years old. Erin graduated from Prattville High School this past May and Jessica will graduate in May of 2013. The family lives in Prattville. Kay enjoys being outside and enjoying nature—especially the colors of Fall. She likes to go fishing when she gets a chance and also enjoys deer hunting—but only with a camera! Most of all, Kay is an avid Alabama fan and enjoys watching SEC football. Kay is a very good employee. She is a hard worker and is dedicated to helping clients with their cases. We are most fortunate to have Kay with us.

CAREY HENDERSON

Carey Henderson has been with the firm since February of this year, working in our Web Department. Since starting, Carey has been helping with the redesign of the current Beasleyallen.com website, as well as numerous smaller sites. Carey also helps with the graphic design elements as well as writing code for the websites.

Early in his career, Carey worked with a firm that put the very first internet café on a cruise ship, the Norwegian. He has also worked with several design firms that have built websites for a number of companies including Coca-cola, the NBA, and Pepsi. During the last few years before coming with our firm, Carey worked with the U.S. Army Combat Readiness Center at Ft. Rucker. While there, he helped build numerous websites for soldiers in combat theaters. During his time at the USA CRC, Carey received several commendations from two Brigadier generals, as well as certificates of accomplishments from the U.S. Government for contributions to existing and new websites.

From all accounts, Carey has a variety of interests that occupy his time away from work. Carey is a guitar player in two different bands, he writes fiction and editorials, enjoys photography, and studies Roman history, which he says is for fun. He also says that he enjoys dabbling in philosophy, religion and anthropology. Carey is a very good employee and we are pleased to have him with us.

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Our firm was selected by the Alabama Bar Association as the recipient of the Alabama State Bar Pro Bono Award for 2012. The Bar has been giving awards to acknowledge outstanding pro bono service since 1996. Specific categories of nomination—Individual, Firm, Law Student and Mediator—were added in 2000. The purpose of the award is to recognize the outstanding pro bono efforts of lawyers, law firms, mediators, and law students who are actively donating time to the civil representation of those who cannot otherwise afford legal counsel and to recognize individuals who encourage greater legal representation in and acceptance of pro bono cases.

Nominations for each award category are reviewed by the Alabama State Bar Volunteer Lawyers Program. Nominations are accepted from Bar members, judges and the public. Our firm was chosen for this year’s award based on the following achievements:

- The lawyers at Beasley Allen regularly accept pro bono cases from the Alabama State Bar Volunteer Lawyers Program. The firm also schedules one attorney each month to assist at the Montgomery County Bar’s walk-in legal advice clinic. Without such firm support these projects would not be possible.

- The firm maintains 100% participation in the State Bar’s Volunteer Lawyers Program. This policy was a first for a Montgomery-based firm and has encouraged other firms around the state to follow suit.

- Beasley Allen also provides significant resources in support of pro bono activities in the state. In 2009 the firm established a competitive grant of $10,000 awarded annually to an organization that promotes pro bono activity.

Tom Methvin, our managing Shareholder, made pro bono work by Alabama lawyers a top priority during his tenure as President of the Alabama Bar. His work paid off with a tremendous increase in the number of Alabama lawyers volunteering to do pro bono work under the Bar’s Volunteer Lawyers Program. We are both pleased and humbled to have been selected by the Bar Association to receive this award.

**XXIII. SPECIAL RECOGNITIONS**

**DR. SIDNEY WOLFE DOES A GREAT SERVICE FOR THE AMERICAN PEOPLE**

I have referred quite often over the years to Public Citizen, an organization that works extremely hard on behalf of consumers, and I hope the information we have supplied has been helpful. Dr. Sidney Wolfe, who serves as Director of Public Citizen’s Health Research Group, deserves a tremendous amount of credit for helping to keep dangerous drugs off the market. It’s well known that the United States is one of the biggest drug-consuming countries in the world. Of course, I am referring to prescription drugs and over-the-counter drugs—all “legal” drugs. Most folks expect those drugs to be safe for them to use.

Unfortunately, many of the drugs allowed by the FDA to be put on the market are extremely dangerous and have been approved by the regulatory agency. Dr. Wolfe and his co-workers at Public Citizen have fought hard for years attempting to keep bad drugs from being approved by the FDA and to get bad drugs that are approved off the market. While they have been most successful, there is much more for them to do. I only wish Congress would provide the FDA with sufficient funds and laws so that Public Citizen wouldn’t have to do the job for them.

I recommend that any person who wants to learn what drugs to avoid should subscribe to Worst Pills, Best Pills. As mentioned in another part of this issue, this is a publication put out by Public Citizen and it should be required reading for every U.S. consumer. You can go to either Citizen.org or Worstpills.org for more information.

**CUMBERLAND LAW DEAN JOHN CARROLL WILL RETURN TO TEACHING**

John Carroll will step down as Dean of Cumberland School of Law next summer. He will return to teaching at the law school where he graduated. As Dean, John led the law school through its 50th anniversary. John, who will make the transition on June 30, 2013, has this to say about his future plans:

*There is nothing mystical about my decision. I have simply decided that it is time to take a step back and return full-time to my real love in legal education: teaching.*

A U.S. Marine Corps flight officer on 200 missions during the Vietnam War, John graduated from Cumberland in 1974. After serving as a civil rights lawyer, law professor and federal judge, he returned to Cumberland in 2001 as Dean. Under John’s tenure as Dean, the law school returned to an earlier focus on producing courtroom-ready lawyers.

**U.S. News and World Report** ranked Cumberland’s trial advocacy program fourth nationally in 2012, up from fifth in 2011. Recently, John led an effort to update the curriculum to better prepare students for the ever-evolving practice of law. John Carroll has been a highly effective and successful Dean and will be hard to replace. He leaves Cumberland in great shape by all standards.

*Source: Al.com*

**MORRIS DEES CHOSEN FOR TOP LEGAL AWARD**

Morris Dees, the co-founder of the Southern Poverty Law Center in Montgomery, was chosen to receive the highest award from the American Bar Association. Morris received the ABA Medal in Chicago at the annual meeting last month. ABA President Bill Robinson said Morris is an outstanding example of a lawyer who moves the country toward tolerance and equality case by case.

Morris and Joseph Levin started the Southern Poverty Law Center (SPLC) in 1971. Morris is known for having won cases that helped integrate government and public institutions, and for fighting white supremacist hate groups. He took on cases that some considered unpopular, but that didn’t deter him or SPLC in their quest for justice and fair play. I can think of no person more deserving than Morris Dees to receive this distinguished award from the American Bar Association. Morris, a tremendous lawyer, is a great American by any standard.

*Source: Associated Press*

**A WOUNDED WAR HERO RETURNS HOME**

Josh Wetzel, an Army Paratrooper, served his country in Afghanistan and while there suffered some most serious injuries. While on a foot patrol, this brave warrior was injured in a roadside bomb explosion in May of this year. Josh lost both of his legs and suffered a neck injury and

other less serious injuries in this blast. Josh recovered from his wounds and has begun his road to recovery at Walter Reed National Military Medical Center. He is determined to lead a normal life, and based on all reports, he will do just that.

Josh, a native of Gmcnco, Al., is married to the former Paige Beasley, who is from Ft. Payne. Paige is the granddaughter of G. B. and Jean Beasley, who also reside in Ft. Payne. G. B. was a well-known high school football coach, who later served as principal at Ft. Payne High School. Paige, who was teaching school in Tacoma, Wash. when Josh was injured, had to give up her job so she could be with her husband while he is at Walter Reed. Paige says that Josh is working extremely hard and is on the road to recovery. Josh has a great attitude and a tremendous desire to return to a normal lifestyle.

I asked G.B. and Jean how we could help Josh and Paige and they told me they only wanted folks to pray for them. I suggested to G.B. that a fund be set up so that friends and others could help the couple through a tough time in their lives. A fund has now been set up, and it’s projected that Josh will be at Walter Reed for a year.

Neither Josh, Paige nor any of the family requested that this fund be set up, and they didn’t want to solicit donations. But the fund will give folks a way to help them out. The account was set up at First Federal Bank in Ft. Payne where folks can send monetary donations. Checks should be made out to Josh & Paige Wetzel, P.O. Box 680488, Ft. Payne, AL 35968. Any donations received, according to G.B., will go to pay travel expenses for Paige and other family members and for other expenses related directly to Josh's hospital stay and rehabilitation. Any funds left over after Josh is discharged from Walter Reed, will be paid over to the Wounded Warrior Project, a most worthwhile cause, to help others.

Anybody who would like more information on Josh's progress can go to Prayers For Josh Wetzel on Facebook. I want to emphasize the only thing Josh and Paige have asked for is prayers to help them get through this ordeal. You can also write Josh whose current address is SPC Josh Wetzel, 8901 Wisconsin Ave., Bldg. 10, 4th Floor, Room 442, Bethesda, MD 20889.

Even though Josh had only served in the war in Afghanistan for a relatively short time, he was doing his duty and was doing it very well. He, like all others who have fought in this long war, is an American hero. May God bless them all and their families.

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**Kendall Dunson Raises $1,000 for Child Protect**

Kendall Dunson, a shareholder in our firm, and his wife Samarria Munnerlyn Dunson, led an event recently at Super Suppers Montgomery to help raise awareness for Child Protect Children's Advocacy Center. Kendall is on the Board of Directors for Child Protect and works regularly on its behalf. Jannah Bailey, executive director of Child Protect, said:

> We are grateful beyond measure for the continued support Kendall Dunson and his wife, Samarria, unselfishly contribute to Child Protect. They truly have servants' hearts and great passion for abused children that come through our doors every day. We could not continue our service to the least of these without their belief in our cause. They have left their handprints on the hearts of many of the children we serve.

Established in November of 1989, Child Protect was originally developed to aid the Department of Human Resources and law enforcement in their investigation of child abuse, both physical and sexual. Child Protect, which operates as a 501(c)3 non-profit agency, works for children. It has saved countless children from endless interrogations by creating an atmosphere where a child can tell his or her story once and have it recorded for future use. The fund-raising event consisted of a cooking demonstration, chef tasting and wine tasting to highlight local and seasonal produce in five different courses. All of the food was donated by the venue of the event, Super Suppers, located in the Pepper tree Shopping Center off Vaughn Road.

During a presentation by Kendall on Child Protect, the importance of donations for Child Protect was emphasized. The donations go to child victims of physical, mental and sexual abuse. All attending the event donated to Child Protect Children's Advocacy Center. Kendall is on the Board of Directors for Child Protect and works regularly on its upcoming events, or on how to make a donation to Child Protect, visit its website at www.childprotect.org, or call (334) 262-1220.

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**XXIV. Favorite Bible Verses**

Lisa Harris, who is our firm’s Executive Director, told me that a specific verse has been a tremendous help to her over the past several years. Lisa does a tremendous job for our firm and is a most valuable employee.

> When you pass through the waters, I will be with you; And through the rivers, they shall not overflow you. When you walk through the fire, you shall not be burned, Nor shall the flame scorch you.

Isaiah 43:2

Brenda Boman, who is with Alabama Arise, sent in a verse for this issue. Brenda, along with others with ARISE, works hard for the poor in our state. She will be blessed for that work.

> We know that all things work together for good to them that love God.

Romans 8:28

I wrote about the ordeal Josh and Paige Wetzel are facing in another section of this issue. Josh sent in a verse that he feels strongly about and one Josh says he depends on. While the ordeal that Josh and Paige are facing is a tough one, I am convinced they will come through it.

> “For I will restore health to you And heal you of your wounds,” says the Lord, “Because they called you an outcast saying: ‘This is Zion; No one seeks her.’”

Jeremiah 30:17

Penny Marcum, who was a longtime legal secretary with our firm before moving to Chattanooga, Tenn. in 1998, sent in a verse for this issue. Penny has a grandson, Cade, who has been battling vision problems for several years. He has made a miraculous recovery.

> Blessed is he who considers the poor; The Lord will deliver him in time of trouble. The Lord will preserve him and keep him alive, And be will be blessed on the earth; You will not deliver him to the will of his enemies. The Lord will strengthen him on his bed of illness; You will sustain him on his sickbed.

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XXV.
CLOSING OBSERVATIONS

Hot Coffee Documentary Screenings In Alabama

Hot Coffee, a documentary directed by Susan Saladoff, was recently shown around the State of Alabama at law schools and legal organization events. It also had selected showings at some movie houses. The documentary chronicles an actual lawsuit that brought tort reform to the forefront of political campaigns, and propaganda fed to the media by Corporate America. That case is Stella Liebeck v. McDonald's. While most Americans are familiar with the "McDonald's Coffee Case," and most likely equate that case with frivolous lawsuits, it's become quite obvious that few actually know very much—if anything—about the facts giving rise to the lawsuit.

Stella Liebeck, a 79-year-old woman, was riding with her nephew when they purchased a cup of coffee from the McDonald's drive-thru. Her nephew pulled into a parking spot so that Stella could put cream and sugar in the coffee. When Stella lifted the lid of the cup, the coffee spilled all over her lap and legs, causing severe burns. The coffee was as hot as radiator water in a car after driving. It was McDonald's policy to keep the coffee at that extremely high temperature. During the trial, it was discovered that McDonald's had received over 700 prior complaints of similar coffee spills and injuries.

This case sparked a media-fueled political frenzy calling for tort reform. The documentary discusses three types of tort reform. The first is capping damages. To illustrate how caps work, the documentary tells the story of twins: one healthy and one with brain damage. One of the twins suffered brain damage when the doctor failed to deliver the babies according to the standard of care. The Life Care Plan for the baby showed that the family would need $6 million to take care of him for the rest of his life. The jury awarded the family $5.6 million, but the award was capped at $1.25 million. The documentary notes that a cap on damages takes away the power of the jury and gives it to legislative bodies.

The documentary then looks at "court reform" as a form of so-called tort reform. As an example, the documentary reviews the prosecution of Oliver Diaz, a Mississippi Supreme Court Justice who was maliciously prosecuted when he won an election despite the fact that millions of dollars were pumped into his opponent's campaign by the U.S. Chamber of Commerce, an entity dedicated to protecting the interests of huge corporations.

Finally, the documentary discusses the impact of mandatory arbitration clauses on the civil justice system. It gives the example of Jamie Leigh Jones, a woman who signed an employment contract with Halliburton, in her quest to help with Operation Iraqi Freedom. Jamie was told when hired that she would be housed with other women, but when she arrived in Iraq, she was bunked with 400 men. She was sexually harassed, assaulted, and raped while working for Halliburton despite her requests to be moved. Jamie could not pursue her civil claims against Halliburton in a court of law because of a mandatory arbitration clause tucked into the employment contract. When she signed her employment contract, she never anticipated that she would have to arbitrate Halliburton's liability for its employees' horrendous actions and would be denied access to the courts.

The documentary seeks to shed light on the true nature of the civil justice system. That system is not one of frivolous lawsuits and unlimited jury awards. Instead, it's a system that seeks justice for all concerned. The truth is our judicial system utilizes one of the greatest entities ever created, and that's the jury. Without our jury system, corporations would police themselves and would never be held accountable for their actions. The right to trial by jury in civil disputes was considered to be so important by our forefathers that it was guaranteed to all Americans by way of the 7th Amendment to the U.S. Constitution! That's why the truth about the jury system in America must be made available to the public.

The Penn State Scandal Teaches A Needed Lesson

I had not intended to write about the Penn State debacle, but after reflecting on it, I changed my mind. The detailed report released last month by the school revealed that the tragic events involving the school were even worse than I had thought. Based on findings in the report, it's very clear that senior officials at Penn State University, including the school's president and Coach Joe Paterno, concealed critical facts about Coach Jerry Sandusky's abuses of a huge number of children over a long period of time. The obvious reason for the cover-up was that those in charge at Penn
State were concerned about bad publicity for the football program. This makes their conduct, which was not only very bad, but almost impossible to believe, even more despicable. The school, and all persons involved in this scandal, deserve to be severely punished.

The report, coming from an internal investigation, revealed that Joe Paterno and other senior officials at Penn State “concealed critical facts” relating to Jerry Sandusky’s child abuse. To cover up such horrendous conduct is reprehensible and can’t be tolerated. The 267-page report, released on July 11th, follows an eight-month inquiry by former FBI director Louis Freeh. The report shows in detail how this scandal was covered up. Freeh was hired by University trustees weeks after San-
dusky was arrested in November to look into what has become one of sports’ biggest scandals. The report concluded that Paterno, President Graham Spanier, Vice-president Gary Schultz, and Athletic Director Tim Curley “failed to protect against a child sexual predator harming young men and hopefully they will be able to get on with their lives. May God bless and sustain them.”

Source: Associated Press

A MONTHLY REMINDER

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

2Chron 7:14

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

Isaiah 10:1-2

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

Edmund Burke

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

Louis Brandeis, 1937

U.S. Supreme Court Justice

XXVI.
PARTING WORDS

The mass shooting last month in a Colorado movie theater resulting in 12 innocent people being killed and another 58 injured, some critically, is just another wakeup call for our country. It’s impossible to comprehend how this sort of thing could even happen in a civilized society, but it did. Sadly, in America, we have experienced this sort of thing—all too often—over the past decade with tremendous loss of life. We have had mass murders in schools, in churches, in the work place, on military bases, in shopping centers, and now in a movie theatre.

How many more mass murders will it take before our political leaders realize that changes are needed on how we control access to guns in this country? I say—no more! We must wake up and demand action. Obviously, the place to start with is with members of Congress. We should demand that action be taken by Congress to keep “assault rifles” in this country off the streets. There can be absolutely no justification for allowing the sale of assault rifles to individuals. These weapons are for use by the military and have no place on the streets in America.

The gun manufacturers and sellers are making tremendous profits from the sale of guns of all sorts, including assault rifles, and that’s a stark reality. The National Rifle Association (NRA) controls Congress on all matters related to any form of gun control and that, too, is a fact. It’s quite evident that most U.S. politicians are afraid they will face defeat at the hands of the NRA if they even debate gun control, much less do something about a real problem in the U.S. It’s past time for those politicians to start this debate, but it’s certainly not too late. While most Americans favor the right to own guns, I don’t believe even members of the NRA want the sale of assault rifles protected by the 2nd Amendment to our Constitution.

From a personal perspective, I have owned shotguns, rifles and pistols all of my life. I learned gun safety at an early age and I was trained to use a rifle properly in the military. I hunted, starting in my teenage years, and continued to do so on a regular basis until I decided to quit a few years ago. But hunting—with weapons designed for hunting—is quite different than dealing with assault rifles and automatic weapons that have no business on the streets or available for sale to individuals in our country. It makes sense for people—who want to do so—to own a handgun to keep in their home in a safe place for the protection of themselves and their family.

But it’s high time for the American people to say enough is enough and demand some reasonable changes in our gun laws in this country without doing damage to the rights conveyed by the 2nd Amendment. But the question remains—how many more mass murders will it take before Congress acts? The sad truth is that the public is shocked and saddened when mass murders occur and those feelings last for a time. But unfortunately, the time comes when the public soon forgets and therein lies the problem. We must remember that the NRA never slows down its
public relations and lobbying efforts. It works its agenda on a full-time basis. As a result, the NRA has been very successful in its efforts to mold public opinion and to control Congress. Hopefully, the time has come for some serious debate on gun control and from that some reasonable and needed changes in our gun laws.

For now, all of us must pray daily and earnestly for those families who lost loved ones in Colorado, for those who were injured, for their community, and for our entire country. We all lost something that fateful day in the movie theatre—but not nearly what the families of victims who were killed by a mass murderer lost. The healing process will be long and painful for them and for many others in Colorado. May God provide the peace and comfort to all of those persons touched in any way by the tragic events in Colorado that only He can supply in times like this. People in our nation must come to their senses and say to those in authority—we have seen enough of these senseless mass murders. So now let’s do whatever it takes to stop them!

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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.