I. CAPITOL OBSERVATIONS

Republicans Kill Veterans’ Job Bill

Legislation to put veterans to work was defeated on September 19th when Senate Republicans successfully blocked the bill’s advance with a budgetary point of order. The largely party-line Senate vote of 58-40 fell two votes short of the three-fifths majority needed to overcome the procedural objection. Republican senators killed the Veterans Job Corps bill in a partisan effort on a technicality and defend that is impossible to understand. Sen. Bill Nelson (D-Fla.), one of the bill’s co-sponsors, has this to say on the floor before the vote: “They’re going to kill it on a technicality. That’s the bottom line here. That’s what’s going on here, and it’s sad.”

The Republican opposition was based on their refusal to support an initiative that originated in the White House. The corps to be created, loosely based on the Civilian Conservation Corps created during the Great Depression, would employ veterans in conservation, resource management and historic preservation projects on public lands. The legislation would also provide for hiring veterans as police officers and firefighters. The measure, which should have passed in the Senate, was derailed by raw display of partisanship. The organization representing the largest number of post-9/11 veterans, Iraq and Afghanistan Veterans of America, expressed outrage at the outcome, saying the program would have created thousands of jobs. IAVA founder Paul Rieckhoff had this to say:

Election politics should never stand in the way of creating job opportunities for our nation’s veterans, especially with an official 10.9 percent unemployment rate. We hope our constituents, veterans and their families across the country will hold the Senate accountable for this failure.

Members of the House and Senate have a duty to do all within their power to put America’s veterans back to work. At a time when one in four young veterans are unemployed, Republicans in the Senate should put aside the politics of obstruction and pass this bill to help these men and women provide for their families.

Every Democrat and 5 GOP Senators voted to waive the budgetary objections, but the vote fell two votes short. The bill was killed on a procedural objection. It’s hard to believe that 4 GOP members of the Senate, who actually helped write the bill, actually voted to kill it. The American Legion and Veterans of Foreign Wars, the country’s two largest veterans’ organizations, want a bill passed. They have expressed their dismay, but still voiced hope for compromise legislation.

Members of Congress, including Republicans—many of whom have never served in the military—don’t hesitate to send young Americans to war. But some of them ignore needs of veterans when they return home from war. We have veterans who have fought in two of the longest wars in U.S. history and who are now being ignored when they come home. That is both shameful and a national disgrace. Playing politics with this bill, designed to help our veterans, is just plain wrong!

Source: Washington Post

Alabama Voters Approve $437 Million Transfer

Alabama voters, on September 18th, overwhelmingly approved the $247 million bailout of the State’s general fund budget. The constitutional amendment will allow the funds to be moved from the Alabama Trust Fund to the general fund budget over the next three years. Gov. Robert Bentley, who inherited a fiscal mess when he took over in 2011, worked hard to make this happen. But anybody who believes that the state’s financial woes have been solved by this vote simply isn’t facing reality. In my opinion, because of the crisis, voters did the right thing. But now it’s up to our elected officials to correct our problems on a permanent basis.

For years governors and legislators have refused to deal with the fiscal issues facing them. They have routinely taken the approach of “robbing Peter to pay Paul” when funding governmental functions. We have found it acceptable to depend on the federal government to furnish stimulus funds to bail out our state finances. It’s time to stop “kicking the can down the road” and deal with our financial problems in a responsible manner and provide a solid, permanent basis for funding. Hopefully the successful raid on the trust fund won’t give our state’s leaders a sense of finality when it comes to the funding of the operations of state government. I don’t believe the recent vote gives them that assurance in any respect. They still must deal with the fiscal problems that were simply carried over to next year.

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royalties of $7.52 million since 1986. The state was told it had to pay the money back.

Alabama officials have disputed the debt and claim that the changes to how the money is divided were made outside the normal bureaucratic procedures. It’s stated in the Alabama lawsuit:

If upheld, this change would afford Mississippi the right to certain ... revenues that have been paid to Alabama over the last 26 years (and that have been long since obligated and expended by the state for public purposes) and that otherwise would be distributed to the state of Alabama in the future.

Attorney General Luther Strange filed the suit for Alabama. The complaint contends the U.S. Department of Interior’s intention to collect the $7.52 million is “an abuse of discretion and is otherwise not in accordance with law.” Joy Patterson, speaking for the Attorney General, says that the Interior Department has given notice it intends to withdraw the demand for repayment. She says further that “If they do in fact withdraw the demand letter, that figure will be zero, unless and until they issue a new demand letter.” It appears the state doesn’t have an estimate about the amount of royalties Alabama would lose in the future under the changes. A section of the Outer Continental Shelf Lands Act requires all “bonuses, rents, royalties and other revenues” from federal leases in certain zones within three nautical miles of shore to go into a special account with the U.S. Treasury. A portion of those funds go to the Gulf Coast states each month. The Interior Department altered how those zone boundaries are drawn, which resulted in the change in the revenues Alabama would receive.

The case filed by Louisiana says the federal government is demanding that Louisiana repay $2.81 million. The Alabama case was filed on behalf of the state, the Alabama State Treasury and the Alabama Department of Conservation and Natural Resources. The Defendants are the top officials with the Interior Department, the Bureau of Ocean Energy Management and the Office of Natural Resources Revenue. In a response to Alabama’s lawsuit, federal government lawyers denied all of the allegations.

II.
A REPORT ON THE GULF COAST DISASTER

ON SPILL SETTLEMENT FAIRNESS HEARING TO TAKE PLACE ON NOVEMBER 8, 2012

On November 8, 2012, Judge Barbier will conduct a fairness hearing for the landmark oil spill medical, economic and property damage settlements. Almost all class actions undergo a fairness hearing of some sort before a court will grant final approval of a class action settlement, and the oil spill settlements will be no different. In their briefs to the Court, the PSC and BP have laid out extensive evidence supporting the fairness of the oil spill settlement, including testimony from some of the foremost experts throughout the various industries along the Gulf Coast, as well as from respected experts on class action procedure. While Judge Barbier does not intend to take any live testimony at the fairness hearing, we expect the PSC and BP to offer substantial proof in their arguments supporting the settlements.

There will also likely be objectors to the settlement, as cases of this magnitude predictably draw. To have standing to object to the settlement, a party must either be a class member or represent the interests of a class member. For this reason, a party cannot opt out of the settlement and also object to the settlement’s terms. Oftentimes, the objections originate from four key areas: parties that want to be in the settlement, but are excluded; parties that are in the settlement, but want to tweak it to their benefit; parties that are in the settlement, but prefer more time before they have to choose to stay in; and finally, those “professional objectors” that move from class action to class action simply to kill settlements. Unfortunately, objectors are usually comprised of the fourth category more than any other.

We believe the Court will approve the settlements. Simply stated, the settlements are unprecedented in scope and transparency, and will provide real and meaningful compensation to businesses and individuals across the Gulf region. The economic and property damages settlement allows each business to stand on its own unique financial records and specifically tailor its compensation to those records. Gulf front property owners will be able to recover for a loss of enjoyment to their property during the oil spill. The medical settlement will provide a free, 21-year medical consultation program to thousands of cleanup workers and residents, and will provide compensation and a back door litigation option in case new conditions develop later in life. More importantly, both settlements address future risks—something a claimant would have a very difficult time obtaining in traditional court.

If you have any questions about the upcoming fairness hearing, please contact Sandra Walters at 800.898.2034 or Sandra.Walters@beasleyallen.com

III.
THE STATES NEED GUIDANCE ON IMMIGRATION

It’s time for states like Alabama to get out of the immigration business and let the federal government do the job. Immigration
ment and proceed directly against BP. The new deadline is November 1, 2012. Some lawyers and residents along the Gulf Coast have publicly declared that class members should opt out of the settlement due to delays in payments. It is not surprising that a settlement, which by all accounts may be the most complex and expansive settlement in United States history, is having some kinks that need to be worked out. Indeed, there will be some delays in the process while the settlement matures out of its infancy. However, the settlement, as written, still presents the fairest, quickest and most reasonable opportunity for claimants to be compensated in the oil spill litigation. As we will explain below, oil spill opt outs will face a long, treacherous path to compensation.

To start with, almost all oil spill cases are tolled and cannot proceed until the Court can resolve the Limitation trial currently set to commence in January, 2013. The Limitation trial, in all phases, is expected to take at least a year to conclude. Appeals to the Court’s decision could further lengthen the stay by months—or even years. Given the logistical processes needed to get cases remanded back to their originating jurisdictions, not to mention docket delays that would exist after those transfers, it is not inconceivable that it could take multiple years before a case is placed on a docket for discovery. Afterward, these cases would go through significant motion practice and lengthy discovery. In other words, opt outs must consider the idea that their case may not be heard or resolved for many, many years.

Aside from the time it would take to actually litigate claims, the cases will face many legal hurdles that make a positive outcome unpredictable. Cases claiming damage to property will have to prove that damage—and proof will most assuredly require expert testimony and Daubert challenges to that expert testimony. Economic loss claims will likely face challenges from multiple angles. For instance, while the settlement does not allow for a full offset in Vessels of Opportunity payments (and for seafood claims, there is no offset), a court may very well determine that full offsets do apply to any recovery because a Defendant is entitled to mitigate its damages. This alone could make a significant difference in claim payouts.

In addition, unlike the settlement, which compensates for future injury, many courts could be extremely hesitant to award “future” damages due to their speculative nature. Because punitive damages are reserved for a very small subset of claimants (commercial fishermen and oilied property owners) pursuant to general maritime law, punitive damages may not be recoverable for a large number of claimants. In other words, the “risk transfer premium” that exists in the settlement will likely not be recoverable in traditional litigation.

Finally, causation could be a major hurdle for many businesses and individuals in traditional litigation. Unlike the settlement, which has clear, predictable methods to determine causation (and for many businesses, they don’t even have to show their losses are actually connected to the oils spill), litigation will require a strict analysis that specifically connects damages to the oil spill. Even the method of calculation could be much stricter. For instance, there is no guarantee that a claimant could choose some months and discount others in a given year, or be able to utilize a combination of 2009, 2008-2009, or 2007-2009 for benchmark years to determine actual losses.

The settlement may still have a ways to go, but we believe for most of our clients, it will provide the fairest and most efficient method of payment. If you have any questions about the settlement, please contact Parker Miller in our firm at 800.898.2034 or Parker.Miller@beasleyallen.com.

**BP Executives Blame “Blue Collar Rig Workers” For Gulf Oil Spill**

It can now be reported that BP executives, in an attempt to save themselves, tried to concentrate blame for the Deepwater Horizon oil spill disaster on “blue collar rig workers.” Lawyers for the U.S. Justice Department are claiming gross negligence on BP’s part in causing the oil spill. A brief filed by the Justice Department on August 31st contains this claim. Justice Department lawyers had blacked out two sentences before they filed the brief in federal court in New Orleans. They cited a confidentiality claim by BP as the reason for the redaction. But Judge Carl Barbier last month ordered the full document released, saying BP had withdrawn its confidentiality claim. The sentences appear in a section of the brief in which Justice Department lawyers attack BP’s internal investigation of the oil spill. Government lawyers charge that the internal inquiry, run by BP executive Mark Bly, ignored embarrassing and damaging emails from drilling supervisors that preceded the explosion on the oil rig. The brief said:

*Bly and BP’s management in London purposefully limited the investigation by excluding any of the systemic management failures that led to the disaster: This was a decision designed to ensure that the public and legal lines of accountability would be focused exclusively on blue collar rig workers and other contractor/defendants—but at all cost, not upon BP management and the inexplicable behaviors that coursed through the pages of the internal BP emails.*

The executives at BP who tried to shift the blame from themselves over to blue collar workers on the rig should be ashamed. That sort of conduct is inexcusable. BP was clearly guilty of gross negligence and should be punished for what it did.

**BP Oil Found On Alabama Beaches**

Scientific testing has confirmed a link between oil from the massive BP spill and tar found on Alabama beaches after Hurricane Isaac. According to Auburn University researcher Joel Hayworth, a chemical analysis showed that tar balls collected after Isaac were associated with the type of oil spilled after the explosion on the Deepwater Horizon rig. Auburn researchers collected about 15 pounds of tar balls after the storm, and officials from Gulf Shores and Orange Beach picked up still more. By the end of September it was very clear that the tar balls came from BP.

**ANY BUSINESS COULD HAVE AN OIL SPILL CLAIM**

As we reported previously, all businesses in the affected Gulf Coast states have potential claims arising from the 2010 disaster in the Gulf. To date, our firm has filed claims for businesses with a cumulative value of over $65 million, and we are continuing to review and file claims for our clients every day. Simply put, any business in the affected Gulf Coast region could have a claim based upon the oil spill settlement. To qualify in the settlement, the majority of businesses need only show that their gross revenues for three consecutive months between May and December 2010 diminished 15% as compared to the same months in either 2009, the average of 2008-2009, or the average of 2007-2009, and their revenues increased by 10% for the same months in 2011. Importantly, outside of what the settlement’s methodologies require, a business is not required to draw a connection between the oil spill and their drop in revenues.

Importantly, unless a business has signed a final release with BP, it does not matter whether the business participated in the BP claims process, the Gulf Coast Claims Facility, or filed a lawsuit in the New Orleans Federal Court. Neither of those events are required for a business to now have a right file a claim. All qualifying businesses that
The appeals court ruling serves as a powerful reminder that a drug company’s misleading safety claims will not be tolerated in Louisiana. The Attorney General’s Office will continue to move aggressively against those who commit Medicaid fraud.

The jury unanimously concluded that the pharmaceutical companies had violated the Louisiana Medical Assistance Programs Integrity Law (MAPIL) with an aggressive marketing campaign. The Appeals Court found that the jury had sufficient evidence to find that the pharmaceutical company had “violated” the law, and affirmed the lower court decision. This was a very important victory for the state. Attorney General Caldwell is to be commended for his strong stand against Medicaid fraud in his state.

Source: Insurance Journal

JANSSEN PHARMACEUTICALS SETTLES DECEPTIVE ADVERTISING PRACTICES SUIT FOR $181 MILLION

Janssen Pharmaceuticals Inc. And its parent company Johnson & Johnson have agreed to resolve charges of improper marketing and advertising of the powerful anti-psychotic drugs Risperdal and Invega in the largest multi-state consumer protection-based pharmaceutical settlement in history. Janssen agreed to a record $181 million settlement, which includes settlements for 36 states plus the District of Columbia. In a complaint filed in New York County Supreme Court, New York Attorney General Eric T. Schneiderman charged that from 1998 through at least 2004, Janssen Pharmaceuticals engaged in deceptive and misleading practices when it marketed Risperdal, Risperdal Consta, Risperdal M-Tab and Invega for off-label uses.

As a result of the states’ investigations, Johnson & Johnson agreed to change its marketing of Risperdal and Invega, and to cease promoting “off-label” uses of the drugs not approved by the U.S. Food and Drug Administration. Attorney General Schneiderman believes strongly that illegal promotion of drugs for off-label uses by drug companies must stop. He had this to say on the subject:

Consumers, including parents of children with serious mental disorders and vulnerable patients should be able to trust their doctor’s advice without fear that drug companies are manipulating their physician’s independent judgment. This landmark settlement holds the companies accountable for practices that put patients in danger, and serves as a warning to other pharmaceutical giants that they must play by one set of rules. It goes further by ensuring that the corporations stop rewarding doctors for prescribing certain drugs or presenting scientifically-suspect studies as sound.

Risperdal is an anti-psychotic medication used to treat mental illnesses including schizophrenia, bi-polar disorder and irritability associated with children and adolescents with Autism. Invega, which is derived from risperdone, is also marketed for the treatment of schizophrenia and bipolar mania. The complaint charged that Janssen promoted Risperdal for unapproved uses, including dementia in elderly patients, schizophrenia and bi-polar disorder in children and adolescents, and depression, anxiety, obsessive compulsive disorder, conduct disorder, post-traumatic stress disorder, and Alzheimer’s disease. The complaint also charged that Janssen concealed and misrepresented information regarding the side effects and efficacy of Risperdal thereby putting patients at risk.

There are several strong prohibitions required by the settlement. The terms of the settlement prohibit Janssen from doing any of the following:

• Making false, misleading or deceptive claims regarding Risperdal or Invega;
• Promoting Risperdal or Invega for off-label uses;
• Promoting Risperdal or Invega by highlighting use for selected symptoms instead of diagnoses;
• Misusing continuing medical education (CME) programs to market Risperdal or Invega;
• Awarding grants to Health Care Professionals (HCPs) based on their prescribing habits; and
• Presenting information and conclusions from a study that is not scientifically sound, or presenting information and conclusions in a manner that is not supported by the underlying study; Disseminating reprints containing off-label usage information.

In addition to the above prohibitions, there are several positive aspects of the settlement which will be good for the public. The settlement also requires Janssen to:

• Report clinical research results regarding Risperdal or Invega in an accurate, objective and balanced manner;

III. DRUG MANUFACTURERS FRAUD LITIGATION

APPELLATE COURT UPHOLDS $257.7 MILLION JURY VERDICT

Louisiana’s 3rd Circuit Court of Appeals has upheld a $257.7 million jury verdict in a lawsuit brought by Attorney General Buddy Caldwell on behalf of the State of Louisiana against Janssen Pharmaceutical and Johnson & Johnson for defrauding the state’s Medicaid program. Louisiana sued Johnson & Johnson for serious misrepresentations regarding the drug Risperdal’s link to diabetes in order to obtain funds from Louisiana’s Medicaid program. In 2010, a jury in St. Landry Parish ordered Johnson & Johnson to pay $257.7 million to Louisiana. Attorney General Caldwell had this to say:

can show damages within the settlement’s framework will be entitled to compensation.

Our law firm has over 50 lawyers, in-house consultants and staff working full time on these claims for our clients. Aside from interpreting and explaining the 1,200 page settlement document, we work closely with trained financial professionals in preparing, and if necessary, arguing, our clients’ claims in the settlement. Importantly, claimants who accept a payment in the settlement will have a limited time to bring in all of their other covered claims. Otherwise, those covered claims will be lost forever. We are finding that a business or professional that has a business claim, such as a doctor who owns a doctor’s office, may also own a beachfront condo, which would also be a property claim under the settlement. Those are two separate claims. It’s very important to get professional advice on how to proceed with claims covered by the settlement. It should be noted that there is no aggregate property claim under the settlement. Those who commit Medicaid fraud.

Insurance Journal
• Disclose on its website a searchable listing of all HCPs and related entities who or which received any payments directly or indirectly from Janssen;

• Provide clear and conspicuous disclosure of the risks associated with the use of Risperdal or Invega in all of its promotional materials;

• Provide accurate, objective and scientifically balanced responses to requests for off-label usage information by doctors.


Source: Insurance Journal

COMPANY PAYS $1.8 MILLION TO SETTLE FRAUD CLAIMS IN ALABAMA

A Mississippi medical equipment company has agreed to pay nearly $1.8 million to settle claims in a 2009 whistleblower lawsuit that had been filed in a Birmingham federal court. The company was charged with cheating government insurance groups out of money for delivery of diabetic supplies to patients. Pinnacle Medical Solutions, a medical equipment company based in Southhaven, Miss., last month agreed to settle the False Claims Act lawsuit brought by two former employees.

Wendy Horne, a former reimbursement specialist for that company, was one of the employees blowing the whistle. She had been faced with the choice of reporting her allegations and suffering the consequences or keeping quiet. Fortunately, she took the right path. According to her lawsuit, soon after Horne was hired in 2007, she reported to Pinnacle management that there were fraudulent practices in the company’s handling of insurance reimbursement. At that time, she suggested the company repay the money. Pinnacle management ignored her requests and she was fired in 2009.

According to the U.S. Attorney’s Office, from September 2006 through May 2009 Pinnacle submitted false claims to Medicare and the Federal Employees Health Benefits Program for blood glucose monitoring strips and lancets that either were for more or different supplies than Pinnacle had actually shipped, for more supplies than had been ordered, or that lacked supporting documentation for the supplies. After Ms. Horne reported problems to the U.S. Department of Health and Human Services, Pinnacle made a voluntary repayment of $236,204. Under the settlement agreement, the company will re-pay an additional $1,771,522.

As a condition of the settlement, Pinnacle is also required to enter into a Corporate Integrity Agreement with the Department of Health and Human Services Office of Inspector General, under which the company will be monitored for a period of five years to ensure that in the future it complies with all federal health care program rules. But in the agreement, the company does not make an admission that it is liable and the U.S. Attorney’s office does not concede that its claims are not well founded. U.S. Attorney Joyce White Vance stated in a news release:

The resolution of this lawsuit means nearly two million taxpayer dollars that were used to reimburse false claims by Pinnacle Medical Solutions have been recovered.

Jim Barger, a lawyer with the Birmingham firm of Frohsin & Barger, represented the two whistleblowers. Jim did a very good job, both for his clients and for the U.S. Taxpayers, and he should be commended for his work. U.S. Attorney Vance and her staff should also be commended for getting involved in this case and helping to work out this settlement.

Source: Associated Press

OMNICARE AGREES TO SETTLE SUIT OVER REIMBURSEMENT CLAIMS

Omnicare Inc., a supplier of drugs to nursing homes, has agreed to settle a lawsuit claiming it paid a kickback in buying a pharmacy company. It was also claimed in the suit that Omnicare submitted false claims for reimbursement to government health insurers. U.S. District Judge John J. Tharp Jr., a federal judge in Chicago, was told that a “settlement in principle” had been reached to resolve the 2007 lawsuit by whistleblower Maureen Nehls. At press time, it was not known if the settlement had received court approval.

It was contended that Omnicare’s $25 million purchase of Total Pharmacy Services LLC in 2004 included a kickback to one of its owners, Philip Esformes, and his father, Morris. It was alleged that the payment helped Omnicare win contracts with nursing homes owned or controlled by Morris Esformes and gave the company thousands of elderly and disabled customers. It was stated that Omnicare capitalized on the illegal kickback arrangement at the heart of Total Pharmacy’s operations in a March 21 filing. As Total Pharmacy held no assets, aside from a small inventory, virtually all of the $25 million that Omnicare ultimately paid to purchase Total Pharmacy amounted to a kickback for long-term contracts. Omnicare is based in Covington, Ky. Ms. Nehls, who once worked at Total Pharmacy, is now pursuing a nursing degree.

The suit was filed in Boston under the U.S. False Claims Act. The U.S. Justice Department declined in January 2010 to join the case. It also sued under false claims laws in Illinois and Florida. On May 11, Omnicare settled a case with the Justice Department for $50 million. The agency called it the “largest controlled substance settlement in history,” and said Omnicare gave nursing home residents medicines without a prescription, with missing prescription information or without documentation. Omnicare agreed in November 2009 to pay $98 million to settle civil allegations by the U.S. government and various states that it took kickbacks from Johnson & Johnson. This case is United States of America v. Omnicare Inc., 07-cr-5777, U.S. District Court, Northern District of Illinois (Chicago).

Source: Bloomberg

IV.

PURELY POLITICAL NEWS & VIEWS

THE TWO CONVENTIONS TOLD US LOTS ABOUT THE CANDIDATES

The Democratic Convention was carefully planned, carried with precision, and had excellent speakers. It was, in my opinion, one of the best conventions ever. There were lots of good speakers, but the highlight for me was the outstanding performance by former president Bill Clinton. While he did a tremendous job explaining why President Obama should be reelected, the former president also did a skillful job—without being “nasty”—of letting the public know why Gov. Romney has no business being president. President Obama and the first lady each did extremely well in their presentations. Perhaps the best line from the convention speeches came when President Obama said he should appoint Bill Clinton as “Secretary of explaining stuff.”

Earlier in Tampa, the GOP convention was more like a country club event with very little enthusiasm or any real substance. The highlight of the convention for those on the
extreme right seems to have been Clint Eastwood’s participation, which was both weird and very sad. One of my friends who attended the convention told me there was very little real support in Tampa for their nominee, but that there was lots of hate at the convention for President Obama. That is a very sad commentary. It’s also very dangerous. It indicates that the base of the party is still dedicated to defeating the President, regardless of their considering Romney to be a weak candidate.

**THE PROSPECT OF MITT ROMNEY BECOMING PRESIDENT IS STILL A VERY SCARY THOUGHT**

In a previous issue I mentioned that the possibility of Mitt Romney being elected President of the United States was a scary thought. Recent events have convinced me that a Romney Presidency would not only be scary, it would be a total disaster. His being owned lock, stock and barrel by Billionaires such as the Koch brothers and Sheldon Aldeson should bother all Americans. But when Romney politicized the recent events in Libya, that was Exhibit A of his unfitness to be President. His public media statements before he even knew the magnitude of what had happened were ill-advised and showed a total lack of understanding of how a President should react when our country’s interests are threatened. Romney’s handling of media questions during his news conference showed a man way out of his league. He looked very much like a deer in the headlights of an oncoming 18-wheeler. Can you imagine how he—as President—would react in the event of a crisis?

Even before Romney’s remarks about 47% of the American people being free loaders, ordinary folks had to know the GOP nominee had no concern for them. Working men and women will have a very hard time voting for Mitt Romney if they have taken even a casual look at his record. Besides being the all-time champion when it comes to flip-flopping, there is nothing about Romney that makes him attractive as a candidate to American workers. In fact, he is the very worst in my recollection on issues that affect workers and the middle-class. His background shows clearly that Romney has absolutely nothing in common with a person who works for a living or who has to worry about paying monthly bills. He neither understands what they have to deal with on a daily basis, nor does he comprehend what affects them in the workplace or at home. Any persons who are in the working-class who vote for Romney would be voting against their economic and social best interests. Such a vote would have to be for another reason and in that case it would be both a sad and a wrong reason.

A candidate whose public life is one of constantly changing positions—almost daily—might still get elected to some offices, but surely not to the highest office in the free world, that being the office of President of the United States. When a candidate won’t release his tax records and hides his millions in Swiss bank accounts, his motives for such actions are justifiably put at issue in an election. It should be noted that no candidate has ever been elected President who refused to disclose his tax returns. But even that failing is not the main reason to vote against the GOP nominee. Gov. Romney’s lack of understanding of what ordinary folks have to deal with and his tax plans that would gut the middle-class are enough to push the vast majority of Americans, who might be undecided or on the fence, over into the Obama ranks.

Romney’s present position on Obamacare is most interesting. The man who had promised to repeal and replace Obamacare during the primary races now says he is only against parts of the new law and would keep most of it. He even said at an appearance in Florida on September 20th that he was proud to be the “grandfather” of Obamacare. I wonder if the recent polls showing that most Americans approve of Obamacare had anything to do with this flip-flop on a critical part of his original campaign.

Can a person who really cares about America vote for a man like Mitt Romney, who is totally out of touch with the real world in which most folks live? I can only speak for one person and I can say without reservation that the thought of Romney becoming President is a very scary thought. His performance at a fund-raiser in Florida indicating he didn’t care about 47% of the American people tells us that he is totally unfit to be President. I have no doubt that his statements are exactly how he feels about the vast majority of Americans.

**PAUL RYAN’S NOSE IS GROWING DAILY**

I didn’t know a great deal about the GOP nominee for vice president before the convention. In fact, all I knew related to his budget work in Congress. But now that Paul Ryan has been nominated and he has been put on stage, it appears he has a serious character flaw—he has a tendency to not tell the truth. The following is a list of five outright lies that Paul Ryan told when he gave his speech at the Republican National Convention. Many news outlets have reported on these misrepresentations.

- **Untruth:** President Obama is the “greatest threat” to Medicare. **Truth:** Obama didn’t make any cuts to Medicare benefits; he made cuts to provider reimbursements, to improve cost efficiency and extend the fiscal security of Medicare by eight years. According to the Medicare actuary, “[Obama’s] Affordable Care Act makes important changes to the Medicare program and substantially improves its financial outlook.” But Ryan actually does want to cut benefits. He proposed dismantling Medicare and replacing it with a voucher system, leaving millions of seniors to come up with more money to pay for care out of pocket.

- **Untruth:** President Obama didn’t save a General Motors plant in Wisconsin. **Truth:** First, Obama wasn’t even in office when the GM plant closed. Second, Obama never made a promise to save it.

- **Untruth:** President Obama ignored recommendations of a bipartisan debt commission. **Truth:** Paul Ryan actually sat on that commission. And he led Republicans in voting down the commission’s own recommendation. So the commission never gave a report to Obama, because Ryan himself voted to kill the report before it could.

- **Untruth:** President Obama is responsible for the downgrading of the U.S. Credit Rating. **Truth:** House Republicans, including Paul Ryan, held the full faith and credit of the United States hostage to try to ransom it for trillions of dollars in cuts to social programs without increasing taxes on the wealthy one dime. Standard & Poor’s said specifically, “We have changed our assumption on [revenue] because the majority of Republicans in Congress continue to resist any measure that would raise revenues.” That’s why our nation’s credit rating was downgraded.

- **Untruth:** Ryan wants to protect the “weak.” **Truth:** Ryan’s biggest feat in his political career was proposing a budget with dramatic cuts to programs benefiting the poor. He’d cut Medicaid by one third, take away health care insurance from 30 million Americans, and cut Pell Grants for 1 million students. All so that he could give more tax breaks to the rich.

Since his acceptance speech at the convention, Ryan has continued to play fast and loose with the truth. For example, he wasn’t even truthful about his marathon time. I don’t believe the American people want a person as vice president who has a real problem with telling the truth.
V. COURT WATCH

UNJUSTIFIED ATTACKS AGAINST FLORIDA SUPREME COURT JUSTICES

Corporate America is working hard to control the judiciary in every state throughout the country. That’s a sad state of affairs. Recent events in Florida and Iowa, and in other states, should alarm folks who believe all courts should be open, independent and fair to all litigants. I strongly believe that the independence of the judiciary is a goal worth fighting for. The attacks against three Supreme Court justices in Florida are completely unjustified. Those justices are being opposed for purely political reasons, which puts fairness and impartiality in jeopardy. That shouldn’t be tolerated.

On September 21st, the Republican Party of the Florida Executive Committee, with the strong encouragement of Republican Gov. Rick Scott, voted unanimously to actively oppose the merit retention of Florida Supreme Court Justices Fred Lewis, Barbara Pariente and Peggy Quince. A few days later—and not by chance—Americans for Prosperity, the conservative activist group affiliated with the Koch brothers, announced a political campaign to attack the judicial voting records of the three justices. Millions of dollars will now be made available in the sunshine state to influence the removal of three highly respected Supreme Court justices whose recent approval ratings by the Florida Bar poll of lawyers were 92%, 89% and 90% respectively. Lawyers in Florida are totally familiar with the job performance of the justices.

Florida, like Iowa, faces a direct and unjustified attack against Supreme Court justices standing for merit retention. The sole criterion for retention is supposed to be whether the justices have remained impartial, ethical and qualified, not whether the Governor disagrees with some of their opinions. Florida’s appellate court merit retention system and the judicial appointment system were set up by a prior governor and by a constitutional amendment following the serious questions about favoritism by some members of the Florida Supreme Court. In the succeeding years, under merit selection and retention, there have been no such issues. The system has worked very well.

The attacks on the three justices thus far have been over a “right to counsel reversal of conviction” in an old criminal murder case. The ruling actually occurred before these justices last appeared, and were retained, on the merit retention ballot. It was said that this attack on the justices is following the approach used in the infamous “Willie Horton” ads.

If successful, the campaign would eliminate the only two women on the court, and eliminate Justice Lewis, who created the highly praised Justice Teaching civics education program. Friends in Florida say the real reason these justices are being opposed is purely political. They participated in a ruling against Gov. Scott, who attempted to seize Florida’s rule-making power by Executive Order shortly after he took office. The justices participated in a ruling against a ballot issue misleadingly drafted by the Republican controlled legislature. The Court has cases pending before it in which the Governor’s agenda of limiting public pensions and privatizing prisons is under review. Gov. Scott and the Republican Party of Florida are attempting to intimidate the court on matters before it, and attempting to remove those justices and stack the court to protect their agenda.

These are dangerous times for the constitutional principle of separation of powers if the fairness and impartiality of the courts can be overcome by a large fund of out of state money devoted to slandering the real records of supreme court justices in Florida. The Internet addresses for Defend Justice from Politics, an organization devoted to stopping the political power grab launched in Florida, and the addresses for each of the Supreme Court Justices merit retention campaigns are www.defendjusticefl.com; www.voteyesjusticepariente.com; www.voteyesjusticequince.com; and www.voteyesjusticelewis.com.

I encourage our readers who believe in a fair and independent judiciary to get involved in this fight. It’s really more than just a “Florida battle.” The outcome there will affect all states where judges are still elected. I suggest you contact Michael T. Callahan, a lawyer with Callahan & Martinez in St. Petersburg, Florida, and Wayne Hogan, who is with the Terrell Hogan firm in Jacksonville, Florida, if you need more information on the situation in Florida. They would be happy to discuss this matter with you. The vote will be on November 6th and it’s important for all Floridians to vote “yes” for each justice.

SUPREME COURT TO REVIEW CLASS-ACTION CASE

The U.S. Supreme Court agreed last month to consider the constitutionality of a legal tactic now being used that should keep class-action lawsuits in state courts. The Court will review this case in the term that started on October 1st. At issue is whether a company can remove a case from state court to federal court when the Plaintiff signs a binding “stipulation” limiting the amount sought in the case. The Class Action Fairness Act of 2005 lets companies move cases to federal court from state court provided that more than $5 million is at stake and they are not incorporated or based in the state where the case was filed.

In the case accepted for review, Standard Fire Insurance Company had been sued in an Arkansas state court over alleged underpayment of homeowner claims. The Hartford, Conn.-based insurer said the named Plaintiff, Greg Knowles, whose house sustained hail damage, signed a stipulation limiting damages and binding all potential class members. An Arkansas federal judge approved the stipulation, saying the Plaintiff had shown to a “legal certainty” that damages for all class members would not exceed $5 million. The 8th U.S. Circuit Court of Appeals in St. Louis later upheld that decision.

In its appeal, Standard Life said the lower courts ignored the Supreme Court’s 2011 decision in Smith v. Bayer Corp., which said a named Plaintiff seeking class-action status cannot, without court approval, bind others who could join that class. A decision in the case is expected in the coming Supreme Court term, which ends next June. The case is Standard Fire Insurance Co. v. Knowles, U.S. Supreme Court, No. 11-1450.

Source: Insurance Journal

ARTHUR MILLER DISCUSSES THE FEDERAL CIVIL JURY SYSTEM

Professor Arthur R. Miller, a professor at New York University, said in a recent speech that “federal trial by jury is being eviscerated by big business and the U.S. Supreme Court.” According to Professor Miller, who spent over 30 years at Harvard, before coming to his present position, the Supreme Court “seems to have a thumb on the justice scale favoring Defendants that has had significant consequences on access to the courts.” In his presentation, delivered to the American Association for Justice’s annual meeting in Chicago last month, this well-respected gentleman said that he’s grown “increasingly concerned about procedural changes that have resulted in the earlier and earlier disposition of litigation, often eviscerating a citizen’s opportunity for a meaningful merit adjudication of his or her grievance.” In layman’s language, that simply means he believes that the scales of justice in the federal system seem to be weighed in favor of big business.

www.BeasleyAllen.com
Professor Miller considers trial before a jury the “civil litigation gold standard.” He is absolutely correct in that assessment. That is why our forefathers felt so strongly about the American jury that they guaranteed the right to trial by jury in the 7th Amendment to the U.S. Constitution. Professor Miller made this observation:

There are hardly any federal civil trials—let alone jury trials. Indeed, a contemporary cliché refers to “the vanishing trial.” Many reasons have been offered, but, in my view, one of the most significant is that judges are terminating cases earlier and earlier. It has been a gradual, almost invisible process. The acceleration of case disposition has come about because courts have erected a sequence of procedural stop signs during the past 25 years.

It is rather interesting that a federal judge in Alabama, speaking to a group of lawyers in Montgomery recently, said basically the same thing. Judge Mark Fuller indicated that summary judgment is granted in over 75% of the civil cases filed in the Middle District of Alabama. That is alarming to say the least.

JUDGE RAKOFF BACKED BY TEAM OF LAW PROFESSORS

The Securities and Exchange Commission, Citigroup, Wall Street, the big banks, and the vast majority of the corporate crime defense bar are all in a case on the same side in what has been billed as “the corporate crime fight of the century.” Having this group together and on the same side is newsworthy in itself. On the other side of the suit—all alone—had been U.S. District Court Judge Jed Rakoff. But that is changing. The Second Circuit Court of Appeals appointed Rusty Wing, a partner in the New York City firm of Lanker Siffert & Wohl, to brief the case because both the SEC and Citigroup were taking the same side on the issue. Then—sort of like the cavalry—along came a team of 19 securities law professors including University of Cincinnati Law Professor Barbara Black, Columbia Law Professor John Coffee, Cornell Law Professor Lynn Stout, and Duke Law Professor James Cox, to join Judge Rakoff and the court-appointed lawyer.

To put things in perspective, let’s take a look at what brought this about. Last year, Judge Rakoff rejected a proposed settlement between the Securities and Exchange Commission and Citigroup, ruling that the settlement was “neither reasonable, nor fair, nor adequate, nor in the public interest.” Earlier this year, the Second Circuit rebuked Judge Rakoff, saying that “it is not the proper function of federal courts to dictate policy to executive administrative agencies.”

It was pointed out in a brief by Rusty Wing, a veteran and well-respected lawyer, that the proposed $95 million penalty against Citigroup was “a small fraction of the $535 million penalty imposed for very similar conduct in the Goldman case, and the proposed penalty was based on Citigroup’s purported net profit, not the allowable gross revenue noticeably missing from the complaint.” The team of law professors have concerns about the SEC’s “practice of settling enforcement actions alleging serious fraud without any acknowledgment of facts, on the basis of a pro forma obey the law injunction, a commitment to undertake modest remedial measures and insubstantial financial penalties.” The professors added:

The prevalence of this practice is precisely why federal district courts must have discretion, when reviewing consent judgments between a government agency and a private party that include an injunction, to take into account the public interest.

They argued that the question before the Second Circuit is whether Judge Rakoff “may refuse to approve a proposed consent judg-

COURT UPHOLDS $10 MILLION PUNITIVE DAMAGES IN DWI DEATH

The New Mexico Court of Appeals has upheld $10 million in punitive damages for the family and estate of an Albuquerque man killed by a drunken driver in 2003. The Court ruled last month that there was enough evidence to support the full amount of damages awarded against the parent company of an Albuquerque convenience store known as Alameda Meteor. The case arose out of a crash involving a store employee. A vehicle driven by Dean Durand, a store maintenance worker, crashed into Daniel Gutierrez, who was stopped on his motorcycle at an intersection. Gutierrez later died from his injuries.

The Appeals Court said Meteor knew the employee drank on the job and had actually bought alcohol at the store on the day of the accident. The Court, in its opinion, said the store’s actions “demonstrated a reckless disregard for the health and safety of others.” There was no claim that the compensatory damages of $4.5 million were excessive. Therefore, those damages were not an issue in the ruling. But the full amount of punitive damages, which was at issue, was upheld.

Source: Insurance Journal

COURT REVERSES LANDMARK KATRINA RULING ON ARMY CORPS LIABILITY

A federal appeals court reversed itself last month, throwing out a judge’s landmark ruling that the Army Corps of Engineers was liable for billions of dollars in Hurricane Katrina flood damage that property owners blame on the corps’ maintenance of a New Orleans shipping channel. The same three-judge panel from the 5th U.S. Circuit Court of Appeals had ruled for the plaintiffs earlier this year, but withdrew that decision and replaced it with a new ruling which is in the federal government’s favor. The panel’s new opinion says the corps is completely insulated from liability by a provision of the

Source: Corporate Crime Reporter

Federal Tort Claims Act called the “discretionary-function exception.”
Source: Insurance Journal

VI. THE NATIONAL SCENE

LAWSUIT SEeks To Change How NCAA ATHLETES ARE COMPENSATED

Lawyers representing former and current college football and men’s basketball players in an anti-trust lawsuit indicated for the first time last month that they will seek to collect billions of dollars in damages from the NCAA and its Division I schools for using the athletes’ images, names and likenesses. Additionally, the suit will seek to fundamentally change how athletes are compensated for playing these sports in college. In seeking certification of the lawsuit in U.S. District Court in California as a class action, a motion was filed in which it was stated that while monetary damages were being sought on behalf of former athletes, compensation wasn’t being sought for current student-athletes “while they maintain their eligibility.” But rather the suit seeks to put monies generated by the licensing and sale of class members’ names, images and likenesses in trust until the current athletes end their college playing careers.

The suit, initially filed in May 2009, is against the NCAA, video-game maker Electronic Arts, and the nation’s leading collegiate trademark licensing and marketing firm, Collegiate Licensing Co. The named Plaintiffs in the suit include former basketball stars Ed O’Bannon, Oscar Robertson and Bill Russell. The Plaintiffs allege that the Defendants violated anti-trust law by conspiring to fix at zero the amount of compensation athletes can receive for the use of their names, images and likenesses in products or media while they are in school and by requiring athletes to sign forms under which they relinquish in perpetuity all rights pertaining to the use of the names, images and likenesses in ways including TV contracts, rebroadcasts of games, and video game, jersey and other apparel sales.

Under anti-trust law, the statute of limitations on damages is four years back from the date of filing. The athletes’ lawyers have been seeking to collect information about the revenues of the NCAA and Division I schools and conferences from TV contracts and from the licensing and royalties related to video-game sales from 2005 to present. Those revenues are said to be in the billions. This recent filing references an accompanying scaled report from one of the Plaintiffs’ experts, Roger Noll, an economics professor emeritus at Stanford who has written on the business of sports. He has provided a method of “determining how this revenue would be allocated between colleges and student-athletes in the absence of the restrictions that the NCAA imposes.”

The method set out by the expert, according to the filing, “is based on a 50-50 split for telecasts and a one-third split for video games, based on recognized economic principles, examples from professional sports, and examples from music artists’ licensing.” It then entails “equal allocations among all members of a team in a given year, and these team members are then further divided according to whether they were current or former players at the time that the revenue was generated.” On September 1st, the NCAA issued a statement from Donald Remy, the association’s executive vice president and general counsel, which said:

The NCAA does not make any attempt to prevent former student-athletes from selling or licensing their ‘college likeness,’ nor has it ever done so. Unable to prove their original claims regarding former student-athletes, plaintiffs have now abandoned those claims and are attempting to assert new claims on behalf of current student-athletes. Unfortunately, this about face runs them smack into a very old argument, and one that the NCAA has defeated in court many times…. We are confident that plaintiffs will find no more success in this case than they have in past cases.

It will be most interesting to see how this case comes out. If the plaintiffs are successful, without any doubt it will change the face of college sports forever. I have been a little surprised that this litigation hasn’t received more media attention.
Source: USA Today

AMERICAN AND UNITED FACE TRIAL OVER 9-11 TOWERS DESTRUCTION

It appears that AMR Corp.’s American Airlines and United Continental Holdings Inc. will go to trial in a federal court over negligence claims tied to the hijacking of jetliners used in the Sept. 11, 2001, terrorist attacks. As all Americans know, about 3,000 people were killed in New York, Washington and Pennsylvania. World Trade Center Properties LLC, which owned the twin skyscrapers in lower Manhattan destroyed in the attacks, sued the airlines in 2008 alleging negligence against the carriers for allowing terrorists to board and hijack the planes that were flown into the buildings. U.S. District Judge Alvin Hellerstein in Manhattan ruled last month that a trial is required.

As we know all too well, on the day of the attacks, two planes were hijacked and flown into the World Trade Center. American Airlines Flight 11 crashed into the North Tower of the World Trade Center. Minutes later, United Airlines Flight 175 crashed into the South Tower. After the attacks, the owners sued insurers, eventually settling for $4.09 billion, the judge said. World Trade Center Properties sued the airlines seeking $8.4 billion, or the estimated cost of replacing the two towers as well as claims of negligence, the judge said in yesterday’s ruling. Judge Hellerstein said he had previously rejected the airlines’ bid for summary judgment.

Judge Hellerstein also limited the owners’ recovery and determined its destroyed lease on the day of the terrorist attacks to be worth $2.805 billion, the price the World Trade Center Properties agreed to pay the Port Authority of New York and New Jersey for the lease a few months before the 2001 attacks, he said. The judge rejected the air carriers’ argument that since the buildings’ owners recovered $4.09 billion from insurance, World Trade Center Properties couldn’t also recover the $2.8 billion sought for the lease. Judge Hellerstein said in his ruling: “On this record, before trial, I am not able to make such findings.” The case is In re September 11 Litigation, 21-MC-101, U.S. District Court, Southern District of New York (Manhattan).
Source: Bloomberg
The apology was made by Stock in the West German city of Stolberg, where the company is based, during the unveiling of a bronze statue symbolizing a child born without limbs because of thalidomide. The drug, which was sold under the brand name Contergan in Germany, was given to pregnant women to combat morning sickness, but it led to a wave of birth defects in Europe, Australia, Canada and Japan. It should be noted that Thalidomide was never approved for sale in the United States. Grunenthal settled a lawsuit in Germany in 1972—11 years after stopping sales of the drug—and at the time voiced its regret to the victims. But for decades the company refused to admit liability, saying it had conducted all necessary clinical trial required at the time.

Sadly, the company is now reiterating that very same position, insisting that “the suffering that occurred with Contergan 50 years ago happened in a world that is completely different from today.” He says that the pharmaceutical industry learned a valuable lesson from the incident. Stock now claims that when it developed Contergan, Grunenthal “acted on the basis of the available scientific knowledge at the time and met all the industry standards for the testing of new drugs that were known in the 1950s and 1960s.” A German victims group, with justification, rejected the company’s apology as too little, too late. Ilonka Stebritz, a spokeswoman for the Association of Contergan Victims, had this to say:

The apology as such doesn’t help us deal with our everyday life. What we need are other things.

She pointed out that while the 1972 settlement in Germany led to the creation of a €150 million fund for some 3,000 German victims, it was inadequate to compensate the victims. With a normal life expectancy of 85 years the money simply wasn’t enough. In many other countries, victims are still waiting for compensation from Grunenthal or its local distributors. In July, an Australian woman was awarded a multimillion dollar verdict from UK company Diageo Plc, the local distributor of thalidomide. In that case, Lynette Rowe, now 50, was born without arms and legs after her mother took thalidomide, made by Grunenthal, for a month while pregnant. She had to work for a very long time for justice.

Incidently, Thalidomide is still sold today, but as a treatment for multiple myeloma and leprosy. I have to wonder why this company—knowing the misery it caused—did what it did 50 years later. Maybe I am missing something here.

Source: NBC News
**Sinclair Oil To Pay $3.8 Million In Penalties**

Two units of Sinclair Oil Corporation will pay $3.8 million in penalties to settle violations of air pollution limits established in a 2008 consent decree at refineries in Casper and Sinclair, Wyo. The two units, Sinclair Casper Refining Co. and Sinclair Wyoming Refining Co., will pay penalties totaling $3,844,000. They will also spend approximately $10.5 million on additional pollution control equipment and other projects to resolve the charges against them. Under the settlement the Sinclair companies will be required to reduce emissions of nitrogen oxides (NOx), sulfur dioxide (SO2) and particulate matter by approximately 24,385 and 59 tons per year, respectively.

The violations are from Sinclair’s failure to meet the terms of the 2008 consent decree, including exceeding NOx emissions limits at the Casper and Sinclair refineries and failing to comply with requirements to install, operate and maintain a flare gas recovery system at the Sinclair refinery, resulting in excess emissions of SO2. The problems will be addressed by installing and operating a selective catalytic reduction system to control NOx emissions and by upgrading the flare gas recovery system to meet SO2 emissions limits. Sinclair will also complete a project to provide road paving at its Casper refinery that will reduce particulate matter emissions by an additional 59 tons per year and reduce fuel oil burning at the Casper refinery from the existing 188 tons per year limit to no more than 95 tons per year.

**Source:** The Corporate Crime Reporter

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**Pacific Health To Pay $16.5 Million To Settle Kickback Case**

Pacific Health Corporation (PHC) will pay $16.5 million to settle charges that it engaged in an illegal kickback scheme. The civil settlement resolves a U.S. and state investigation of three PHC-affiliated hospitals for engaging in a scheme in which the hospitals paid recruiters to deliver homeless Medicare or Medi-Cal beneficiaries by ambulance from the “Skid Row” area in Los Angeles to the hospitals for treatment that was medically unnecessary. The hospitals, Los Angeles Metropolitan Medical Center (LA Metro); Newport Specialty Hospital (formerly known as Tustin Hospital and Medical Center); and Anaheim General Hospital, would then bill Medicare and Medi-Cal for these services, violating rules that permit payment only for necessary treatment.

A subsidiary of PHC, Los Angeles Doctors Hospital Inc., will plead guilty to a federal conspiracy charge arising out of the illegal kickback scheme. The settlement arises out of the same investigation which in 2010 resulted in consent judgments against Intercare Health Systems Inc. (formerly doing business as City of Angels Medical Center) and its former owners Robert Bourseau and Rudra Sabaratnam. That was for a similar illegal kickback scheme in Los Angeles. Several individuals have pled guilty in connection with the scheme, including Bourseau and Sabaratnam, who were sentenced to three years and one month, and two years in prison, respectively, for their part in the scheme.

**Source:** The Corporate Crime Reporter

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**Charity Scam By Telemarketing Company Revealed**

It was reported recently that a telemarketing company that solicits donations for several big-name charities is keeping most of the money raised and systematically lying about it to the public. An investigation, done by Bloomberg Markets Magazine, learned of this scam. The company, InfoCision, instructs its employees to say, when asked, that at least 70 percent of the money that they raise for the American Cancer Society and American Diabetes Association will go toward charity, Bloomberg Markets Magazine reports. But these charities, which approved the telemarketing scripts, had agreed to give InfoCision more than half of the money raised. In fact, InfoCision kept all the money raised and systematically lied to nonwhite borrowers than to whites with similar financial backgrounds. Nearly all of the settlement money to be paid by the company will go to 600 black and Hispanic borrowers who federal authorities said paid unfairly high rates from 2005 through 2009. The settlement also included a fine of $55,000, the maximum under the federal Fair Housing Act.

The mortgage company, which concentrates on the New York, New Jersey and Florida markets, agreed to develop new policies to reduce the discretion of its loan officers in deciding fees and rates. Preet Bharara, the United States Attorney in Manhattan, said that with this settlement “the hundreds of victims of lending discrimination committed by GFI will be made whole.”

GFI says on its Web site that it originates “nonprime” loans, which are more expensive in objective rate-setting criteria. It should be noted that the loans in question were not subprime loans, which are more expensive loans created for people whose credit histories make obtaining a traditional loan unlikely, and that makes the conduct even more horrendous.

GFI, which sells the loans it originates, was one of the first mortgage lenders in New York to venture into subprime loans, long before that category of mortgage lending came to be blamed for the financial collapse of 2008. The GFI settlement comes after several larger lenders settled with the Justice Department over similar claims, including a $175 million agreement by Wells Fargo that was announced in July. Josh Zinner, who monitors lending bias in the city for the Neighborhood Economic Development Advocacy Project, pointed out that “(a)ll of this discriminatory lending did not happen in a vacuum.” He added that there was “a huge pattern of this across a whole bunch of mortgage companies and banks.”

**Source:** New York Times

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**$3.5 Million Settlement in Mortgage Bias Case**

GFI Mortgage Bankers has agreed to pay more than $3.5 million to settle allegations by federal prosecutors that it charged higher interest rates and fees on mortgages to nonwhite borrowers than to whites with similar financial backgrounds. Nearly all of the settlement money to be paid by the company will go to 600 black and Hispanic borrowers who federal authorities said paid unfairly high rates from 2005 through 2009. The settlement also included a fine of $55,000, the maximum under the federal Fair Housing Act.

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You can read Bloomberg Markets Magazine's full investigation at http://www.
Two of the top ten False Claims Act settlements of all time involved cases filed against HCA Inc.—one in December 2000 for $731 million and one in June 2003 for $631 million. You would think HCA had learned a lesson, but now HCA is back at it again. HCA, one of the nation’s largest for-profit hospital chains, has agreed to pay $16.5 million to settle claims that it violated both the False Claims Act and the Stark Statute. Federal officials alleged that during 2007, HCA, through its subsidiaries Parkridge Medical Center, located in Chattanooga, Tenn., and HCA Physician Services (HCAPS), headquartered in Nashville, Tenn., entered into a series of financial transactions with a physician group, Diagnostic Associates of Chattanooga, through which it provided financial benefits intended to induce the physician members of Diagnostic to refer patients to HCA facilities.

These financial transactions included rental payments for office space leased from Diagnostic at a rate well in excess of fair market value in order to help Diagnostic meet their mortgage obligations and a release of Diagnostic members from a separate lease obligation. The Stark Statute restricts financial relationships that hospitals may enter into with physicians who potentially may refer patients to them. Federal law prohibits the payment of medical claims that result from such prohibited relationships. As part of the civil settlement, HCA will pay $16.5 million to the United States and the state of Tennessee, with the federal portion representing $15,693,000 of the settlement amount. The whistleblower will receive an 18.5 percent share for bringing the lawsuit.

Source: Corporate Crime Reporter

**CALIFORNIA HEALTH PLAN PAYS $319 MILLION TO SETTLE FALSE CLAIMS CHARGE**

A Long Beach, Calif-based managed care health plan has paid $319.85 million to resolve allegations that it received overpayments from Medi-Cal. SCAN Health Plan in August paid $129,380,632 to the federal government and $190,470,301 to the State of California to resolve an investigation into overpayments for services provided to long-term-care patients. Medi-Cal, which is California’s Medicaid program, is jointly funded by the federal government and the State of California.

A federal government’s investigation found that the State of California paid SCAN rates for long-term-care-certified (LTC) patients that were over the legal ceiling set by a California statute and regulations. The overpayments to SCAN resulted from two actuarial errors made during the State of California’s rate-setting process. On August 10, 2012, SCAN also paid an additional $3.82 million to the federal government—bringing the total settlement in this matter to $323,670,650—to settle a whistleblower lawsuit’s allegations that the company unlawfully caused an inflation of some of its patients’ “risk adjustment scores,” which then inflated Medicare payments to the company.

Under Medicare Part C’s managed care system, physicians for patients enrolled in a Medicare Advantage health plan report patients’ diagnosis codes to the plan, which then reports the codes to the federal Centers for Medicare and Medicaid Services (CMS), which then uses the codes to develop risk adjustment scores for the patients. Risk adjustment scores measure the health of patients and are used by Medicare Part C to determine how much to pay the plan as a monthly capitated rate for each patient. A former SCAN employee, James M. Swoben, filed a federal whistleblower lawsuit in United States District Court in Los Angeles in July 2009.

The complaint alleged that SCAN improperly submitted diagnosis codes to CMS that led to higher risk adjustment scores, resulting in higher monthly capitated rates to SCAN. It was alleged further that after SCAN had reported to CMS the diagnosis codes for certain patients with severe illnesses, SCAN used outside companies to review the medical charts for those patients with the hope of finding additional diagnosis codes to report. While this practice was not illegal, it was alleged that in substituting the outside companies’ later judgment on diagnosis codes for the earlier judgment of the patients’ physicians, SCAN should have told CMS that some of the original diagnosis codes might need to be deleted. According to the lawsuit, SCAN, in order to increase risk adjustment scores, did not tell CMS that any of the original diagnosis codes might need to be deleted.

Source: The Corporate Crime Reporter

**WHISTLEBLOWER AWARDED $104 MILLION**

The Internal Revenue Service has awarded $104 million to a former banker-turned-whistleblower. Bradley Birkenfield, a former banker at the Swiss bank UBS, provided federal investigators with evidence detailing how Switzerland’s largest bank helped its American clients evade U.S. Taxes. Birkenfield, a Massachusetts native who lived in Switzerland, approached the Justice Department in 2007 to reveal what he knew about a wide-ranging tax-fraud scheme perpetrated by UBS. However, when the U.S. government declined to grant him immunity from prosecution, Birkenfield took the evidence he had to Congress and other regulators. In 2008, while in the U.S. To speak to government regulators, Birkenfield was arrested for personally assisting a client in evading taxes while he was employed at UBS.

Although Birkenfield pleaded guilty in 2008 to helping his former clients avoid taxes, what was unknown until now is that he also exposed to the government widespread tax fraud at UBS. The government used the information provided by Birkenfield to negotiate a deferred prosecution agreement resulting in UBS having to pay $780 million in criminal fines. As part of the settlement agreement, UBS admitted to helping its U.S. clients cheat on their taxes and it turned over the names of nearly 5,000 clients suspected of tax evasion.

In light of the information he provided detailing and exposing the tax evasion scheme, Birkenfield was awarded $104 million as a result of a little-known federal statute. The IRS Whistleblower Reform Law, part of the Tax Relief and Health Care Act of 2006, provides financial rewards for whistleblowers who help the IRS recoup unpaid taxes. Under the law, an award worth between 15-30% of the total proceeds that the IRS collects could be paid, if the IRS recovers unpaid taxes based on information provided by the whistleblower. These awards will be paid when the amount of unpaid taxes, penalties and interest identified by the whistleblower exceed $2 million. If the taxpayer is an individual, then the taxpayer’s income must exceed $200,000.

The $104 million paid to Birkenfield is believed to be the largest award ever paid under the IRS Whistleblower Reform Law. In announcing the award, a government
spokeswoman stated, “the IRS believes that the whistleblower statute provides a valuable tool to combat tax non-compliance, and this award reflects our commitment to the law.” In addition, Birkenfield’s lawyers, Stephen Kohn and Dean Zerbe, stated, “the IRS today sent 104 million messages to whistleblowers around the world—that there is now a safe and secure way to report tax fraud and that the IRS is now paying awards.”

Lawyers in our firm routinely pursue whistleblower litigation on behalf of our clients. For more information, contact Larry Golston at 1-800-898-2034 or visit our website at www.beasleyallen.com.

Sources: Washington Post and ABC News

ALCATEL-LUCENT UNIT TO PAY $4.2 MILLION TO SETTLE FALSE CLAIMS CHARGE

Lucent Technologies World Services (LTWSI), which is a subsidiary of Alcatel-Lucent, will pay $4.2 million to settle False Claims Act allegations that it submitted misleading testing certifications to the Army in connection with the design, construction and modernization of Iraq’s emergency communications system. Alcatel-Lucent is a global telecommunications provider. In March 2004, the U.S. Army awarded LTWSI a $250 million contract to build the Advanced First Responder Network (AFRN), a 911 emergency response and first responder communications system designed to enable Iraqis to summon police, fire and medical assistance in emergencies.

The settlement resolves allegations that LTWSI submitted claims for payment for equipment, services and contract performance award fees under the AFRN contract based upon inaccurate certifications that LTWSI, between January and July 2005, had performed and successfully completed certain testing of AFRN radio transmission sites, as well as validation of the network as a whole, to ensure the network’s proper operation prior to acceptance by the United States and transfer to the Iraqi government. The settlement ends a whistleblower suit filed under the False Claims Act in December 2008, by Geoffrey Willson, LTWSI’s former contract manager for the project.

Source: Corporate Crime Reporter

FDIC SAYS WALL STREET DEFRAUDED COLONIAL

The Federal Deposit Insurance Corp. has filed lawsuit in the Circuit Court of Montgomery County, Ala., and in the U.S. District Court in New York, against eight of the largest international investment banks. Securities fraud that contributed to the 2009 collapse of Colonial BancGroup was alleged in the suits. Named as Defendants in the complaints filed by the FDIC are Bank of America, Merrill Lynch, Citicorp Mortgage Securities, Citigroup Financial Products, Credit Suisse Securities (USA) LLC, J.P. Morgan Securities, RBS Securities, UBS Securities, HSBC Securities and a host of mortgage servicing companies, including Countrywide.

The suits allege that 31 mortgage-backed securities sold to Colonial were sold in criminal violation of the Alabama Securities Act and the U.S. Securities Act of 1933. The complaints say the Defendants lied about the credit quality of the loans that backed the securities, including loan-to-value ratios and the number of properties that were not primary residences. The 31 securities were said to be worth a total of $816 million. The FDIC says it can prove that more than 50 percent of the mortgages that backed them were fraudulently represented.

The three suits together call for damages of not less than $425.5 million. Colonial BancGroup, then the second largest bank in Alabama, was put into receivership by the FDIC in 2009, shut down with $25.4 billion in assets. It is the third largest bank failure in the U.S. since 2008, the first full year of the financial crisis.

Source: Businessalabama.com

TYCO UNIT PLEADS GUILTY TO FCPA VIOLATIONS

A unit of Tyco International has pleaded guilty to conspiring to violate of the Foreign Corrupt Practices Act (FCPA). But Tyco the parent was granted a non prosecution agreement. Tyco will pay more than $26 million to resolve the charges. Tyco, based in Switzerland, manufactures and sells products related to security, fire protection and energy. The company will pay a $13.68 million penalty for falsifying books and records in connection with payments by its subsidiaries to government officials in various countries in order to obtain and retain business. Tyco Valves & Controls Middle East Inc.—an indirect, wholly owned subsidiary of Tyco that sold and marketed valves and other industrial equipment throughout the Middle East for the oil, gas, petrochemical, commercial construction, water treatment and desalination industries—pled guilty to conspiring to violate the anti-bribery provisions of the FCPA. The company paid bribes to officials employed by Saudi Aramco, an oil and gas company controlled and managed by the government of the Kingdom of Saudi Arabia, in order to obtain contracts with Saudi Aramco.

At the conclusion of the plea proceeding, the court ordered TVC ME to pay a $2.1 million fine, which is included as part of the $13.68 million penalty. The Department entered into a non-prosecution agreement with Tyco. According to the NPA, a number of Tyco’s subsidiaries made payments, both directly and indirectly, to government officials in order to obtain and retain business with private and state-owned entities, and falsely described the payments in Tyco’s corporate books, records and accounts as legitimate charges.

From 1999 to 2009, Tyco knowingly conspired to falsify its books and records in connection with these payments. In addition to the monetary penalty, Tyco and TVC ME also agreed to cooperate with the department, to report periodically to the department concerning the companies’ compliance efforts, and to continue to implement an enhanced compliance program and internal controls designed to prevent and detect FCPA violations. In the parallel civil proceedings, Tyco consented with the SEC to a proposed final judgment that orders the company to pay $10,564,992 in disgorgement and $2,566,517 in prejudgment interest—which, together with the Department of Justice penalty, totals more than $26 million.

Source: Corporate Crime Reporter

CORPORATE EXECUTIVES CAN BE PUNISHED FOR CORPORATE WRONGDOING

When a large corporation intentionally crosses the line and violates the law, consequences should always accompany that sort of thing. It should be noted that corporations are run by officers and directors and they have potential liability when they allow the law to be violated. There is a rule of law, known as the corporate officer doctrine, that all officers and directors should be aware of. Let’s look at a case in point. The executives at Purdue Pharma were convicted under that doctrine for a misdemeanor misbranding crime. While the company itself was convicted of a felony—misbranding the painkiller OxyContin—what was the collateral consequence for the executives? The Secretary of the Department of Health and Human Services excluded them from federally-funded health care programs for 12 years. In my opinion, that was a good decision and was authorized by law.

The executives argued to the DC Court of Appeals that the Secretary didn’t have the authority to do what she did, and that even if she did, 12 years was too long. The Court of Appeals, in a 2-1 ruling, held that the Secre-
tary of Health and Human Services was within her authority in excluding three Purdue Pharma executives for 12 years. The Secretary has the authority to impose an exclusionary order for a violation that includes misbranding of drugs, according to the Court. I believe Congress clearly intended for the Secretary to be able to exclude a corporate official who engaged in behavior that violates the law. It will be interesting to see how this case winds up.

Source: The Corporate Crime Reporter

THE CORPORATE DEATH PENALTY IS A RARE BIRD

We have written over the past several months about the massive amounts of corporate wrongdoing in the U.S., including fraudulent conduct. That fraud, if anything, has increased in recent months. Contrary to what some in Corporate America say, a corporate death penalty is very rare, even considering that much of the corporate wrongdoing involves repeat offenders. The Department of Justice, instead of forcing a corporation to plead guilty, in most cases will enter into a deferred and non-prosecution agreement with the company. In those cases, major American corporate wrongdoers pay the fines and penalties imposed and don’t even miss a beat. They keep right on doing what got them in trouble in the first place. There are a number of reasons given for why there is no corporate death penalty, including the following:

• A criminal conviction would risk putting the accused company out of business;
• The collateral consequences of a conviction are too great;
• Convicted companies would go the way of Arthur Andersen;
• Shareholders would lose millions of dollars in the event of a death penalty; and
• Thousands of workers would then be thrown out of work.

I can understand giving an offending corporation a break on its first offense, but find it hard to understand why there isn’t a tougher approach for repeat offenders. The belief apparently is that a corporate criminal conviction is the equivalent of a corporate death penalty. But let’s take a look at the record.

Actually, according to a report in The Corporate Crime Reporter, there were 51 publicly-traded companies that were convicted of a criminal offense between 2001 and 2010. Of those 51 companies, 36 are still in business. In fact they are still listed on the same stock exchange that they were listed on at the time of their conviction. None of the corporations have undergone a merger, acquisition, or name change. Eleven companies merged with or were acquired by another company under favorable circumstances that did not implicate a business failure.

It was reported that only four of the 51 companies “suffered fates that could reasonably be described as business failures.” But none of those four “could reasonably be said to have resulted from the companies’ convictions.” Gabriel Markoff, a graduate of the University of Texas law school, and now a law clerk to a federal judge, did a tremendous amount of research on this subject. Hopefully, his efforts will find a way to get the information into print. He wrote a paper entitled “Arthur Anderson and the Myth of the Corporate Death Penalty: Corporate Criminal Convictions in the Twenty-First Century.” I would really like to see his paper published.

Source: The Corporate Crime Reporter

VIII. PRODUCT LIABILITY UPDATE

PROTECTIVE CLOTHING IN THE WORK PLACE

Individuals in jobs requiring them to work with or around fire are exposed to one of the most extreme hazards known to man. Unfortunately, fire damage accounts for significant loss of life, health, and property daily. When employees are the victims of a fire, disfigurement or death, long recovery periods, painful and multiple surgeries are certain to follow. Approximately 300,000 Americans are injured by fire annually. Employees who are exposed to fire hazards must be properly trained and must have access to the best safety clothing available.

As you may know, different fibers burn differently. Generally, cotton ignites and burns easily. Polyester and nylon are slower to ignite, but will eventually burn with a flame. The melting residue from polyester and nylon gets extremely hot and can cause deep and severe burns. Wool and silk will shrink from flames and are difficult to ignite; however, they burn easily. Blended fabrics, like cotton and polyester, are oftentimes more dangerous than either individual fiber.

Our firm currently represents a client who sustained severe burns when his welding torch ignited his “flame retardant” clothing. His clothing was provided by his employer and the manufacturer sells this clothing specifically to protect individuals working in this industry. The manufacturer advertised that its clothing is the leading flame retardant all-cotton material that will temporarily resist the spread of flames. Flame retardant fabrics are chemically treated to make them more resistant to fire or flames or the fabric is inherently flame resistant. The flame retardant protective clothing provided to our client burned as quickly and as much as his non-flame retardant personal clothing.

The failure of the flame retardant clothing to prevent and/or slow the spread of fire caused our client to sustain severe burns to 90% of his back. He has and will endure surgeries and skin grafts for the foreseeable future. His life is forever changed.

The prosecution of this case will include testing to compare the flame resistant properties of the clothing provided to our client to the flame resistant properties of other safety clothing and non-flame resistant clothing. Based on the circumstances surrounding our client’s injury, it is our belief that the manufacturer exaggerated the ability of its clothes to resist fire. If proven, it will be our hope and desire that the manufacturer improve its product or properly warn the users of its products. Our client agrees that although he cannot change what happened to him, he can influence change to prevent similar injuries to others.

If you need more information on this subject contact Kendall Dunson, who handles product liability cases for our firm, at 800-898-2034 or by email at Kendall.Dunson@beasleyallen.com.

JURY AWARDS $10 MILLION IN HEAT PUMP CASE

A jury in Jackson County has awarded nearly $10 million to a man and his wife after a Florida manufacturer’s heat pump severely shocked him as he worked on the unit at his home. Donald Chapman received 480 volts when he came into contact with an exposed live wire on the heat pump in July 2008. The jolt threw Chapman from a ladder he had climbed to reach the heat pump. He landed on the corner of a table and then fell to the floor.

Nine jurors assigned 40 percent of the fault for the accident to Mr. Chapman and held FHP Manufacturing 60 percent at fault. In addition to the damages that the jury found that Mr. Chapman and his wife, Tammy, suffered, $4.5 million in punitive damages were also awarded. This made for a total verdict of $9.97 million in the case. Mr. Chapman’s injuries included “multiple rib fractures and a spleen laceration that

required its surgical removal, as well as other damages.” While being treated, Mr. Chapman also contracted an infection. At 37 years of age, Mr. Chapman is basically disabled.

The electrical shock happened in part because Chapman had worked on the heat pump while it was still connected to the building’s power supply. It was contended at trial by the Plaintiffs that the company was also at fault, because a design change in the heat pump left the wire exposed. The Defendant had changed the original design, which had a cover over the electrical panel. In its statement for the media, FHP Manufacturing’s statement said the heat pump “was in fact sound, and had Mr. Chapman followed accepted service procedures relating to the heat pump, this situation would not have happened.”

Evidence at trial indicated that the work on the unit while it was still connected to the power supply was “sometimes necessary,” to “troubleshoot” a problem. Brian Timothy Meyers, a lawyer from Kansas City, Mo., represented the Plaintiffs and he did a very good job. The defendant, FHP Manufacturing Co., located in Tallahassee, Fla., plans to appeal the verdict.

Source: Kansascity.com

**$7.2 Million Jury Verdict In “Popcorn Lung” Lawsuit**

A jury returned a $7.2 million verdict in favor of Wayne Watson against Gilster-Mary Lee Corp. The Kroger Co. And Dillon Companies Inc. in a “popcorn lung” lawsuit. The Plaintiff developed respiratory problems in 2007 known as “popcorn lung.” Testimony at trial indicated Watson, a Denver native, ate about two bags of popcorn every day for ten years. He developed the rare disease, known as “popcorn lung,” from inhaling the artificial butter smell of the microwave popcorn.

Popcorn lung is usually found in plant workers exposed to high levels of diacetyl, an artificial flavoring used to give popcorn that buttery taste. The lawsuit was against the popcorn maker and Kroger, the supermarket that sold it, claiming the companies never warned consumers that diacetyl—also recently linked to Alzheimer’s—was dangerous.

Defense attorneys argued that Watson’s health problems stemmed from working with carpet-cleaning chemicals for years. Many manufacturers no longer use the diacetyl in microwave popcorn. Watson previously settled claims against the flavor developer FONA International Inc., formerly Flavors of North America Inc., according to Associated Press.

Kenneth B. McClain, with the Humphrey, Farrington, McClain law firm located in Independence, Mo., represented the Plaintiff. He did a very good job in this most significant case.

Source: *ABC News*

**IX. MASS TORTS UPDATE**

**J&J SETTLES FIRST DePuy HIP SUITS FOR $600,000**

Johnson & Johnson has agreed to pay $600,000 to settle the first three of approximately 8,000 lawsuits over hip implants recalled by the company’s DePuy Orthopaedics unit in 2010. The company agreed to pay three Nevada residents approximately $200,000 each to settle claims over the ASR hip implant. As we have previously reported, the hip implants were recalled after the Food and Drug Administration received about 300 complaints about the devices, most of them from patients who said they had to have their hip implant replaced.

After the recall, litigation over ASR hip implants escalated, with Plaintiffs alleging that the metal-on-metal hip replacement device was defectively designed. Moreover, Plaintiffs claimed that Indiana-based DePuy knew its hip replacements were failing at a higher than expected rate, but didn’t alert consumers or orthopedic surgeons. Federal cases over the hip implant were consolidated in multidistrict litigation in Ohio. These settlements involved cases filed in state court in Las Vegas. Each of the three settling Plaintiffs are elderly women who had ASR hip replacements done by the same surgeon during the past six years. The women needed to have their artificial hips removed after experiencing pain and other side effects. The women’s cases had been consolidated and scheduled to go to trial in December. As we previously reported, Johnson & Johnson had set aside $922 million to cover litigation and settlement costs relating to the ASR hip implants.

Source: *Bloomberg News*

**DIALYSIS MEDICATIONS CAUSE CARDIAC ARREST AND SUDDEN DEATH**

The largest operator of dialysis centers in the United States is a German company, Fresenius. Its dialysis centers treat more than a third of the estimated 400,000 people in this country receiving dialysis. In addition to owning dialysis centers, Fresenius is also the leading supplier of dialysis products. Among the company’s products are GranuFlo (Dry Acid) and Naturalyte (Liquid Acid). These products are used to help remove toxins from the kidneys during hemodialysis. Part of the dialysis process requires use of a sodium bicarbonate to, in essence, balance the blood’s increased pH from the acid-containing products. Fresenius’ products contain sodium acetate (in addition to the acetic acid found in other manufacturer’s products). Sodium acetate is converted by the body to bicarbonate. This has resulted in many patients receiving too much bicarbonate.

On November 4, 2011 Fresenius notified the medical directors and attending physicians at its facilities that its analyses revealed elevated bicarbonate levels in over 40 percent of its patients. This internal analysis also determined that “borderline elevated pre-dialysis bicarbonate levels and overt alkalosis are significantly associated with a six- to eight-fold greater risk of CP (cardiopulmonary) arrest and sudden cardiac death in the dialysis facility.” The memo also advised Fresenius physicians that “the bicarbonate prescription entered into the dialysis machine underestimates the total buffer that the patient receives from the dialyzer...” Amazingly, Fresenius did not provide notice to any outside facilities or physicians that it had conducted such an analysis or its findings.

Fresenius will likely claim that its label contains sufficient information to allow physicians to determine the correct amount of bicarbonate to prescribe. If that is truly the case, one must wonder why it was not being done in Fresenius facilities by its own physicians. That would lead to this question: Why was the internal memo needed to explain to them the science behind the conversion from sodium acetate to bicarbonate, and how to adjust dosing to compensate for it? Regardless of who is to blame, it appears there have been many unnecessary deaths as a result of dialysis. The company issued a Class I recall of these products on March 29, 2012. If you need additional information, contact Russ Abney, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Russ.Abney@beasleyallen.com.

Sources: *New York Times* and www.fda.gov

**MORE TRIALS SET FOR VAGINAL MESH LITIGATION**

In ongoing mass tort litigation over vaginal mesh implants, new bellwether trial dates have been set for cases over the
Avaulta mesh product, manufactured by C.R. Bard. The development comes on the heels of the first jury verdict in a vaginal mesh case. In July, a jury awarded $5.5 million to a California woman and her husband. The case was in state court and involved injuries caused by the Avaulta mesh, including complete incontinence, chronic pain, inability to have sex and eight additional surgeries to try to remove the mesh. This case was not part of multidistrict litigation.

Over 1,000 cases have been consolidated in four multidistrict litigations against the major vaginal mesh makers, including C.R. Bard, American Medical Systems (AMS), Johnson & Johnson subsidiary Ethicon, and Boston Scientific. Hundreds more cases have been filed in coordinated state court actions. The lawsuits allege that the products, which are implanted in the pelvic area to deal with sagging organs, are defectively designed and cause serious injuries by puncturing internal organs, migrating and often requiring corrective surgery. The first set of bellwether trials in the Bard Avaulta MDL are set to begin in February 2013. The next batch will begin in June 2013. Our firm is representing a number of clients in the mesh litigation. If you need more information, contact Danielle Mason, a lawyer in our Mass Torts Section, at 800-898-litigation. If you need more information, representing a number of clients in the mesh batch will begin in June 2013. Our firm is set to begin in February 2013. The next turing internal organs, migrating and often designed and cause serious injuries by puncturing internal organs, migrating and often requiring corrective surgery. The first set of bellwether trials in the Bard Avaulta MDL are set to begin in February 2013. The next batch will begin in June 2013. Our firm is representing a number of clients in the mesh litigation. If you need more information, contact Danielle Mason, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Danielle.Mason@beasleyallen.com or Chad.Cook@beasleyallen.com.

Source: Lawyers USA Online

**An Update On The Reglan Litigation**

Reglan battles continue to wage on throughout the country on two fronts—generic Defendants continue to allege that federal law preempted them from strengthening their warning labels, and brand name Defendants continue to allege that they cannot be held liable for harm caused by their generic counterparts. While Reglan cases are filed in multiple venues, many eyes are on the litigation in Pennsylvania and California state courts, where the majority of Reglan cases are filed. Pennsylvania was the first state to consolidate Reglan cases for discovery management and bellwether trial settings, and the state has so far rejected the Defendants’ attempts to absolve themselves from all liability.

In our last Reglan update in February of this year, we reported that generic drug manufacturers sought to appeal Judge Sandra Moss’s decision to overturn their objections to the Plaintiffs’ Master Complaint. This decision effectively dismissed generic Defendants’ arguments that all claims against them were preempted under the US Supreme Court’s Mensing decision. Under Pennsylvania law, generics were permitted to seek appeal on this issue to the state’s Superior Court. That Court denied all of the petitions for permission to appeal. Generics then filed a petition to appeal to the Pennsylvania Supreme Court. On August 22, 2012, that Court also denied their petitions.

But, on September 7, 2012, brand name Defendant Wyeth filed a petition to the Superior Court of Pennsylvania, generally arguing that they are also preempted from Plaintiffs’ state law claims against them because they divested from the Reglan product in 2001, thus rendering it impossible for them to have made any changes to the product labeling after that date. While this appeal does not bear upon the future ability to raise claims against generic manufacturers, it can serve as further delay in Reglan proceedings, including the ability to reconvene discovery and reset cases for trial. For more information about the status of Reglan litigation, contact Danielle Mason, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Danielle.Mason@beasleyallen.com.

Source: Much of the material comes from the Pennsylvania Reglan Litigation Group, as well as from briefing by the parties and the orders from the courts.

**X. BUSINESS LITIGATION**

**Ford Sued Over F-150 Fuel Injection System**

A lawsuit has been filed against Ford Motor Co for allegedly infringing a patent that covers a fuel-injection system it uses in its top-selling F-150 truck. In the federal lawsuit, TMC Fuel Injection System LLC of Wayne, Penn., says it is the assignee and owner of the January 2008 patent, which covers a fuel flow process that improves fuel economy, cuts exhaust emissions and reduces idle speed. It was invented in 2002 by a Harvard University-trained engineer that TMC employed, Shou Hou, who in later years communicated several times with Ford personnel about TMC, possibly licensing the technology to the automaker, according to the complaint.

According to TMC, in August 2008, Ford decided against licensing the technology but has been incorporating it in vehicles, including the F-150. Saying it has been “irreparably harmed” by Ford’s “willful and deliberate” infringement, TMC is seeking a halt to any infringement, plus compensatory and triple damages in the lawsuit.

Ford’s F-Series pickups are by far the largest-selling vehicle in the United States, as reported by automakers. Sales totaled 350,455 from January to July, 44 percent higher than No. 2-ranked Toyota Camry, and 57 percent higher than the F-Series’ main rival, the Chevrolet Silverado-C/K. Robert Sachs, a partner in the Philadelphia office at Shrager, Spivey & Sachs, represents TMC. The case is TMC Fuel Injection System LLC v. Ford Motor Co, U.S. District Court, Eastern District of Pennsylvania, No. 12-04971.

Source: Claims Journal

**ALLSTATE SUES FLORIDA NEUROLOGIC CLINIC FOR $7.6 MILLION IN FALSE CLAIMS**

AllState is back in court again, as a Plaintiff, and that’s not too unusual. It’s good to know that the giant insurer realizes the importance of the civil jury system and will use the system when it believes it has been wronged. A Florida neurologic clinic that specializes in treating patients with traumatic brain and spinal cord injuries was sued recently by the giant automotive insurance company for more than $7 million in false claims stemming from charges it abused patients, failed to provide treatment, and kept them hospitalized without medical justification. Allstate Insurance Co. filed the suit against the Florida Institute for Neurologic Rehabilitation, Inc., and its owner, Joseph Brennick, in the U.S. District Court for Middle District of Florida under the federal Racketeer Influenc and Corrupt Act, for breach of contract, and a variety of fraud charges.

Source: Insurance Journal

**BPI SuES ABC News For Defamation**

Beef Products Inc. (BPI) has filed a defamation lawsuit against ABC News for its coverage of a meat product that critics have dubbed “pink slime.” It was alleged in the suit that the network misled consumers causing them to believe the product to be unhealthy and unsafe. The Dakota Dunes, S.D.-based meat processor is seeking $1.2 billion in damages for roughly 200 “false and misleading and defamatory” statements about the product officially known as lean, finely textured beef. The lawsuit filed in a South Dakota state court also accuses ABC News of improper interference with the relationships between BPI and its customers. Dan Webb, BPI’s Chicago-based attorney, stated:

*It caused consumers to believe that our lean beef is not beef at all—that*
it's an unhealthy pink slime, unsafe for public consumption, and that somehow it got hidden in the meat.

The reports cited in the lawsuit include 11 that aired on television and 14 that appeared online in March. According to BPI, the reports had “an enormous impact” on the company, forcing it to close three of its four U.S. plants and lay off more than 650 workers. The network allegedly published a list of chain grocery stores that had stopped selling the product, and that this pressured others to end their business relationship with BPI. Craig Letch, BPI’s director of food-quality assurance, said the company lost 80 percent of its business in 28 days. Some of the customers have returned, he said, but BPI still doesn’t have the customer base that would allow it to rehire former employees.

The phrase “pink slime” began to spread after it was cited in a 2009 article by The New York Times on the safety of meat processing methods. Soon afterward, celebrity chef Jamie Oliver began to speak out against it. McDonald’s and other fast food companies stopped using it, and major supermarket chains including Kroger and Stop & Shop said they would stop selling beef with the low-cost product.

The company has won support from the governors of Iowa, Nebraska, Kansas, Texas and South Dakota. U.S. Agriculture Secretary Tom Vilsack has also defended the product, saying the federal government wouldn’t allow the product if it was unsafe. The company has launched its own public relations offensive, including a website—www.beefisbeef.com—to advocate for the product. ABC News, owned by The Walt Disney Co., denied BPI’s claims.

Source: Claims Journal

TIVO SETTLES LAWSUIT AGAINST VERIZON FOR $250.4 MILLION

Verizon will pay Tivo Inc. At least $250.4 million to license its digital video recording technology and settle a patent lawsuit. This is the third settlement that Tivo has reached in recent patent cases. In each of the cases, Tivo has alleged that companies have copied its DVR technology. Tivo, based in Alviso, Calif., is set to go to trial in patent lawsuits over DVRs made by Google Inc.’s Motorola unit and Cisco Systems Inc. next year.

The two companies agreed to dismiss all pending litigation. They had been scheduled to go to trial this month. The settlement with Verizon is the latest in a string of patent settlements for Tivo, which developed the first commercially available DVR. The device made it easy for people to record programs and watch them later, skipping over ads.

Last year Tivo settled with satellite TV company Dish Network Corp. And its set-top box provider EchoStar Corp. for $500 million, and earlier this year resolved a lawsuit against AT&T Inc. for $215 million. The payments from those settlements are staggered over several years. According to the company, the settlements bring its operations closer to profitability. Tivo has posted an annual loss in eight of the past 10 years. Under the settlement with Verizon, Tivo will get an initial cash payment of $100 million and quarterly payments totaling $150.4 million through July 2018.

Verizon will also pay monthly license fees through July 2018 for each of its DVR subscribers above a certain level. If the companies work together on certain joint initiatives, $29.4 million of the payment would be subject to a credit. The companies may also make Internet video services developed through Verizon’s joint venture with video rental kiosk Redbox accessible through TiVo’s DVRs.

Source: Associated Press

XI.
AN UPDATE ON SECURITIES LITIGATION

THE SEC FINES NYSE $5 MILLION

The Securities and Exchange Commission last month fined the New York Stock Exchange $5 million. The fine represents the first ever SEC financial penalty against an exchange. The SEC brought first-of-its-kind charges against the New York Stock Exchange for compliance failures that gave certain customers an improper head start on trading information.

SEC Regulation NMS (National Market System) prohibits the practice of improperly sending market data to proprietary customers before sending that data to be included in what are known as consolidated feeds, which broadly distribute trade and quote data to the public. This ensures the public has fair access to current market information about the best displayed prices for stocks and trades that have occurred. According to the SEC’s order against NYSE, the exchange violated this rule over an extended period of time beginning in 2008 by sending data through two of its proprietary feeds before sending data to the consolidated feeds.

NYSE’s inadequate compliance efforts failed to monitor the speed of its proprietary feeds compared to its data transmission to the consolidated feeds. SEC enforcement chief Robert Khuzami had this to say:

Improper early access to market data, even measured in milliseconds, can in today’s markets be a real and substantial advantage that disproportionately disadvantages retail and long-term investors. That is why SEC rules mandate that exchanges give the public fair access to basic market data. Compliance with these rules is especially important given exchanges’ for-profit business interests.

Hopefully, the SEC will be more aggressive in its role as protector of American investors. Many observers believe that the SEC hasn’t been tough enough. Perhaps, this action is the start-up of a tougher enforcement agency.

Source: Corporate Crime Reporter

THE SEC IS CRITICIZED FOR HEDGE FUND ADVERTISING RULE

But just when I was feeling good about the Securities and Exchange Commission, I learned that consumer advocates are not happy with a rule proposed by the SEC that allows hedge funds for the first time to publicly advertise private placements to average investors. This is the SEC’s first rulemaking effort following the April 5th passage of the Jumpstart Our Business Startups Act. Public Citizen’s Bartlett Naylor had this to say about the proposed rule:

The SEC failed to propose concrete solutions that would prevent average investors from being duped by hedge fund managers and other issuers of private securities.

Transactions involving private offerings already result in more enforcement actions and investigations than any other kind of financial transaction, according to the North American Securities Administrators Association. The number of actions grew to 410 in 2011, a 60 percent increase from 2010. Naylor said further:

Private offerings are so risky that, to date, hedge funds and other firms could only offer these high-risk deals to proven, ‘sophisticated’ investors, such as professional money managers with whom they have an ongoing business relationship. The JOBS Act permits advertising such deals to the public. One of the very few investor
safeguards from Congress is the requirement that firms offering private securities have to take “reasonable steps” to ensure that the investor is sophisticated and has a net worth of $1 million or $200,000 in annual income. Significantly, the SEC’s proposed rule fails to adequately define these “reasonable steps” a hedge fund is required to take before it can categorize a prospective client as sophisticated. This is a grave oversight.

SEC Commissioner Luis Aguilar opposed the proposed rule. Another opponent, Senator Carl Levin (D-Michigan), said that with the proposed rule, the SEC “began undermining significant investor protections and putting ordinary Americans’ investments at risk.” He added:

Just a few years after the financial crisis, it is disappointing that the SEC is proposing a rule that ignores years of experience and the law. The SEC rule should require those who advertise private deals to take specific steps to ensure that investors have the wherewithal and expertise to make these risky investments. And it should require that the content of the advertising meets some minimum standards, such as those that mutual funds are subject to today. The proposed rule does neither.

Hopefully, there will be enough opposition to the proposed rule, making the Commissioners revisit this issue. If that happens, I believe they will make significant improvements. The first action by the SEC after the reform legislation should be strong protection for investors. If this one is as weak as is indicated by the opposition, it should be changed.

Source: The Corporate Crime Reporter

Douglas Whitman now joins the grim procession of convicted Wall Street professionals who decided that the rules don’t apply to them. The rules do apply. Over and over again, juries of good, common-sense citizens have said the rules do apply, and they have held defendants like Mr. Whitman accountable for breaking them. Mr. Whitman had a hedge fund with his name on the door, with rules against insider trading. He flouted those rules, tarnished his name and now is a convicted felon facing imprisonment. I want to thank both the jury for their service and the fine career prosecutors from my office who so ably tried this case for their hard work and dedication.

Insider trading is against the law and those who knowingly violate that law must be dealt with harshly. Sentencing for Whitman is scheduled on December 20, 2012.

Source: The Corporate Crime Reporter

BIGLARI HOLDINGS TO PAY $850,000 CIVIL PENALTY

Biglari Holdings Inc., based in San Antonio, will pay an $850,000 civil penalty to settle charges that it violated premerger reporting and waiting requirements when it acquired Cracker Barrel voting securities. The Justice Department’s Antitrust Division, at the request of the Federal Trade Commission, filed a civil antitrust lawsuit in U.S. District Court in Washington, D.C., against Biglari Holdings for violating the notification requirements of the Hart-Scott-Rodino (HSR) Act of 1976. At the same time, the department filed a proposed settlement that, if approved by the court, will settle the charges.

According to the complaint, Biglari Holdings failed to comply with the antitrust premerger notification requirements of the HSR Act before acquiring voting securities of Cracker Barrel Old Country Store Inc. in June of 2011. Although the HSR Act exempts from its premerger notification requirements certain acquisitions “solely for the purpose of investment,” Biglari Holdings’ acquisitions were not made solely for the purpose of investment, the department said. The complaint alleges that Biglari Holdings was in violation of the HSR Act from June 8, 2011 through September 22, 2011. The Hart-Scott-Rodino Act of 1976, an amendment to the Clayton Act, imposes notification and waiting period requirements when it acquires stock or assets above a certain value, which was $66 million in 2011 and is currently $68.2 million.

A STRONG VERDICT IN MONTGOMERY FEDERAL COURT

A federal jury in Judge Myron Thompson’s court in Montgomery, Ala. returned a $13.6 million verdict last month in an insurance case. Carter Brothers Manufacturing Company, a Pike County company, sued Lumberman’s Underwriting Alliance over a fire loss. The insurer defended on claims of arson, fraud and failure to cooperate on the part of the Plaintiff. The claim arose out of a fire at the Plaintiff’s factory.

The lawsuit was filed after the insurance company failed to pay for Carter Brothers’ losses in the fire that very nearly destroyed their business. The fire destroyed all the company’s manufacturing equipment, and along with other items, over 3,000 brand new motor scooters still in their boxes. The verdict also included the company’s losses for the 200,000 square foot building. Jeff Kirby and Bo Johnson from Birmingham, along with Randy Smith from Dothan, represented Carter Brothers in this case and they did a very good job.

Source: Dothan Eagle

$3.5 MILLION JURY VERDICT IN CONECUH COUNTY

A jury in Conecuh County, Ala., returned a $3.5 million verdict last month against Guyoung Tech USA, Inc. The jury found that the Plaintiff, Elaine Dees, was terminated in retaliation because she reported a job injury. The jury verdict consisted of $3.5 million in compensatory damages for lost future wages and mental anguish and $2.5 million in punitive damages.

While Alabama employment law allows an employer to dismiss a private employee without cause, there are certain limitations. In 1985 the Alabama Legislature passed a law stating that a worker cannot be fired solely...
for reporting a job injury. The Defendant in this case disputed Mrs. Dees' contentions as to why she was terminated, but the jury didn't buy its claims. Mrs. Dees contended that for several weeks after her March 14, 2011, on-the-job injury, she was able to work her shifts. But when she went to the doctor on April 4th, she was restricted to no more than eight hours of work. Mrs. Dees was fired two days later. Witnesses for Guyoung Tech claimed that Ms. Dees was laid off as part of a planned layoff that had started in November 2010 and ended in July 2011 and included at least 60 employees.

A worker injured on the job in Alabama is required by law to report the injury because the Department of Industrial Relations monitors the safety of workplaces. The employee has to report the injury in order to obtain medical care under the Worker's Compensation Act. The intent of this law is to make sure that a worker is not punished for following the requirements of the worker's compensation law. In this case, I am told there were no settlement discussions prior to trial. This verdict sets a record for civil jury verdicts in Conecuh County. G guyoung Tech USA, Inc. has 30 days from the date of the verdict and resulting judgment to request Judge Dawn Hare to reduce the amount of the judgment or order a new trial. Max Cassady, a lawyer from Evergreen, represented Mrs. Dee. He did an excellent job for her in this most significant case.

**FedEx Wage Settlement For Delivery Drivers**

After five years of litigation FedEx settled allegations that it violated California state labor laws by failing to pay overtime wages, provide proper meal breaks and maintain sufficient pay records. A federal judge in California approved the $4 million dollar settlement which will benefit more than 7,400 FedEx delivery drivers. The settlement covers all current and former FedEx employees who worked as delivery drivers in California from April 15, 2006 to present. Source: Law360

**Hours Identified In Collective-Bargaining Agreement Not Conclusive In FMLA Actions**

When computing the number of hours an employee works, the calculation is not restricted to the hours identified in a collective-bargaining agreement. That was the conclusion reached by the Second Circuit in Donnelly v. Greenburgh Central School District No. 7. In that case, the Plaintiff was a teacher denied tenure allegedly because of his absences from school caused by a surgical procedure. Under a collective-bargaining agreement between the teacher's union and the school district, a teacher's regular working day was not to exceed seven hours and 15 minutes. Since the Plaintiff had worked 172 days, he had only worked 1,247 hours—three hours shy of the Family Medical Leave Act's 1,250-hour requirement.

But the Second Circuit concluded that when a Plaintiff alleges that a compensation agreement does not accurately reflect all of the hours that he or she worked, then the employer has the burden of showing that the employee failed to work the requisite hours. The employer must prove either that the employee could not have worked the alleged amount of hours, or that the alleged hours worked are not compensable. Based on the evidence, the Plaintiff will likely be able to prove that he worked at least 1,250 hours, and may go on to prove that he was retaliated against for exercising his rights under the FMLA. If you need more information, contact Lance Gould at 800-898-2034 or by email at Lance.Gould@beasleyallen.com.

**Settlement Reached In Race Discrimination Lawsuit**

Foley Products Company, a Columbus, Ga.-based concrete products company, has settled a discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission. The EEOC charged that Foley failed to promote Fred Pharham, who is black, and then subsequently fired him, both because of his race. Mr. Pharham was the only black single leadman (direct supervisor of a crew within a department) working at Foley's Clanton facility. The settlement will also include significant injunctive relief.

Title VII of the Civil Rights Act of 1964 prohibits race discrimination. The EEOC filed the lawsuit against Foley Products in U.S. District Court for the Middle District of Alabama after first attempting to reach a pre litigation settlement through its conciliation process. The Court issued a two-year consent decree and the suit has now been resolved by way of the settlement. Pursuant to the decree, Foley agreed to implement new policies and practices designed to prevent further harassment, employee training on anti-discrimination laws, posting of notices at the work site and other injunctive relief. Foley is also enjoined from engaging in any further employment practice which has the purpose or effect of discriminating against anyone on the basis of race and from retaliating against employees for opposing discriminatory practices. In addition, Foley agreed to provide reports to the EEOC on complaints of alleged race discrimination.

Previously in this lawsuit, the Court issued an order on July 11th denying Foley's motion for summary judgment on the merits of the EEOC's two racial discrimination claims, which were failure to promote and discriminatory discharge. Thus, the Court allowed the case to proceed to trial. The EEOC sought monetary relief for Mr. Pharham as part of its lawsuit. The claims for monetary relief were settled separately by the parties. In its order, the Court recognized this resolution of part of the case and therefore refused to allow the case to go to trial. Delner Franklin-Thomas, district director for the EEOC's Birmingham District Office, had this to say:

We commend Foley Products for acting in a positive, proactive manner to prohibit race discrimination by entering into this settlement. Under the decree, the revisions of Foley's policies, procedures and protocols on race will have a positive effect on the entire workforce and advance racial equality there.

Steven L. Murray and Gerald L. Miller, senior trial attorneys in the EEOC's Birmingham District Office, served as lead attorneys throughout the EEOC's prosecution and litigation of this action. Murray had this to say:

Race too often continues to be a key factor in denying employees access to rights and advancement. The EEOC is committed to eradicating race discrimination from the American workplace.

In addition to the Clanton facility, Foley also has facilities in Newnan and Winder, Ga. The EEOC is responsible for enforcing federal laws prohibiting employment discrimination. The EEOC's Birmingham District consists of Alabama, parts of Mississippi and the Florida Panhandle. If you need further information about the EEOC, it's available on its web site at www.eeoc.gov.

**EEOC Lawsuit Against United Air Involving Disabled Workers Revived**

A federal appeals court has revived an Equal Employment Opportunity Commission lawsuit against United Airlines Inc. The Court said U.S. law generally requires employers to reassign disabled workers to vacant jobs for which they are qualified. The decision by the 7th U.S. Circuit Court of Appeals in Chicago, where the parent
company United Continental Holdings Inc. is based, overruled a 12-year-old case by that same Court, and reversed a February 2011 lower court ruling. United Continental is the world’s largest air carrier.

The case stemmed from a “competitive transfer” policy that United had adopted in 2003 for workers who could no longer perform their jobs because of disabilities. That policy gave disabled workers preferential treatment over non-disabled workers for vacant positions—if two workers were equally qualified for a job, the disabled worker would win—but did not afford automatic placement into those positions. The EEOC argued that the policy violated the Americans with Disabilities Act. The agency said this law required employers to move workers losing their jobs because of disability to vacant jobs for which they are qualified.

In 2000, the 7th Circuit concluded that disability law had no such requirement. But a three-judge panel of that same court overruled that decision. Circuit Judge Richard Cudahy wrote for the panel:

(We) hold that the ADA does indeed mandate that an employer appoint employees with disabilities to vacant positions for which they are qualified, provided that such accommodations would be ordinarily reasonable and would not present an undue hardship to that employer.

The 7th Circuit sent the case back to U.S. District Judge Harry Leinenweber in Chicago to review United’s policy under this standard. The Court also said it was joining two other federal appeals courts in its interpretation of the ADA, while noting that another had adopted the reasoning of the 2000 decision that was overruled. This brings the Seventh Circuit’s law in line with Supreme Court precedent, and is a big victory for people with disabilities. The EEOC had originally brought the case in June 2009. Lead Plaintiff Joe Boswell, a United mechanic at San Francisco International Airport for more than a decade, said the carrier had rejected him for new jobs and put him on involuntary leave after a brain tumor left him unable to work as a mechanic.

The 7th Circuit relied on a 2002 U.S. Supreme Court decision involving what is now US Airways Group Inc in adopting its new standard. That Court held that disabled workers seeking jobs with lessened physical demands generally cannot bump more senior workers from those jobs. But it said exceptions can be made that would afford reasonable accommodations to the disabled workers, and which did not pose undue hardships on their employers. In his opinion, Judge Cudahy wrote: “The Supreme Court has found that accommodation through appointment to a vacant position is reasonable.” The case is Equal Employment Opportunity Commission v. United Airlines Inc, 7th U.S. Circuit Court of Appeals, No. 11-1774.

**Family Dollar To Settle Overtime Lawsuit With New York Store Managers**

Family Dollar has agreed to settle a lawsuit with 1,700 store managers in New York. The managers alleged that the retailer unlawfully failed to pay them overtime. The settlement, which has not been finalized, could cost Family Dollar up to $14 million. The settlement must be approved by the court. Family Dollar plans to record a one-time charge in the fourth quarter to account for the settlement.

This isn’t the first time the company has been punished for a similar offense. In 2009, Family Dollar had to pay $33 million to employees classified as managers who, improperly, did not receive overtime pay, following a class-action lawsuit in Alabama. At the time, Family Dollar CEO Howard Levine said he thought the judgment was a “raw deal” for the company. Family Dollar, founded in Charlotte in 1959, currently operates more than 7,400 stores in 45 states, with more than 50,000 employees.

The employees in the New York case were classified by Dollar General as “managers” and exempt from overtime pay. But the company assigned them almost exclusively non-managerial duties, such as stocking shelves, mopping the bathrooms, running cash registers and unloading trucks. They were scheduled to work more than 60 hours a week, six days a week.

Family Dollar is currently defending 17 lawsuits in seven states over employees being misclassified as managers and not receiving overtime pay, according to its most recent quarterly securities filing. The company also is facing a lawsuit alleging discriminatory pay practices against its female store managers. Other retailers have faced similar complaints from employees classified as exempt from overtime, including Walmart, Publix, and Rite Aid. Family Dollar’s sales rose to nearly $2.4 billion in the third quarter, and profits were up 12 percent, to $125 million. If you need more information on this litigation, contact Larry Golston, who handles employment litigation for our firm, at 800-898-2034 or by email at Larry.Golston@beasleyallen.com.

Source: charlotteobserver.com

**Cashier With Cancer Gets $100,000 Settlement**

Home Depot U.S.A. Inc. will pay $100,000 to a part-time cashier in Maryland who was a cancer victim. The retailer allegedly fired the woman because she had cancer. The settlement by the company was with the Equal Employment Opportunity Commission. The EEOC claimed that the home improvement store violated the Americans with Disabilities Act by failing to provide reasonable accommodation for Judy Henderson, who was terminated while on an unpaid medical leave for cancer treatments in 2010. Debra M. Lawrence, EEOC’s regional attorney for Maryland, Pennsylvania and Ohio, stated:

The message is that the ADA applies to employees who currently are working and also need time off to heal so that they can get working again. We’re seeing a lot of cases where, once an employee is out with a disability and intends to return, the employer doesn’t give them an opportunity. The employer may be running afoul of the ADA.

Under the decree, Home Depot agreed to provide one hour of training on the Americans with Disabilities Act to all store managers and assistant store managers, as well as members of its human resources department. The training will include “special emphasis” on reasonable accommodations and the duty to communicate with employees on the accommodations they need.

The company also agreed to post a notice of the consent decree, which will remain in effect for three years. The notice will be posted where employees and job applicants are likely to see it, informing them of their rights under the ADA and instructing them to report any violations to a supervisor or the EEOC. Ms. Henderson had worked at Home Depot since 1997 and consistently received favorable performance reviews before July 2010, the EEOC alleged. That’s when she requested unpaid leave to undergo surgery to have a tumor removed, according to the complaint filed June 29.

Home Depot granted her leave but, on Sept. 27, 2010, informed the employee that she would be fired if she did not tell the company of her status by Oct. 12, 2010. On Oct. 5th, Ms. Henderson provided the company with medical documentation stating she could return to work on Oct. 25. But Ms. Henderson later amended the restart date to Oct. 27, because she needed another medical procedure. Home Depot did not respond to Ms. Henderson’s message, and hired a new cashier for the store on Oct. 15, 2010.

The company fired Ms. Henderson on Oct. 26—the day before she was to return—stating it had no work for her because of a seasonal slowdown. Ms. Henderson, however, had not been fired during previous seasonal slowdowns. Home Depot’s intention actions deprived Henderson of equal employment opportunities “and otherwise adversely affect her rights under the ADA resulting in emotional pain, suffering, inconvenience, mental anguish, embarrassment, frustration, humiliation and loss of enjoyment of life,” the complaint stated. Of the $100,000 payment to Ms. Henderson, $84,224 represents compensatory damages and $15,776 is for back pay, under the decree. Source: Lawyers USA Online

**TEXAS FIRM MUST PAY DISABLED WORKERS $1.4 MILLION**

A federal judge has ruled a Texas company that profited for decades by supplying mentally disabled workers to an Iowa turkey plant at wages of 41 cents per hour must pay the men $1.37 million in back wages. The judgment against Henry’s Turkey Service of Goldthwaite, Texas is the third judgment in excess of $1 million against the company. In 2009 state authorities shut down a dilapidated bunkhouse in rural Iowa where the men had lived since the 1970s. U.S. District Judge Charles Wolle ruled that the 32 employees had been paid $65 per month to work the processing line at a huge turkey plant in West Liberty after Henry’s improperly deducted fees for room and board, care, transportation and other expenses out of their pay and Social Security checks. The judge found that the amount they were paid never changed during the entire 30-year period they worked at the plant, regardless of whether they worked more than 40 hours per week.

The Equal Employment Opportunity Commission had sued, alleging that Hill Country Farms violated the Americans with Disabilities Act by paying the workers discriminatory wages. Judge Wolle ordered a trial in March on the rest of the claims in the EEOC’s lawsuit. It will include claims that the men faced a hostile work environment, harassment, verbal and physical abuse and other “adverse terms and conditions of employment” because of their disabilities. It was reported that Hill Country Farms, which did business as Henry’s Turkey Service, offered little resistance to EEOC’s wage claims. The company had been on contract to supply workers to the plant starting in the 1970s when it was owned by Louis Rich Foods. By 2008, the company’s contract with owner West Liberty Foods was worth more than $500,000 for work performed by the men in the evisceration department.

Judge Wolle said the company “engaged in unlawful and discriminatory pay practices” that deprived workers of wages they earned. He said the $1.37 million represents how much more the intellectually disabled workers should have been paid between February 2007 and February 2009 for their work, based on wage rates paid to similarly-situated and experienced workers. Despite their disabilities, the workers “performed as productively and effectively as non-disabled workers doing the same jobs,” he ruled. Even though they’d been there decades, the law limits their recovery to the two-year period before the violations were reported.

Several of the workers were employed at the bunkhouse, a converted former schoolhouse a few miles from the plant that Hill Country Farms rented from the city of Atalissa for $600 per month. It was shut down after investigators found substandard construction and other unsafe living conditions, a leaky roof and insect infestation. The U.S. Department Labor earlier won a $1.76 million judgment against Henry’s on behalf of the workers for violating wage and overtime laws, and Iowa Workforce Development issued a $1.2 million fine against the company for violating state labor laws.

The company had agreed to change its wage practices in 2005 following a federal investigation, but it never did so, according to Judge Wolle. The Iowa Attorney General’s Office last year declined to bring criminal charges against the company or its owners, Kenneth Henry and Jane Ann Johnson, saying it felt that the civil penalties sought by regulators were enough to hold them accountable. This case is more like a horror story than a lawsuit. Source: Insurance Journal

**PREMISES LIABILITY UPDATE**

**JURY RETURNS VERDICT IN SPEED WAY CASE**

A jury in Jefferson County, Ala., returned a verdict last month in a case that arose out of a race track accident. Sutton Helvey-Chandler, a 33-year-old motorcyclist in the novice class, was training on the Barber Motorsports race track in Leeds for an event known as “Track Day.” The track had been leased for “Track Day” by Zoom Motorsports, LLC., and the event was organized and run by Ed Bargy Racing, LLC. Helvey-Chandler’s husband, Russell, was also running practice laps. While Helvey-Chandler rode her motorcycle around the track, a corner marshal named Holley Hance ran onto the track to remove a dead bird that was littering the track. Hance, who had been trained by a company known as Flagging by Faynisha, LLC, ran directly into Helvey-Chandler’s path, and she struck him.

Both Hance and Helvey-Chandler were killed. The estate of Helvey-Chandler filed suit against Ed Bargy Racing, Zoom Motorsports, and Flagging by Faynisha and blamed them for Helvey-Chandler’s death. The estate’s theories included negligence and wantonness. The estate offered into evidence racing guidelines that stated that corner marshals should “never enter a hot track without permission from race control.”

Flagging by Faynisha obtained summary judgment in its favor after discovery was performed and Plaintiffs conceded Flagging by Faynisha had not been supervising Hance on the day of Helvey-Chandler’s death. Ed Bargy Racing and Zoom Motorsports argued that Helvey-Chandler was at fault for the collision. Eyewitnesses, including another rider on the track and an accident reconstructionist, testified to show that Helvey-Chandler did all she could to avoid striking the corner marshal in front of her.

The Defendants also argued the corner marshal might have made a mistake in judgment, but that his conduct did not rise to the level of wantonness. They claimed that punitive damages were not appropriate under the circumstances. The jury disagreed as to Ed Bargy Racing and awarded the estate a verdict of $10,000,000 against that Defendant. The jury returned a defense verdict as to Zoom Motorsports. David Marsh and Rip Andrews, both with the Birmingham firm of Marsh Rickard & Bryan, represented the Plaintiff in this case. They did an excellent job for the victim’s estate. Source: The Alabama Jury Verdict Reporter

**FAMILY SETTLES SUIT WITH AMEREN OVER HOME EXPLOSION**

After more than four years, a wrongful-death lawsuit has been settled between Ameren Missouri and the daughters of a couple who died after a gas explosion at their East Campus home. Terms of the settlement are confidential. The case had been set to go to trial before the settlement was reached. The explosion that led to the deaths of Carl and Merna Sneed occurred on the morning of March 14, 2008, at the couple’s home. Fire investigators confirmed an excessive amount of natural gas leaking into
the basement of the house likely caused the explosion that led to the deaths.

Carl Sneed, who was 87, died at the scene of the explosion. Emergency responders found Merna Sneed, who was 85, lying 20 feet from the house, with 30 percent of her body burned. She died as a result of her injuries about three weeks later. According to an investigative report from the Columbia Fire Department, the explosion was powerful enough to thrust the walls of the house outward several feet. The front door of the house was blown into the yard across the street, and the first floor collapsed into the basement.

The amount of gas flowing into the Sneed house on the morning of March 14, 2008, had reached 1,800 cubic feet before the explosion. In the weeks leading up to the explosion, no more than 700 cubic feet of gas had gone into the house in one day. In the wrongful-death lawsuit against Ameren, filed in June 2008, the Sneeds' daughters alleged Ameren had “superior knowledge” of the gas distribution system that carried natural gas into the Sneed home and that it was the company's responsibility to act in a timely manner to shut off the gas after it had been pumping into the Sneed home.

Ameren argued it did not willfully cause the accident and that it was following government regulations. The company also argued that Carl and Merna Sneed did not react to the smell of leaking natural gas, which produces a distinct “rotten eggs” odor when even a small amount is released. The company also claimed the couple failed to maintain their gas appliances, including a stove, a water heater and a furnace.

Neil Johnson, a lawyer from Hartford, Conn., represented the daughters in the lawsuit. He did a very good job for them. Source: columbiatribune.com

ELEVATOR FALL RESULTS IN $13 MILLION JURY AWARD

A jury has awarded $13 million to a woman, who was left bruised, depressed and with psychological and physical injuries as the result of a very rough and tumble elevator ride. Janice Beasley was injured in a May 1999 incident in a Jacksonville, Fla. high rise. According to testimony during the trial, Mrs. Beasley, 54, experienced a series of falls in an elevator in the building between the 23rd floor and the basement. A mechanic with the Schindler Elevator Corp., the building's on-site elevator maintenance firm, handled the malfunctioning elevator. But rather than taking Mrs. Beasley off the elevator, he sent her on to the basement. That caused another series of falls in the elevator.

It was proved that Schindler grossly mishandled the response to the malfunction and failed to consider Mrs. Beasley’s safety as a priority. She suffered post traumatic stress disorder, chronic depression, partial paralysis of her left leg, pseudo seizures and was wheelchair-bound for several years. The jury award was reversed against Schindler and Highwoods Properties, the building’s owner. Mrs. Beasley filed suit in 2002, but the case was delayed over legal complications and finally came to trial this year.

Industry officials don’t keep records of elevator fatalities, but experts say they are rare, with more injuries resulting from elevator doors. Many believe that if one jumps at the exact moment of impact, they could survive. But most experts say no. The chances of timing a jump precisely are very small, and even if one did so, the reduction in velocity would be so minor as to have no effect. The elevator would collapse atop the rider when it hits bottom.

The only chance of surviving in a falling elevator is to lie spread-eagled on the floor, head in arms, according to the website of the Department of Physics at the University of Illinois at Urbana-Champaign. That would distribute the force of impact across a wider area, causing internal injuries perhaps, but less likely to break bones. Brad Edwards, a lawyer with the Fort Lauderdale firm of Farmer, Jaffe, Weissing, Edwards, Fistas & Lehrman, represented Mrs. Beasley in this case and he did a very good job for her. Source: sun-sentinel.com

Wrongful-Death Lawsuits Filed In Atchison Grain Elevator Blast

Families of four of the six workers killed last year in a grain-dust explosion in Atchison, Kan., have filed wrongful-death lawsuits in state court against Bartlett Grain Co. LP. The lawsuits name Bob Knief, a Bartlett senior vice president at the time, and other Bartlett employees as Defendants. The cases were brought on behalf of four of the employees who were killed, all of whom were in their early 20s, in state court. The young men were all killed in the explosion on Oct. 29, 2011. Two other workers killed in the explosion—grain inspectors—were not named in this suit. It was alleged in the suit that Knief and other unnamed Bartlett employees “issued directives that displayed a knowing or voluntary disregard” for the safety and health of the workers who were killed.

The allegations are similar to charges made in April by federal safety officials, who accused Bartlett of willfully ignoring workplace rules before the explosion. They also proposed $406,000 in fines. Secretary of Labor Hilda Solis said at the time that the “deaths of these six workers could have been prevented had the grain elevator’s operators addressed hazards that are well-known in this industry.” In April, Knief, now Bartlett’s president, said that the government’s allegations were “flawed,” and he said he took “extreme exception” to charges that any workplace violations were willful, as the government alleged.

The company has contested the proposed fines and will make its case in an administrative hearing. The company has now issued a statement very much like the one it issued after the accident. It added that “we continue to believe that Bartlett employees acted reasonably and appropriately at all times.” The lawsuits allege that the elevator was at or near capacity at the time of the explosion and that daily train transfers were required to keep the elevator operating. According to the families, workers were routinely required to work 60 to 80 hours a week.

In addition, the families allege that the elevator had no emergency action plan or adequate alarm system and workers were not properly trained to get rid of the combustible dust that led to the explosion. It is alleged further that dust cleaning practices and electrical connections at the plant were unsafe and inadequate. About a month before the lawsuit was filed, Bartlett sent the victims’ families a letter informing them of a memorial the company planned to build in Atchison to remember the six dead. The memorial plan has drawn criticism from the family of at least one victim. They believe building a memorial may be a good thing, but compensating the families is much more important. I totally agree! Source: KansasCity.com

Worker Burned Badly In Explosion At Louisiana Gas Plant

The U.S. Department of Labor’s Occupational Safety and Health Administration has cited Plains Gas Solutions LLC in Eunice, La., following a February explosion and fire that left a worker severely burned. The proposed penalties total $111,000. OSHA has issued one willful and seven serious violations against the company, which produces liquid natural gas through a cryogenic process. OSHA says cryogenic liquids were improperly routed, as part of a re-starting process, through equip-
C.Rash ruled that a fraternity can be sued for negligence in connection with a 2003 crash that killed four Yale University students, including two members of the school’s baseball team. The students were returning from a Delta Kappa Epsilon fraternity event for pledges in New York City on Jan. 17, 2003, when their SUV at a high speed ran into a tractor-trailer that had crashed on Interstate 95 at about 5 a.m. It was alleged in a lawsuit filed by the family of one of the victims that fraternity leaders failed to provide safe transportation home from the event. They said the driver, who was a Yale student and fraternity member, was sleep-deprived during the fraternity’s so-called “Hell Week” when its pledges are hazed.

The Supreme Court overturned a lower court ruling in favor of the fraternity, ruling that the lawsuit can proceed. The crash killed the driver and three of four back seat passengers. Two of the victims were pitching in on the baseball team. Five other Yale students in the SUV were injured, including members of the football team.

The trial judge found in favor of the fraternity in September 2009, saying national and local fraternity leaders didn’t owe the students a “duty of care” while transporting him back to New Haven from New York. That ruling was appealed to the Supreme Court. That court ruled that the fraternity had no duty to provide transportation, but once it decided to, “it assumed a duty to do so safely.” The Court said it was up to a jury to decide whether the fraternity was negligent in having the student drive the students home.

The National Transportation Safety Board investigated the accident and found plenty of blame, including poor highway conditions, speeding, fatigue and lack of seat belt use. The agency concluded that the tractor-trailer driver probably was driving too fast on ice and snow when he lost control of his vehicle. Part of the tractor-trailer, which was traveling north, went over the median barrier and collided with two other vehicles in the southbound lanes. According to the NTSB, the student driver probably was suffering from a combination of fatigue, lack of highway lighting and distraction from the collisions in the southbound lanes, and likely did not see that part of the tractor-trailer was in the northbound left lane. Relatives of all the crash victims also have a pending federal lawsuit against the tractor-trailer manufacturer for not putting enough lights on the truck’s trailer.

**Fraternity Can Be Sued In Fatal Yale Crash**

The Connecticut Supreme Court has ruled that a fraternity can be sued for negligence in connection with a 2003 crash that killed four Yale University students, including two members of the school’s baseball team. The students were returning from a Delta Kappa Epsilon fraternity event for pledges in New York City on Jan. 17, 2003, when their SUV at a high speed ran into a tractor-trailer that had crashed on Interstate 95 at about 5 a.m. It was alleged in a lawsuit filed by the family of one of the victims that fraternity leaders failed to provide safe transportation home from the event. They said the driver, who was a Yale student and fraternity member, was sleep-deprived during the fraternity’s so-called “Hell Week.” When its pledges are hazed.

The Supreme Court overturned a lower court ruling in favor of the fraternity, ruling that the lawsuit can proceed. The crash killed the driver and three of four back seat passengers. Two of the victims were pitching in on the baseball team. Five other Yale students in the SUV were injured, including members of the football team.

The Supreme Court’s ruling came in a lawsuit filed in 2005 against the national office of Delta Kappa Epsilon, the fraternity’s Yale chapter, the state Department of Transportation and two construction companies that had worked on the highway. The lawsuit contends that the fraternity had a duty to provide safe transportation home and negligently chose a student as the driver, even though he had had little sleep that week and had been up for nearly 20 hours before the accident.

It was alleged in the lawsuit that the state DOT and two construction companies were liable for alleged safety hazards at the highway construction site where the tractor-trailer crashed. Claims against the state were dismissed because of government immunity from lawsuits, while the construction companies entered into settlements with families of the victims.

The trial judge found in favor of the fraternity in September 2009, saying national and local fraternity leaders didn’t owe the students a “duty of care” while transporting him back to New Haven from New York. That ruling was appealed to the Supreme Court. That court ruled that the fraternity had no duty to provide transportation, but once it decided to, “it assumed a duty to do so safely.” The Court said it was up to a jury to decide whether the fraternity was negligent in having the student drive the students home.

The National Transportation Safety Board investigated the accident and found plenty of blame, including poor highway conditions, speeding, fatigue and lack of seat belt use. The agency concluded that the tractor-trailer driver probably was driving too fast on ice and snow when he lost control of his vehicle. Part of the tractor-trailer, which was traveling north, went over the median barrier and collided with two other vehicles in the southbound lanes. According to the NTSB, the student driver probably was suffering from a combination of fatigue, lack of highway lighting and distraction from the collisions in the southbound lanes, and likely did not see that part of the tractor-trailer was in the northbound left lane. Relatives of all the crash victims also have a pending federal lawsuit against the tractor-trailer manufacturer for not putting enough lights on the truck’s trailer.

**Couple Awarded $10 Million In Motor Vehicle Crash Case**

A jury awarded a couple more than $10 million in damages in a case involving a multi-vehicle crash in Dickson City, Pennsylvania. A dump truck that had steering and brake problems was involved in the crash. Valvano Construction Inc. and its driver, Theodus Williams, have will have to pay the plaintiffs, Holly Ann Kuchwara and Robert J. Kuchwara, $9.1 million in compensatory damages and $1.025 million in punitive damages. Williams was driving a 1979 Mack dump truck loaded with stone in May 2010, when he lost control of the truck and collided with a line of vehicles on a city street. The collision knocked another car into the back of the Kuchwara’s vehicle. Their Toyota Four Runner SUV was thrown into a utility pole.

Valvano Construction and Williams were charged by police with 12 violations each, saying the truck had brake and steering deficiencies and that Williams was operating the vehicle with an expired medical examination certificate. The crash left Holly Ann Kuchwara with a fractured vertebrae, shattered ankle, head trauma and other injuries, her lawyers said in the complaint. It was clear the truck should never have been on the road. Joseph A. Quinn, a lawyer with Hourigan, Kluger and Quinn, a firm located in Kingston, Pa., represented the plaintiffs. He did a very good job in this case.

**Folks Born Between 1945 And 1965 Should Get Tested For Hepatitis C**

Public health officials are urging all adults born between 1945 and 1965 to get a one-time blood test for hepatitis C. Deaths from hepatitis C-related diseases have almost doubled from 1999 to 2007 and now amount to more than 15,000 U.S. deaths annually, records show. In Alabama, the Department of Public Health issued a statement last month letting residents know they are in step with the federal Centers for Disease Control and Prevention in its recommendation. Dr. Mary McIntyre, assistant state health officer for disease control and prevention, stated:

> Many of the people with hepatitis C in Alabama are not aware they have it, and its prevalence among baby boomers is five times greater than in other adults.

Before widespread testing of blood donations began in 1992, hepatitis C could be spread through blood transfusions. Many infected people, however, do not report a known exposure risk, health officials said. About 3 percent of baby boomers are infected with hepatitis. Dr. Thomas Frieden, CDC’s director, in a news release said that folks who have not been screened should get the blood test during their next visit to the doctor.

Hepatitis C symptoms can take decades to emerge. The virus, which can gradually scar the liver and lead to cirrhosis or liver cancer, is the leading cause of liver transplants. Today, hepatitis C is commonly transmitted through sharing needles to inject drugs. Testing baby boomers can help avert major increases of liver disease and deaths—especially since new drug therapies can cure many more people than older therapies.
Concerned patients should talk to their health care provider about conducting a simple blood test to determine if they have ever been infected. More information is available at adph.org/hepatitis/ and cdc.gov/hepatitis.

Source: AL.com

**Learning About And Reporting Adverse Events**

On several occasions, I have encouraged our readers to subscribe to the publication *Worst Pills, Best Pills News*. I have also recommended that our readers check WorstPills.org for warnings about new drugs. But in addition to those excellent sources, we should always review the newest product label for any new drug that is prescribed for us. FDA-approved products labels can be found online at the DailyMed website (http://dailymed.nlm.nih.gov/). If a drug that a person is taking requires a Medication Guide, it can be found in the product label or at www.fda.gov/drugs/drugsafety/ucm085729.htm. But, also remember that this guide should be distributed to you when you fill or refill your prescription. If you don’t get it, ask the pharmacists to provide it.

It should also be noted that consumers may report serious adverse events or product quality problems to the FDA’s MedWatch Adverse Event Reporting program online or by regular mail, fax or phone. These are your contact points:

- **Online**: www.accessdata.fda.gov/scripts/medwatch/medwatch-online.htm
- **Regular Mail**: Use postage-paid, pre-addressed FDA form 3500 and mail to MedWatch, 5600 Fishers Lane, Rockville, MD 20852-9787. The fax number is (800) FDA-0178 and the phone is (800) FDA-1088.

Source: Public Citizen

**XVIII. Environmental Concerns**

**Update On Our Firm’s Ongoing TVA Litigation**

As reported in the September edition, a federal judge recently ruled that TVA’s negligent conduct caused the massive coal ash spill in Kingston, Tenn. in December 2008. In August of this year—nearly four years after the disaster occurred—U.S. District Court Judge Thomas Varlan found that TVA failed to investigate, address and potentially remedy the underlying problems with the coal ash pond dike leading up to the spill of over 1 billion gallons of toxic coal ash sludge into the community and adjacent rivers. This ruling came after the Phase I trial in the Fall of 2011 on the issue of liability, and Plaintiffs may now go forward to prove their damages against TVA in a Phase II trial.

Nearly 600 local property owners and businesses filed suit against TVA in the aftermath of the spill to hold TVA accountable for damages to their property values and way of life on Watts Bar Lake. This once tranquil lake community is now the site of a massive environmental cleanup that TVA projects will last until 2015. Only recently did EPA and TVA begin the decision-making process to determine how to handle the remaining 500,000 cubic yards of coal ash sludge that remains at the bottom of the Emory, Clinch, and Tennessee rivers that make up Watts Bar lake. The plans could include additional dredging of the river bottoms; capping the ash by covering it with stone; or leaving the ash on the river bottoms to let natural processes cover and erode away the ash over time. Some have suggested that a combination of those methods should be used. Regardless of which method(s) the estimated $1.2 billion cleanup likely will continue for more than another year—approximately seven years after the spill occurred.

Plaintiffs in this litigation are pleased that the damages phase of the litigation will begin soon. In his ruling, Judge Varlan ordered the parties to submit proposed trial plans to structure the damages phase of the trial. Both TVA and Plaintiffs submitted plans in mid-September and now await a ruling from the Judge on how he would like to structure the damages phase.

If you need additional information on this litigation, contact Rhon Jones or Brantley Fry in our office at 800-898-2034 or by email at RhonJones@beasleyallen.com or Brantley.Fry@beasleyallen.com.

Source: The Associated Press, The Huntsville Times, and The Knoxville News Sentinel

**North Carolina Poultry Plant Convicted Of Water Pollution**

A federal jury has found House of Raeford Farms Inc., the owner and operator of a poultry slaughtering and processing facility located in Raeford, N.C., guilty of ten counts of knowing violations of the Clean Water Act. Federal officials alleged that House of Raeford allowed plant employees to bypass the facility’s pretreatment system and send its untreated wastewater directly to the City of Raeford’s wastewater treatment plant, without notifying city officials. They also alleged that House of Raeford failed to prevent employees from sending thousands of gallons of wastewater into a pretreatment system that did not have the capacity to adequately treat the wastewater before it was discharged to the city plant.

The untreated wastewater that was discharged directly to the city plant was contaminated with waste from processing operations, including blood, grease and body parts from slaughtered turkeys. A House of Raeford former employee admitted that the facility would continue to ‘kill turkeys’ despite being warned that the unauthorized bypasses had an adverse impact on the city’s wastewater treatment plant. The city plant was responsible for treating industrial, commercial and residential wastewater before it was discharged to Rockfish Creek in Hoke County.

The bypasses and failure to report them violated House of Raeford’s pretreatment permit as well as the city’s sewer use ordinance. Many of the bypasses took place while House of Raeford was subject to a consent order with the city that required it to construct a new pretreatment system and comply with all requirements of its pretreatment permit. A number of the bypasses were recorded in log books kept by House of Raeford Inc. wastewater operators, and were never revealed to the city. House of Raeford Inc. faces a maximum fine of $500,000 or twice the gain or loss resulting from the offenses, whichever is greater, per count. Sentencing has been scheduled for November 28, 2012.

Source: The Corporate Crime Reporter

**Ignoring Climate Change Is Indefensible**

After the warmest-ever January-March in the contiguous U.S., millions of Americans have experienced a summer of scorching, damaging and relentless heat. From the Southwest to the Northeast, more than 40,000 daily heat records have been broken around the country so far this year. It was reported that triple-digit heat at Reagan National Airport caused tarmac melting, trapping plane tires and delaying flights.

Drought, so severe that in places it rivals droughts of the Dust Bowl years, is ravaging more than half the country, causing the U.S. To declare the largest national drought disaster ever. With forests dry as kindling, 1.3 million acres burned in Colorado and across the country. And as crops fail, one plant biologist at the University of Illinois in Urbana made this alarming statement: “You couldn’t choreograph worse conditions...It’s like farming in hell.”

Source: The Corporate Crime Reporter

**Conclusion**

The corporate crime reporter has noted that in a climate where, “You couldn’t choreograph worse conditions...It’s like farming in hell,” it is indefensible to ignore the impact of climate change on our daily lives. Even as the impact of climate change becomes more apparent, companies continue to prioritize profits over protecting the environment. This is why it is crucial for individuals and organizations to take action to combat climate change and support policies that prioritize sustainability and environmental protection.

Source: The Corporate Crime Reporter

**Website**

The record-breaking temperatures that we have seen are part of the dangerous warming trend that scientists have been carefully documenting for decades. Unfortunately, it’s only the beginning. But what’s worse, too many folks, including politicians and policymakers, have ignored the science for decades. If there could be anything considered good about these extremes, it is that they are finally getting people’s attention. Finally, polling reveals that a majority of Americans believe that climate changes, or as some label it, global warming, is real. And they are right.

The only way to change the current course of destructive, extreme weather is to reduce greenhouse gas emissions that are warming the planet—and it must be done now. Concerned citizens must demand that climate change becomes a top-tier governing priority. Strong limits must be enforced on climate pollution, and energy and fuel efficiency must be improved. A clean-energy future is an absolute necessity. We must stop global deforestation, which accounts for about 20% of all human-caused greenhouse gas emissions. A grassroots army must be mobilized to demand that our national leaders take the climate crisis seriously and take meaningful action to address it.

No environmental challenge is bigger or poses a greater threat to our planet, and ourselves, than climate change. It’s the challenge of our time and it will ultimately require revolutionizing the way we generate and use energy. The United States should lead the world in this energy revolution, but we face a powerful and entrenched fossil-fuel lobby. Concerned Americans must stand together, united as one powerful movement for clean energy, to demand action from our political leaders. Nature is doing its part by speaking with a clear, strong voice and so must all Americans who can do something about a most serious problem.

In the fight to prevent the catastrophic threat of global warming, we must support groups that can get the message out and also lobby Congress. The extreme weather events we are seeing are powerful, tangible warning signs of the calamity we will face if we refuse to do what it takes to ensure a climate-stable future. This is a pivotal moment for change. Scientists say that climate change is happening more rapidly than predicted. We can no longer ignore the way global warming is transforming our world as we know it. If you aren’t already involved, I encourage you to do so!

Source: Environmental Defense Fund
of consumer fraud, you can contact Michelle Fulmer, Section Head Administrator in our Consumer Fraud Section, at 800-898-2034 or Michelle.Fulmer@beasleyallen.com to discuss whether you may have a potential class action case. Michelle will have a lawyer in our Consumer Fraud section contact you.

**Escaping The Invisible Killer**

A new study released last month by the U.S. Consumer Product Safety Commission demonstrates that readily available technology can dramatically reduce deadly carbon monoxide (CO) emission rates from certain common portable gasoline-powered generators. The technology can provide additional critical time for consumers to recognize and escape from the deadly hazard of carbon monoxide poisoning. With the adaptation of existing emission control technology, CO rates can be lowered to levels that would save lives. On average, carbon monoxide from portable gasoline-powered generators kills more than 70 people every year.

CPSC staff's study outlined one method to reduce the generator engine's CO emission rate by using closed-loop electronic fuel injection and a small catalyst—the same emission control technology used on motor scooters and small motorcycles. This significantly increased the predicted escape time by twelve times the current time—from eight minutes to 96 minutes—for the deadly scenario when consumers are in their garage while they are running their generator there. CPSC's study also showed that the predicted escape time for those consumers inside the house, as opposed to the garage, was even greater. The escape time is the time between onset of obvious symptoms and incapacitation.

The CPSC continues to urge consumers to never run their portable generators in their attached garages, in or even near their houses, including avoiding placement outside near windows or vents. Generators should only be used outside, far away from homes. The agency cautions that even if portable gasoline-powered generators were to incorporate this technology, they would still need to be used outside, far from the home. The technology does not make them safe for indoor use. Another important line of defense against CO poisoning is having CO alarms on each level of the home and outside sleeping areas. Based on available data, 93 percent of CO-related deaths involving generators take place in homes with no CO alarms. Much like smoke alarms are designed to alert consumers about smoke or fires, CO alarms are designed to alert consumers to dangerous CO levels and give them time to get out of the house before becoming incapacitated.

Deaths involving portable generators have been steadily increasing since 1999 when generators became widely available to consumers. According to the CPSC, there have been at least 755 CO deaths involving generators from 1999 through 2011. While reporting of incidents for 2011 is ongoing, there were at least 73 CO-related deaths involving generators last year. Generators are responsible for the largest number of estimated non-fire CO deaths associated with consumer products. From 2006 through 2008, generators accounted for 43 percent of CO deaths compared to 33 percent for heating systems, such as furnaces. Furnaces had historically been responsible for the most CO deaths.

Generators are used by consumers to keep lights, electrical appliances or heating and cooling units running in their homes during power outages. Incapacitation or death can occur within minutes if consumers use a generator inside a home, garage, shed or use it outside near windows or vents, because dangerous levels of CO from a generator's fuel-burning engine build up quickly. With the release of this study, the CPSC is urging manufacturers to voluntarily adopt a stringent CO emission standard for engines used in portable gasoline-powered generators with the expectation that it will improve safety and save lives, just as the marine industry did in 2005.

That year, manufacturers of small marine generator engines voluntarily adopted a stringent CO emission standard to address the hazard of acute poisoning that was causing fatal and serious injuries to boaters exposed to marine generator engine exhaust. For this study, the CPSC worked with the National Institute of Standards and Technology and the University of Alabama to develop and test the portable gasoline-powered generators.

Source: CPSC News Release

**Tiny Batteries Causing Big Health Problems For Young Children**

A recent report indicates that the small coin-sized batteries found in many toys, electronics and singing greeting cards could be life-threatening in children. An analysis, released recently by the Centers for Disease Control and Prevention and the Consumer Product Safety Commission, found that 14 children who are aged 13 and under have died, and more than 40,000 have been injured from small batteries. Scott Wolfson, director of communications for the CPSC, called these batteries a "serious hazard," and observed:

There is growing attention to this hazard and an increase in the number of fatalities. Today, more of these small batteries are being used in products such as remote controls, greeting cards, and flashlights, and CPSC is seeing children getting access to these batteries.

Statistics in the report appear to support Wolfson's argument that these cases are on the rise. Of the 14 deaths reported between 1997-2010 half were reported in 2009-2010 and 72 percent of ED visits throughout 1995-2010 were among children aged four and under. Part of what makes these ingestions so dangerous is by the time symptoms like severe abdominal pain or vomiting appear, burns, ulcers and severe damage to the esophagus or gut has likely already occurred. Alison Tothy, director of pediatric emergency medicine at the University of Chicago, had this to say:

That's what's so scary about these, you can get damage so quickly. But how many parents bring their kids to the emergency department for a little belly pain, but 8, 12, 14 hours later they are still having belly pain and starting to vomit...and there is even more damage that has been done because the battery has sat there for 24 hours. It's important to bring children in right away if you think they swallowed something. The window of opportunity to get those out before they cause damage is pretty small. It's usually within four hours a battery can cause damage.

Similar findings can be found in a May study in Pediatrics. Children being taken to emergency departments with battery ingestions have increased—with more than 65,000 ED visits involving kids 18 and under between 1990-2009. Gary Smith, director of the Center for Injury Research and Policy at Nationwide Children's Hospital, was the author of the May study. He says that “we live in a world designed by adults for the convenience of adults, and the safety of children is often not considered.”

Dr. Smith found ED visits doubled from 2,591 visits in 1990 to 5,525 in 2009 and the number of button batteries swallowed by children also doubled. Chairman for the CPSC, Inez Moore Tenenbaum, has called on major manufacturers of button and coin-cell batteries to address the safety of their products. She wants to see safety standards in place to address the problem. Wolfson says the changes can't come soon enough, adding: '
We want these products that use button cells to be designed in a way that children can never get access to them. We believe that there can be innovations in both the way the battery is made and how it is used in various products.

In the 1980s, toys and other children’s products were required to secure tiny batteries so kids could not get to them. A bill introduced last year by Sen. Jay Rockefeller, D-W.Va., would require all products with button batteries to be childproof. The CPSC said parents should never let kids play with batteries and take caution to make sure they are disposed of properly. Any parent who believes a child has swallowed one of these batteries, should call the national batteries ingest hotline: 202-625-3333 or the national universal poison control hotline: 1-800-222-1222.

Source: ABC News

**Publishers To Pay $69 Million In E-Book Price-Fixing Settlement**

Three of the nation’s largest book publishers—Hachette Book Group, HarperCollins Publishers and Simon & Schuster—have agreed to pay $69 million to settle claims that they illegally conspired to fix e-book prices. The companies also agreed to change the way they price e-books going forward. The new pricing scheme will allow retailers such as Amazon.com to lower prices on e-books without prior approval from the publishers.

The antitrust lawsuit was filed in U.S. District Court for the Southern District of New York. It was alleged that the publishers conspired, among themselves and with others, to increase retail e-book prices and eliminate competition by imposing a distribution model in which the publishers set the prices. A separate lawsuit against Apple, Macmillan, and Penguin, is still pending in the U.S. District Court for the Southern District of New York. Under the proposed settlement, which requires court approval, Hachette, HarperCollins and Simon & Schuster will compensate consumers who purchased certain e-books between April 1, 2010, and May 21, 2012. Payments will begin 30 days after court approval. Consumers eligible for payments or credits will be notified by the retailer from which they purchased the qualifying e-book.

Hachette, HarperCollins and Simon & Schuster have also agreed to terminate their existing agency agreements with certain retailers, requiring the publishers to give retailers such as Amazon and Barnes & Noble the ability to discount e-book titles. For two years, the publishers will be prohibited from making any new agreements that constrain retailers’ ability to offer consumer discounts.

Source: DenverPost.com

**BP Pays $1.5 Million In Claims In Gas Recall**

BP has paid more than $1.5 million in claims arising from a recall in multiple Midwest states of incorrectly formulated gasoline that damaged some vehicles’ mechanical components. Information BP sent to Indiana’s Attorney General said the company had by September 5th made payments totaling $1.52 million on 2,315 of the 15,965 claims it’s received. BP recalled about 4.7 million gallons of gasoline last month distributed in Indiana, Illinois, Ohio and Wisconsin. The fuel caused problems that included hard starting, stalling and damage to critical vehicle components. Indiana residents have filed 59 percent of the claims, while Illinois residents have filed 33 percent of them. A spokesperson for BP said the company will continue making payments to people who have filed “legitimate claims.”

Source: Insurance Journal

**Major Organic Dairy Aurora Pays $7.5 Million To Settle Suit With Consumers**

Aurora Organic Dairy, a major organic milk producer with two Texas farms, has agreed to settle a five-year-old consumer lawsuit over alleged deceptive-marketing claims for $7.5 million. The suit was filed after the U.S. Department of Agriculture and Aurora signed a 2007 consent agreement that required the producer to adopt more stringent practices or risk losing its organic certification. During a monitored, one-year probationary period, Aurora agreed to give its cows daily access to pastures but not to over-graze them. It also agreed to eliminate cows that had not been properly transitioned from conventional herds while implementing a more stringent transition process.

Organic industry watchdog groups, such as Wisconsin-based Cornucopia Institute, criticized the Bush Administration for not extracting tough penalties from Aurora. But they applauded the class-action suit for proceeding against the company on behalf of organic food consumers. After Aurora fulfilled the terms of the probation period, the civil suit was allowed to proceed only on claims that Aurora and supermarket chains misled consumers. Claims cited by the suit included Target, Costco, Wal-Mart and Safeway. But Aurora defended the case alone and it paid the entire amount of the settlement.

Source: star-telegram.com

**Haier America Trading Agrees To $850,000 Civil Penalty For Failure To Report Defective Blenders**

The U.S. Consumer Product Safety Commission announced last month that Haier America Trading LLC, of New York, N.Y., has agreed to pay a civil penalty of $850,000. The settlement agreement, provisionally accepted by the CPSC, resolves staff allegations that Haier America failed to report immediately to CPSC, as required by federal law, a defect involving its blenders that resulted in nearly 60 incidents and an injury to a consumer’s hand. The nut on the blender that holds the blade assembly can dislodge during use, allowing the blade assembly pieces to break apart, and/or crack the blender’s glass jar, posing a laceration hazard to consumers.

Haier America sold the blenders through retail stores between October 2006 and October 2009. While the company became aware of the incidents and injury between January 2007 and September 2009, it failed to file a full report to the Commission until October 2009. Federal law requires manufacturers, distributors, and retailers to report to CPSC immediately (within 24 hours) after obtaining information reasonably supporting the conclusion that a product contains a defect that could create a substantial product hazard, creates an unreasonable risk of serious injury or death, or fails to comply with any consumer product safety rule or any other rule, regulation, standard or ban enforced by CPSC. Haier America recalled nearly 54,000 blenders in December 2009.

Source: CPSC

**NHTSA To Launch Live Recall Site**

The National Highway Traffic Safety Administration announced last month that it will launch a real-time recall website, complete with information about specific vehicles. In July, Congress enacted the Moving Ahead for Progress in the 21st Century Act, which required the Secretary of Transportation to mandate that safety recall information for motor vehicles be available to the public via the Internet. To meet the mandate, the NHTSA has announced the creation of www.safecargov, which will offer a VIN-based search function. Consumers will be able to find out whether a vehicle has been the subject of a recall and whether a
specific vehicle has had its manufacturer remedy.

In order to gather the necessary information for the site, the agency recently proposed amendments to the agency’s early warning reporting rule that would mandate more recall data from car manufacturers. In addition to giving the agency the VINs of recalled vehicles and remedy completion information on a daily basis, light vehicle makers would be required to provide additional information about the fuel and/or propulsion system type and add four new reporting categories for this class of vehicles: electronic stability control, forward collision avoidance, lane departure prevention and backover prevention. Manufacturers of buses, emergency vehicles and medium-heavy vehicles would be required to provide data about stability control/roll stability systems under the new rule. The agency is accepting public comments on the proposed rule until November 9th of this year.

Source: Lawyers USA Online

XX. RECALLS UPDATE

Each month a number of safety-related recalls are reported. This month will be no different. As we have said, serious safety-related recalls have become commonplace. The following are some of the more significant recalls since those reported in the September 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.

FIRE RISK PROMPTS THIRD RECALL OF NEW FORD ESCAPE

Ford Motor Co. has once again recalled its newly-launched 2013 Escape sport utility vehicle, citing an improperly installed part that could trigger a fire in the engine compartment. This recall, which is the third for this car, affects about 7,600 Escapes, mostly in the United States, equipped with a 1.6-liter EcoBoost engine. The models were built between Oct. 5, 2011, and Aug. 31, 2012. In a small number of these models, the cup plug on the engine cylinder head may come loose. This would lead to loss of engine coolant, causing the engine to overheat. In some cases, the ethylene glycol in the coolant may combust.

Ford said in a document filed with NHTSA that fewer than 0.4 percent of the Escape models recalled in the United States have this issue. In July, Ford recalled 11,500 Escape SUVs for a fuel line defect that could cause an engine fire. The issue led Ford to take the rare step of telling owners to stop driving immediately. The latest recall is less severe and is unrelated to the fuel line problem, Ford said. About 6,150 of the SUVs covered by the action are in the United States and 1,300 are in Canada.

The 1.6-liter EcoBoost engine is made at Ford’s Bridgend Engine Plant in England. In its investigation, Ford found that the cup plugs prone to problems were manually installed. It had been common practice at the plant to install these components by hand if there was a problem with the automated systems. That is no longer the case, according to Ford. The plant is now only using automated machinery for this installation, according to Ford. The company says there will be no more manual installation of that particular part.

The problem came to light in August after an Escape caught fire on a dealer lot in Nashville, Tenn., due to a dislodged plug. Ford later found that an Escape fire reported by a Ford employee on July 11 had also been caused by a missing plug. Ford said that in some cases, the water in the coolant could vaporize once it leaked, increasing the concentration of ethylene glycol to the point where it could combust. Ford said in the filing that it was unaware of any fires in Escapes sold to customers. Replacement parts are available at dealerships.

The Escape SUV, one of Ford’s best-selling models, was completely redesigned for the 2013 model year. It is one of two crucial launches for Ford this year. The other is the 2013 Fusion mid-size sedan, which is due to go on sale this fall. Also in July, Ford recalled more than 8,000 Escape SUVs to fix a carpeting issue that interfered with drivers’ ability to apply the brakes. The Escape is Ford’s fastest selling vehicle on dealer lots, said Ford’s marketing chief Ken Czubay. Two weeks ago, Ford added a third shift at its Escape plant in Louisville, Ky., to keep up with demand. Through August, Ford has sold about 177,000 Escape SUVs this year, up 5.5 percent from 2011. About 90 percent of the Escape SUVs sold have either a 1.6-liter or 2.0-liter EcoBoost engine.

FORD RECALLS SOME 2012 FORD EDGE SUVs

Ford Motor Co. has recalled some of its 2012 Edge vehicles because of concerns that the fuel line could leak and potentially cause a fire. The recall affects about 5,500 vehicles made between Sept. 2, 2010, and Oct. 31, 2011. The Edge is a mid-sized SUV, and the affected vehicles have 2-liter engines. The problem is caused by a part in the fuel line that could crack. If it did, the smell of gas would probably be noticeable, and fuel leaks might also appear. Those conditions could cause a fire under the hood.

In the group of vehicles being recalled the housing of a part called the fuel line pulse damper may crack because of a manufacturing defect. Such cracks can result in fuel leaks when the fuel system is under pressure, and fuel leaks can increase the risk of a fire. Under the recall Ford dealers will repair the vehicles free of charge. The recall is expected to begin on or about Sept. 24.

Customers may contact Ford Motor Co. at 866-436-7332.

Ford blamed the recall on faulty manufacturing by a parts supplier. Ford will notify owners by mail with instructions to take their vehicle to a Ford or Lincoln dealer. If the vehicle needs to be fixed, the dealer will do the repair for free. The recall is expected to begin on, or about, Sept. 24. Ford, based in Dearborn, Mich., said it is aware of 12 cases of fuel leaks after examining warranty claims. No accidents, injuries or fires have been reported.

NISSAN RECALLS CARS FOR STEERING WHEEL PROBLEM

Nissan Motor Co. has recalled 51,000 cars globally, to investigate a reported steering wheel problem. The recall affects Nissan’s Qashqai, Qashqai+2 and Nissan NV200 models. Of the recalls, 880 were in Finland. It was reported that a steering wheel of a Qashqai+2 in Finland became loose. A Nissan official said that about 600 out of all the recalled cars were likely to require a new steering wheel.
GM Recalls 2012 Chevrolet Sonic For Defective Windshield Washers

General Motors has recalled 44,668 2012 Chevrolet Sonic subcompacts to check for and correct faulty windshield washers. GM said the windshield wiper washer hose on Sonics made from May 5, 2011, through February 24, 2012, could separate from the washer fluid reservoir. A lack of washer fluid could impede the driver’s view, increasing the risk of a crash, according to NHTSA. GM was to begin notifying customers on September 7th.

GM Recalls Midsize Cars To Fix Transmission Cables

General Motors has recalled nearly 474,000 Chevrolet, Pontiac and Saturn cars to fix a transmission problem that can cause the cars to roll away unexpectedly. The recall affects 2007-2010 Chevrolet Malibus, Pontiac G6s and Saturn Auras in the U.S., Canada and Mexico as well as a small number of exports. All the cars have four-speed automatic transmissions. GM says part of the transmission cables can break. When this happens, the shifter can show that the car is in park when it’s really in gear. GM says it knows of four crashes from the problem but no injuries. Dealers will put a retainer over the end of the cables or replace them. Owners will be told by letter when to set up appointments with dealers.

Lamborghini Recalls 1,500 Gallardos For Fire Hazard

Lamborghini said it discovered the problem during routine internal testing, not from reports of problems with Gallardos from owners. The automaker told the safety agency it was not aware of any accidents or injuries related to the problem.

Kawasaki Recalls Recreational Off-Highway Vehicles Due To Injury And Death Hazard

About 7,000 Teryx4 Recreational Off-Highway Vehicles have been recalled by Kawasaki Motors Corp. USA, of Irvine, Calif. The steering gear assembly and front brakes can fail, resulting in the loss of steering and braking, posing a risk of injury or death. The recalled vehicles are 2012 Kawasaki Teryx4 4x4 recreational off-highway vehicles in the following styles: 750, 750 EPS and 750 EPS LE. The four-wheel drive recreational off-highway vehicles have side-by-side seating for four people and automobile style controls.

The vehicles are sold in red, camouflage, green, blue and yellow colors. The model name “Teryx4” appears on the driver’s side of the hood. The style name does not appear on the 750 version. For all colors of the 750 EPS except camouflage, “EPS” appears on the driver and passenger side cowling near the top front corner of the doors. On the 750 EPS LE, “EPS” appears on the driver and passenger side cowling near the top front corner of the doors and “LE” appears on the hood on the driver’s side.

The vehicles were sold at Kawasaki dealers nationwide from October 2011 through July 2012 for about $13,400. Consumers should contact their local Kawasaki dealer to schedule a free repair. For more information, contact Kawasaki between 8 a.m. and 5 p.m. Monday through Friday toll-free at (866) 802-9381 or visit the company’s website at www.kawasaki.com. I understand that Kawasaki has contacted its customers directly.

Death Of Child Prompts Recall Of Window Blinds By Blind Xpress

Blind Xpress of Livonia, Mich., has recalled about 139,000 custom-made vertical and 315,000 horizontal blinds. In 2009, a two-year-old girl from Commerce Township, Mich. reportedly strangled in the loop of a vertical blind cord that was not attached to the wall or floor. Blind Xpress custom vertical blinds have an adjustment cord that forms a loop that is not attached to the wall or floor. In some instances, this loop has a weighted device at the bottom.

The custom horizontal blinds do not have inner cord stop devices to prevent the accessible inner cords from being pulled out. A child can become entangled in a cord loop and strangle. This recall involves all Blind Xpress custom-made vertical blinds that do not have a cord-tensioning device that attaches to the wall or floor, as well as all horizontal blinds that do not have inner cord stop devices.

The blinds were sold at various blind specialty stores in Michigan, Ohio and Indiana from January 1995 through December 2011 for between $16 and $380. These blinds were manufactured in the United States. CPSC urges consumers to immediately stop using the window coverings and contact the Window Covering Safety Council (WCSC) to receive a free repair kit. For more information, contact the WCSC toll-free at (800) 506-4636 anytime or visit www.windowcoverings.org. The U.S. Consumer Product Safety Commission (CPSC) is still interested in receiving incident or injury reports that are either directly related to this product recall or involve a different hazard with the same product. Please tell us about your experience with the product on SaferProducts.gov

BP Gas Recall Is Now At 4.7 Million Gallons

BP says the size of its gasoline recall is now more than twice as large as previously reported at 4.7 million gallons distributed as far as southwestern Ohio and southern Indiana. BP spokesman Scott Dean said on Aug. 29 the gasoline was distributed from terminals in Whiting, Indianapolis and suburban Chicago and suburban Milwaukee. One tanker went to a station in Camden, Ohio, about 15 miles southeast of Richmond.

An interactive tool at http://bpresponse.com shows the gasoline refined in Whiting also reached stations as far south as Bloomington and Columbus. Dean previously had said the gas was distributed only in northwestern Indiana and the Chicago and Milwaukee

www.BeasleyAllen.com
areas. According to Dean, BP has begun processing nearly 10,000 claims from customers whose vehicles were affected, mostly in Indiana and Illinois.

**LEGRAND WIREMOLD RECALLS POWER STRIPS DUE TO ELECTRIC SHOCK HAZARD**

About 14,200 Legrand Under Cabinet Power and Lighting four outlet power strips have been recalled by Legrand Wiremold, West Hartford, Conn. The electrical wires are reversed on the receptacles on the power strips, posing a risk of electrical shock. One incident was reported; however, no injuries were reported. This recall involves four-outlet under-cabinet power and lighting strips model number PX1001. The power strips come in a red package with “Wiremold-Series Part PX1001” printed on the front. The manufactured dates of the recalled products are presented as product date codes January 2011 through June 2012, and are found imprinted on a circle on the bottom with an arrow pointing to the number of the month and the year “11” or “12” in the center. The model number PX1001, and UPC number 0 86698 00125 3, are imprinted on the bottom of the packaging. Power strips that have a star symbol printed in black ink on the packaging and on the back cover of the power strip are not included in this recall.

The power and lighting outlet strips were sold at Ace Hardware, Do it Best, Home Depot USA, Sutherlands, True Value Hardware and online at Amazon.com between February 2011 and August 2012 for about $4.0. Consumers should immediately unplug and stop using the power strips and return them to Legrand Wiremold for a replacement or refund. For additional information, contact Legrand Wiremold at (800) 617-1768 between 8 a.m. and 8 p.m. ET Monday through Friday, or visit the company’s website at www.legrand.us.

**SPECIALIZED BICYCLE COMPONENTS RECALLS BICYCLES**

Specialized Bicycle Components Inc., of Morgan Hill, Calif., has recalled about 12,200 Bicycles. The front fork can break, posing fall and injury hazards to riders. Specialized has received four reports of front forks breaking, resulting in facial fractures, head and shoulder injuries and cuts. This recall involves some 2008 and 2009 models women’s and men’s Globe model bicycles. Recalled models include the Globe Elite, Globe Sport, Globe Sport Disc, Globe Centrum Comp, Globe Centrum Elite, Globe City 6, Globe Vienna 3, Globe Vienna 3 Disc, Globe Vienna 4, Globe Vienna Deluxe 3, Globe Vienna Deluxe 4, Globe Vienna Deluxe 5 and Globe Vienna Deluxe 6 bicycles. The bicycles were sold in various colors, including gun, silver, black, khaki, navy, bone, blue, charcoal, burgundy and gold. The brand name “Specialized” is on the lower frame tube and the model name is on various locations on the bicycle frame.

The bicycles were sold at Authorized Specialized retailers nationwide from July 2007 to July 2012 for between $550 and $1,100. Consumers should immediately stop riding these bicycles and return them to an authorized Specialized retailer for the free installation of a free replacement fork. For additional information, contact Specialized toll-free at (877) 808-8154 from 8 a.m. to 5 p.m. PT Monday through Friday, or visit the company’s website at http://www.specialized.com and click on Support/Safety Notices.

**MEIJER STORES RECALLS BICYCLES DUE TO FALL HAZARD**

Various models of Huffy, Iron Horse, Mongoose, Northwoods, Pacific, Razor and Schwinn bicycles have been recalled by Meijer Inc., of Grand Rapids, Mich. Pedals on the bicycles can loosen or detach during use, posing a fall hazard to the rider. There are 29 reports of pedals detaching or coming loose during use, including 16 reports of minor injuries. This recall involves Prestigio Black Leather” are printed on a label located on the underside of the seat.

The chairs were sold exclusively at Office Depot retail stores nationwide and online at OfficeDepot.com from October 2008 through February 2011 for about $250. Consumers should immediately stop using the chairs and contact True Innovations for a free seat repair kit including a replacement seat plate and an installation tool. For additional information, contact True Innovations at (800) 379-9773 between 9 a.m. and 5 p.m. ET Monday through Friday, or visit the company’s website at www.trueinnovations.com.

**TRUE INNOVATIONS RECALLS PRESTIGIO OFFICE CHAIRS DUE TO FALL HAZARD**

About 8,400 Realspace Soho Prestigio High-Back Leather Chairs have been recalled by the manufacturer True Innovations LLC, of Hong Kong, China and the importer Office Depot Inc., of Boca Raton, Fla. The seat plate can break, posing fall and injury hazards to consumers. Office Depot has received 78 reports of incidents involving seat plates breaking, including one report of a fall injury. This recall involves Prestigio model office chairs. The high-back leather chairs were sold in black and have a five-leg metallic finish base with casters. The SKU number 181-265 and the words “Realspace Soho” and “Prestigio High-Back Chair Black Leather” are printed on a label located on the underside of the seat.

The bikes were sold exclusively at Meijer stores in Michigan, Ohio, Illinois, Indiana and Kentucky from March 2012 through August 2012 for between $60 to $300. Bicycles sold at Michigan Meijer stores in Cadillac, Gaylord, Petosky and Traverse City are not included in this recall. Consumers should immediately stop using the recalled bicycles and return them to any Meijer store for a full refund or a replacement bicycle of the same type and value. Consumers will also receive a $10 store coupon. For additional information, contact Meijer at (800) 927-8699 anytime, or visit the company’s website at www.meijer.com where a link to recalls can be found at the bottom of the homepage.
KICKBOARD USA RECALLS CHILDREN’S SCOOTER

Kickboard USA of Grand Rapids, Mich., has recalled about 5,600 scooters. The one-piece plastic platform that covers the front wheel base can break, posing a laceration hazard to children. This recall is for the three-wheeled Mini Micro scooter for children ages three to five. The scooter was sold in the following colors: blue, orange, pink and aqua. “Micro” is written in black and blue letters on the metal handlebar and is imprinted on the black hand grips. “Mini Micro” is written on the front plastic covering. The scooters were sold at independent toy stores, Amazon.com and Kickboardusa.com for about $85 from May 2012 to July 2012. Consumers should take this product away from children and contact Kickboard USA for a free replacement product. For additional information, please contact Kickboard USA toll-free at (888) 256-5657 between 9 a.m. and 5 p.m. ET Monday through Friday, by e-mail to safety@kickboardusa.com or visit the company’s website at http://www.kickboardusa.com.

SHERWIN-WILLIAMS SPRAY PAINT RECALL

Sherwin-Williams has recalled about 17,850 Tree House Studio™ Clear Acrylic Matte Coating; about 98,400 Krylon® Triple Thick Crystal Clear Glaze and Krylon® Indoor/Outdoor Crystal Clear Acrylic Paint; and about 2,700 Dupli-Color® Perfect Match™ Automotive Paint. Consumers should stop using recalled products immediately unless otherwise instructed. It is illegal to resell or attempt to resell a recalled consumer product. The aerosol paint canisters can leak, posing a fire hazard to consumers if the paint can is stored near a source of ignition.

Tree House Acrylic Coating: The recall involves 11-ounce cans of Tree House Studio™ Clear Acrylic Matte Coating. The product was sold in a white aerosol can with Tree House Studio™ logo and the name “CLEAR ACRYLIC MATTE COATING” printed on the front. Batch date HL2081LT is printed on the bottom of the can, along with UPC code 724504103004. The product was sold at Hobby Lobby stores nationwide between July 2011 and June 2012 for about $7.

KRYLON GLAZE AND ACRYLIC: Sherwin-Williams has received 31 reports of leaking canisters, including reports of property damage from leaking paint. No injuries have been reported. This recall involves 12-ounce cans of Krylon® Triple Thick Glaze and 11-ounce Krylon® Indoor/Outdoor Crystal Clear satin acrylic finish. Batch code HL1311FV, HL2081KL or HL2081MN is printed on the bottom of the can, along with UPC code 075577005000 or 724504035305. The Krylon logo is printed on the front of the white spray can with a translucent top. The paint was sold at Ace Hardware, Ben Franklin, Do It Best Corp., Kmart, Lowes, Pat Catan’s, Walmart and other retail stores nationwide between July 2011 and June 2012 for about $7.

Dupli-Color Automotive Paint: This recall involves Dupli-Color Perfect Match™ automotive paint in green metallic. The liquid paint was sold in an 8-ounce spray paint can. Batch code “HL2031L1N” is printed on the bottom of the can, along with UPC code 026916715036. The paint was sold at Advance Auto, Autozone, Discount Auto Parts, General Automotive Supply, NAPA, Pep Boys and other retail stores between July 2011 and June 2012 for about $7.

Consumers should immediately stop using the recalled products and contact Sherwin-Williams for a refund. For additional information, contact Sherwin-Williams toll-free at (888) 304-3769 between 9 a.m. and 5 p.m. ET Monday through Friday, or visit the company’s website at www.sherwin-williams.com.

ENERGIZER RECALLS NIGHT LIGHTS DUE TO BURN HAZARD

About 260,000 Energizer Rotating Night Lights have been recalled by Energizer, of St. Louis, Mo., and Ningbo Sun-alps Industry Develop Co. Ltd, of China. The night lights can overheat and smoke, posing a burn hazard to consumers. Energizer has received nine reports of the night lights overheating, including three reports of minor property damage. No injuries have been reported. This recall involves Energizer LED rotating night lights. The night lights are white and have an LED light inside an adjustable dome on top. The night lights measure about 2 inches wide by 2 ½ inches long. Model number “NLPLROT” and date codes between 0110 (for January 2010) through 0111 (for January 2011) are included in this recall. The model number is stamped onto the side of the night light. The date code is stamped in a circle on the back of the night light. The arrow points to the month of production (i.e. 12 = December) and the number positioned on either side of the arrow represents the year (i.e. “10” = 2010). The lights were sold exclusively at Target stores nationwide from February 2010 through July 2012 for about $6. Consumers should immediately stop using and unplug the recalled night lights. Contact Energizer for instructions on returning the night lights for a $7 coupon towards the purchase of an Energizer product. For additional information, contact Energizer at (800) 383-7323 between 8 a.m. and 6 p.m. CT Monday through Friday, or visit the company’s website at www.energizer.com.

COOPER LIGHTING RECALLS SHOWER LIGHT TRIM AND GLASS LENS DUE TO IMPACT AND LACERATION HAZARDS

The trim for about 50,400 shower lights has been recalled by Cooper Lighting LLC, of Peachtree City, Ga. The shower light's trim and glass lens can fall from the ceiling fixture, posing an impact and laceration hazard to consumers. Cooper Lighting has received 407 reports of trim pieces falling and breaking, including laceration injuries to a consumer's head and foot when struck by the light's trim and lens as they fell from the ceiling fixture. This recall involves All-Pro shower light trim models ERT701, RE-ERT 701, ERT702 and ERT703 with a glass lens and date codes 347 11 through 119 12. The model number and date code are marked on underside of the portion of the trim facing the ceiling.

The shower light trim was sold at Home Depot and other home improvement stores nationwide and by professional installers from January 2012 through July 2012 for about $15 for the trim and glass lens. Contact Cooper Lighting immediately to receive free replacement trim for the shower light. For additional information, contact Cooper Lighting at (800) 954-7228 between 8 a.m. and 5 p.m. ET Monday through Friday, or visit the company’s recall page at www.cooperlighting.com.
DeVilbiss Air Power Co. of Jackson, Tenn., has recalled about 460,000 air compressors. The air compressor motor can overheat, posing a fire hazard. DeVilbiss has received ten reports of motors overheating. No injuries have been reported. The recalled compressors were sold under the Craftsman, EX-CELL, Porter-Cable and Pro-Air II brand names. Recalled models have air slots at the end of the motor that form a horizontal and vertical grid. The model number on each unit is located on the unit name plate on the tank. Consumers with a compressor manufactured before the dates shown, but had a motor replaced after July 25, 2003, should also check the end cap. The end cap is visible from underneath the motor cover.

The EX-CELL, Porter-Cable and Pro-Air II-brand compressors were sold by industrial and construction distributors from July 2003 through December 2008 for between $259 and $299. Craftsman-brand compressors were sold at Sears stores nationwide from July 2003 through December 2008 for between $279 and $329. Consumers should immediately unplug and stop using the recalled compressors and call DeVilbiss Air Power Co. or Sears for a free repair kit. For additional information, consumers with EX-CELL, Porter-Cable and Pro-Air II compressors should contact DeVilbiss toll-free at (866) 885-1877 between 8 a.m. and 6 p.m. ET Saturday, or visit the company’s website at www.porter-cable.com or www.devap.com. Consumers with Craftsman-brand compressors should call Sears toll-free at (888) 710-9282 between 7 a.m and 7 p.m. CT Monday through Friday or between 7 a.m. and 7 p.m. CT Saturday, or visit the company’s website at www.sears.com.

Blenstem Brands Recalls Range Rider Ride-On Toy Cars Due To Fire And Burn Hazards

About 4,700 Range Rider Ride-On Toy Cars have been recalled by Blenstem Brands, Inc., of Eden Prairie, Minn., owner of Fingerhut and Gettington. The battery can overheat, smoke, melt and catch on fire, posing fire and burn hazards to consumers. Blenstem has received nine reports of incidents in which batteries smoked or caught on fire and melted the battery’s connections or scorched the plastic in the ride-on car. No injuries have been reported. This recall involves batterypowered Range Rider ride-on toy cars with an off-road vehicle body style and plastic tires. The ride-on cars were sold in pink and tan colors. The recalled Range Riders can be identified by their product code and model number. The model number is on the back of the seat of the ride-on toy car. The product code does not appear on the ride-on toy cars, but can be found on the product carton.

The toy cars were sold at Fingerhut catalogs and online at Fingerhut.com and Gettington.com from September 2010 through May 2012 for between $200 and $250. Consumers should immediately stop using the recalled ride-on toy cars and remove the battery and contact Blenstem for a full refund of the purchase price plus reimbursement for shipping and handling. The firm is directly contacting those who purchased the recalled ride-on toy cars. For more information, contact Blenstem toll-free at (866) 931-5417 between 8 a.m. and 6 p.m. CT Monday through Friday, or visit the company’s websites at www.fingerhut.com or www.gettington.com and click on Product Recall.

Mr. Coffee Single Cup Brewers Recalled Due To Burn Hazard

Sunbeam Products Inc. doing business as Mr. Coffee® Single Cup Brewing System. This includes 520,000 in the United States and 80,700 in Canada. A build-up of steam in the water reservoir can force the brewing chamber open and expel hot coffee grounds and water, posing a burn hazard. JCS has received 164 reports of the brewing chamber opening due to steam pressure, including approximately 59 reports in the U.S. And two in Canada of burn injuries to consumers’ face, upper torso and hands. The recalled coffeemaker comes in black with silver, red or white trim. It stands about 11 inches tall and has a Brew Now /Off button and a removable drip tray. The water tank is located on top of the unit towards the back. The model number is printed on the bottom of the brewer. The systems were sold by mass merchandisers nationwide, including Bed Bath & Beyond, Brandsmart, JC Penney, Kmart, Lowe’s, Target and Walmart, and online at www.mrcoffeerecall.com.
the bather is lifted and/or carried with an infant in it, its folding wire frame can suddenly disengage from the side hinge, dropping the baby out of the bather, posing a fall hazard and a risk of serious head injury to infants. CPSC and Summer Infant have received seven reports of incidents in the U.S., including five reports of infants suffering head injuries from falls from the bathers. Four children between two weeks and two months old received skull fractures, including one that required intensive care for bleeding on the brain. The fifth child received a bump to the head requiring emergency room treatment.

This recall involves Summer Infant baby bathers with a small, nearly square blue or pink plastic base measuring about 13 ½ inches long by 12 ½ inches wide and with the following model numbers listed below. Model numbers are located either on the side of the baby bather near the warning label or on the front near the wash instructions. Some units have multiple model numbers. Model numbers with an additional letter at the end of the model number are also included in this recall. The bathers have adjustable side hinges with five rivets each and a white wire frame with a mesh fabric sling seat and two or three positions for the seats. Some also have a head support cushion. The fabric seat comes in various colors including white, blue, green, yellow and orange with fish, turtles, butterflies, frogs, flowers and duck patterns.

Bathers manufactured since July 2007 include the warning “Never lift or carry the bather with infant in it.” The bathers were sold at mass merchandise stores nationwide and on the Web from September 2004 through November 2011 for between $15 and $30. Consumers should immediately stop using the bathers and contact Summer Infant for a free repair kit that includes a locking strap and instructions. Note: Even with the new locking strap installed, the baby bather product should never be used to lift and carry an infant. For additional information, contact Summer Infant at (800) 426-8627 between 8 a.m. and 5 p.m. ET Monday through Friday or visit the company’s website at www.summerinfant.com/bathrepairkit. Do not return to stores as the retailers will not have the repair kit.

**ZEST GARDEN RECALLS WILSON & FISHER BISTRO SETS DUE TO FALL HAZARD**

About 22,500 Wilson & Fisher White Cast Bistro Table and Chair Sets have been recalled by Big Lots, of Columbus, Ohio and their importer Zest Garden, of Ontario, Calif. The chairs can break during normal use, posing a fall hazard to consumers. Zest Garden has received five reports of chairs breaking, including three reports of injuries. This recall involves three-piece patio sets sold in a white, cut-out rose pattern. The set consists of a table and two chairs made of cast iron and aluminum. The table is about 26 inches high and measures about 24 inches in diameter. Each chair is about 33 inches high with an oval-shaped seat that measures about 19 inches long and about 16 inches wide. The item number is XG-1015-23. The product measurements, the item number and “Wilson & Fisher White Cast Bistro Set” and “Made in China” are printed on labels located on the product’s packaging.

The sets were sold exclusively at Big Lots stores nationwide from November 2011 to May 2012 for about $100. Consumers should immediately stop using the set and return it to any Big Lots store for a full refund. For more information, contact Zest Garden at (800) 893-3006 the set and return it to any Big Lots store for a full refund. For further information, contact Cost Plus toll-free at (877) 967-5562 between 7 a.m. Through 12 p.m. PT any day, or visit the company’s website at www.worldmarket.com and click on Product Recalls under Customer Service.

**SUN PHARMACEUTICAL INDUSTRIES, INC. ISSUES NATIONAL RECALL OF ONE LOT OF NIMODIPINE CAPSULES**

Sun Pharmaceutical Industries, Inc. (Sun Inc) has recalled one lot of Nimodipine Capsules, 30 mg, marketed by Caraco Pharmaceutical Laboratories, Ltd. Sun Inc. commenced the recall as a precautionary measure due to the presence of crystals of nimodipine within the capsule solution of this lot as identified by a customer complaint. No adverse events have been reported at this time. Nimodipine Capsules, 30 mg, are used to decrease problems due to subarachnoid hemorrhage (bleeding in the brain). Nimodipine capsules 30 mg are clear yellow solution filled in oblong opaque light yellow softgel capsules, imprinted ‘135’ in black ink. The product is supplied in unit dose blisters of 50 and 100, as described below. The affected product was distributed nationwide between January 19, 2012 and April 24, 2012.

The crystallization of the nimodipine fill material in the capsule could adversely affect the product’s bioavailability. Although clinical health implications are unknown, use of the product when the nimodipine has crystallized in the capsule may be of great clinical significance. The product may no longer be bioequivalent and may potentially affect patients who are being treated for a medical emergency. As a precautionary measure, Sun Inc is recalling the following lot numbers to the consumer level to minimize any potential risk to patients. Lot Number: 3305.039A, NDC Number: 57664-135-65 (Unit Dose Blisters of 100 (25x4)) Lot Number: 3305.039B, NDC Number: 57664-135-64 (Unit Dose Blisters of 30 (5x6))

The recalled capsules were manufactured for Sun Inc by Pharmaceutics International, Inc. Patients and healthcare providers using Nimodipine Capsules, 30 mg, with one of the above lot numbers should discontinue use of the product and should contact the following number for more information about the recall: Inmar Inc. At 1-800-967-5952
The water bottles were sold exclusively in an outer circle of numbers. The pacifiers fail to meet safety standards, but injuries have been reported. Consumers should immediately stop allowing their children to use the pacifiers. For additional information and for instructions for returning the product for a refund, consumers can call IDM Group collect at (212) 686-5221 between 9 a.m. and 5 p.m. ET Monday through Friday, or visit the company's recall web site at www.pacifierrecall.net. The U.S. Consumer Product Safety Commission (CPSC) is interested in receiving incident or injury reports that are either directly related to this product recall or involve a different hazard with the same product. You can contact the CPSC at www.safeproducts.gov to tell them of your experience with the product.

**Whole Foods Recalls Ricotta Cheese Over Listeria Concerns**

Whole Foods Markets has recalled a brand of ricotta cheese over listeria concerns. This was part of a national recall that affects 21 states, including Georgia. The cheese comes from Whole Foods supplier Forever Cheese Inc. in New York. Forever Cheese recalled the product because it may be contaminated with Listeria monocytogenes. Forever Cheese issued a recall of one lot 800 wheels of ricotta salata, or roughly 4,800 pounds. The cheese has been linked to illnesses in 11 states, according to the Centers for Disease Control and Prevention.

According to the CDC, Listeria monocytogenes can cause serious and sometimes fatal infections in children, frail or elderly people and people with weakened immune systems. It can cause miscarriages among pregnant women. The recalled Ricotta Salata Frescolina brand cheese was cut into wedges, packaged in clear plastic wrap and sold with a Whole Foods Market scale label using PLU 293427. All sell by dates through Oct. 2 are affected.

**Cantaloupe Recall in Alabama Due To Possible Contamination**

Alabama Department of Agriculture officials said they are monitoring the recall of cantaloupe from a company in California due to possible salmonella contamination. DFI Marketing Inc. recalled the cantaloupe after the company found a contaminated sample at a wholesale produce distribution center. Company officials say no illnesses have been reported and they believe the majority of the recalled product is no longer on store shelves.

The suspected cantaloupes include approximately 28,000 cartons of bulk-packed product. The cantaloupes are packed in 6, 9, 12, 15, or 18 cartons per carton. All cantaloupes are packed in a DFI brand carton stamped “826 CALIFORNIA WESTSIDE.” The cantaloupes were packed on Aug. 26 and may have been distributed from Aug. 27-Sept. 10 primarily to retail customers in 21 states, including Alabama. Retail customers who may have received this product should contact DFI Marketing Inc. Consumers who may have this product should discard it or return it to the store where they purchased it. Consumers with questions may contact the company at 1-559-449-0244 24 hours a day.
There have once again been so many recalls that we weren’t able to include all of them in this issue. We tried to include those of the highest 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.

XXI.
FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

KATY BARKER

Katy Barker, who has been with the firm a little over three months, is a clerical assistant in our Personal Injury/Products Liability Section. In this position, Katy assists anyone in the section who needs help with projects they are working on so as to make things run smoother by taking a little bit of their load off.

Katy, who is the youngest of five siblings, says she is grateful that she grew up in a Christian home and is grateful for the family God blessed her with. Katy’s family is very artsy. Her mother inspired Katy’s heart for music by playing guitar and singing to her for as long as Katy can remember. Her sister and one of her brothers are great artists in many mediums, which also inspired Katy’s heart for art.

Katy graduated high school and studied Cosmetology and Music in college. She recently joined Centerpoint Fellowship Church’s praise band. She enjoys playing piano and singing. Katy is currently learning guitar. She also likes to paint and draw. Katy is a good employee, who enjoys her work and is making very good progress. We are fortunate to have her with us.

MELINDA HENDERSON

Melinda Henderson, who began working at the firm in July 2009 as a clerical assistant, now works as a Legal Secretary to Greg Allen in our Personal Injury Section. Melinda has a degree in Broadcast Journalism with a minor in Public Relations from Troy University. She is now working on her Masters in Public Administration, also from Troy. The work Melinda does in the Section is very important and she does a very good job. Melinda has one son, Nicolas, who is a fourth grader at Wilson Elementary in Montgomery. Melinda enjoys reading, traveling (especially to Savannah, Ga.), going to the movies and spending time with her son. She is a good employee who takes her work seriously. We are fortunate to have Melinda with us.

BEASLEY ALLEN SPONSORS SEAT CHECK

As a part of National Child Passenger Safety Week, our firm sponsored a Seat Check Saturday event last month in partnership with Safe Kids USA and the Alabama Department of Public Health. The event, held on Saturday, September 22nd, provided parents and child caregivers an opportunity to have their child safety seats installed or inspected at no cost. Qualified seat installation experts inspected 50 child safety seats from 9 a.m.-noon at The Shoppes at East-Chase in Montgomery. This was part of National Seat Check Saturday, with similar events held throughout the country.

Safety Facts

As we have previously reported, motor vehicle accidents remain the leading cause of death for children ages three to 14. Properly installed car seats and booster seats reduce the risk of serious and fatal injuries by more than half. LaBarron Boone, a lawyer in our firm’s personal injury/Product Liability Section, had this to say:

We are committed to making this nation, this state and Montgomery, Ala., safer by promoting Seat Check Saturday. Our goal is safety first. Spread the word and buckle up!

The information set out below indicates how serious this matter is:

• Seven children die each day as a result of improperly fastened child seats
• 85% of child seats are not installed according to manufacturers specifications
• Nearly one-third of child seats are not suitable for the vehicles in which they are installed
• Motor vehicle accidents are the leading cause of death for children ages three-14
• Properly installed car seats and booster seats reduce the risk of fatal injury by more than half.

If you missed the most recent Seat Check Saturday event in your area, you can find a safety seat inspection site near you. Visit the Safe Kids USA website, and click on the link that says “In Your Area.” This will provide you with information about Safe Kids Coalition groups in your area, and allow you to search for a seat inspection site near you.

National Child Passenger Safety Week is sponsored annually by the National Highway Traffic Safety Administration. You can find more information about child safety seats and vehicle safety at the NHTSA website. The Centers for Disease Control and Prevention (CDC) also has a helpful website with information about child safety seats. If you would like more information on this subject, contact Helen Taylor, Public Relations Coordinator for our firm, at 800-898-2034 or by email at Helen.Taylor@beasleyallen.com.

XXII.
SPECIAL RECOGNITIONS

DR. PAUL HUBBETT—A LIVING LEGEND

Dr. Paul Hubbert is a remarkable man and one of the most gifted persons I have had the pleasure of knowing. Not only is Paul smart and well-read, he also understands how to motivate folks and lead them in a chosen direction. He took over the leadership of the Alabama Educational Association in 1969 at a time when the organization was not a factor in the state politically. Nobody can dispute that Paul, in his role with AEA, has made the organization into one of the most powerful and influential organizations in our state.

A good number of governors considered it good politics to take Paul on and that only added to his reputation and prestige. From the beginning, he was a staunch defender of public education. If the governors who fought him had worked as hard at doing their real job as they did attacking Paul, Alabama would be in much better shape today. In my opinion, Paul has done more for public education in Alabama than any of the governors who made Paul and AEA their favorite target.

Paul successfully defended the Special Education Trust Fund over the years, convincing the Legislature to reject raids on the fund. Alabama has never adequately funded education at any level and Paul has always been quick to point that out. Unfortunately AEA and Dr. Hubbert were made whipping boys by politicians, acting in their own political interest, and that has done nothing but hurt education. In spite of the attacks, Paul and AEA worked to create statewide kindergarten, helped to reduce pupil-teacher ratios, and were successful—to the extent possi-
ble—in obtaining more equitable state funding for all of the state’s public schools.

Many political observers believe Paul would have been a very good governor. That never happened. I believe the people of Alabama over the years have made two big voting mistakes in selecting governors. The first was failing to elect Albert Brewer to a full term in 1970. The second was not electing Paul Hubbert governor when he ran in 1990. I firmly believe those missed opportunities resulted in major setbacks for our state. Albert Brewer was an outstanding public official and he would have led our state in the right direction had he remained in office. There is no doubt in my mind that Paul would have been very much like Albert Brewer and would have led our state successfully had he been elected governor.

I hesitate to place the label “Living Legend” on any person, but Dr. Paul Hubbert is an exception to the rule. He has had a tremendously successful career and has been a positive influence for good in our state. I also consider this man to be a good friend.

**DR. EDWIN C. BRIDGES RETIRES**

My good friend Ed Bridges retired recently after serving with distinction as Director of the Alabama Department of Archives and History for 30 years. This Department is important for a number of reasons. It’s a remarkable institution and has worked for the preservation of historical events. Clearly the Department is a reservoir of historical events and happenings. Hundreds of thousands of folks have had a first-hand look at our state’s history from its very beginning.

It is Ed’s belief that in Alabama our people have “a stronger sense of history than in any other parts of the United States.” He told me that this is because “we not only feel the hand of history more heavily, but it’s also because we have a stronger sense of community and connection.” When I thought about what he was saying, I realized that Ed was absolutely correct. Anyone who hasn’t taken the time to visit the Department of Archives and History, and all of its divisions, has missed out on something truly wonderful and also educational. To say that all that is there to see is inspiring beyond description is an understatement. The Department of Archives and History has been in the capable hands of Ed Bridges and he has done an outstanding job in every respect. He will be sorely missed. But knowing Ed, he has left things in good hands.

**XXIII. FAVORITE BIBLE VERSES**

Karen Stanfield, a paralegal with the firm of Stevenson & Murray in Houston, Texas, sent in a verse for this issue. Karen says she keeps this verse taped to her computer as a daily reminder. Having watched portions of the Republican and Democratic conventions, and listening to the pundits for both sides, she says the verse deserves attention and personal contemplation. It would be great if each political party would make this a part of its platform.

*Let no corrupt communication proceed out of your mouth, but that which is good to the use of edifying, that it may minister grace unto the hearers.*

*Proverbs 4:29-32*

Shane Seaborn, a lawyer with Penn & Seaborn, lives in my hometown of Clayton, Ala. He sent a verse for this issue. Shane is a very good lawyer who works hard for his clients. His firm recently celebrated its tenth anniversary. More importantly, Shane is also a very strong and dedicated Christian who has a fine family.

*For I know the plans I have for you, declares the Lord, plans to prosper you and not to harm you, plans to give you hope and a future.*

*Jeremiah 29:11*

Pastor Gregory Kelley, who is the senior pastor at First Assembly of God on Bell Road, in Montgomery, Al, sent in a timely verse this past anniversary. More importantly, Shane is also a very strong and dedicated Christian who has a fine family.

*The Lord is Good, a refuge in times of trouble. He cares for those who trust in him.*

*Nahum 1:7*

Pastor Kelly says it’s a comfort to him that God knows and cares for him no matter what he is going through. He says God is a refuge that he can run to in times of adversity or trouble. He knows that God will safely take him though any storm.

Paige Wetzel, who has been mentioned in the Report, sent in a verse that speaks volumes for persons who have a tendency to worry about things in their lives. Paige clearly knows where her trust must be and as a result she knows how not to worry. We told the story of Paige’s husband Josh last month. I plan on giving an update on his progress in the November issue.

*Therefore I say to you, do not worry about your life, what you will eat or what you will drink; nor about your body, what you will put on. Is not life more than food and the body more than clothing? Look at the birds of the air, for they neither sow nor reap nor gather into barns; yet your heavenly Father feeds them. Are you not of more value than they? Which of you by worrying can add one cubit to his stature?*

*Matt. 6:25-27*

My good friend, John Kline, a professor at Troy University, sent in a verse that serves as a pattern for living in this world.

*Trust in the Lord with all your heart,
And lean not on your own understanding; In all your ways acknowledge Him, And He shall direct your paths.*

*Proverbs 3:5-6*

Shanna Malone, who is the Executive Editor of the Report, provided the following verse for this issue. Shanna does a tremendous job in helping me put out the Report each month.

*It is written: “Do not let any unwholesome talk come out of your mouths, but only what is helpful for building others up according to their needs, that it may benefit those who listen.”*

*Ephesians 4:29*

**XXIV. CLOSING OBSERVATIONS**

**A MOST CRITICAL DECISION FACES ALL AMERICANS**

The presidential election this year is critically important for our nation’s future. The two party conventions, and subsequent happenings, have reinforced for all of us how very important it is to re-elect President Obama. It’s essential to re-elect this Presi-
dent if we want this country to have the future our children and our grandchildren deserve, and I believe most Americans realize it. We must have a forward-looking, broad-based prosperity, must modernize our economy, advance our national security, and build a world with more partners and fewer adversaries. President Obama inherited an economy on the brink of total collapse in 2009. The financial crash in September 2008 made an already weak economy much worse. The crash also made the time required to return to full employment much longer. But President Obama pressed on, with a strategy both to deal with that dire emergency and also to implement his plan for long-term prosperity. This was an awesome challenge.

Fortunately for all of us, President Obama enacted measures to prevent the recession from becoming a full-scale depression. He then followed up with a bold agenda, including action to prevent another financial crash by requiring banks to hold more cash reserves to back-up risky loans and investments; to provide incentives to bring manufacturing jobs back to America; to restructure the automobile industry, and reclaim America’s leadership in clean energy jobs; to reform the student loan program to lower interest rates and increase the graduation rate by limiting annual repayment costs to a small fixed percentage of a graduate’s income, and to achieve comprehensive health care reform to expand coverage to millions of Americans, improve the quality of care and hold down inflation in future health care costs.

The fundamental question in this election is whether our nation moves forward with that agenda, or backwards with the failed policies of the past. We all know that soon after Barrack Obama became President, the automobile industry was days from collapse. Had he let it go—had he let the plants close and the suppliers go under—it would have cost our already weakened economy more than one million jobs. It would have also had a disastrous effect on other segments of our nation’s economy. The polls told the President to let it go down. So did those who were already jockeying for the Republican Presidential nomination, including Mitt Romney, which some of us may have forgotten. But President Obama decided to save this industry and to do it the right way.

The car companies—to the surprise of many—rose to the challenge. President Obama bet on the ingenuity of the American worker and American entrepreneurs and, as we all know, America won. The results: Instead of America losing more than one million jobs, we now have a resurgent automobile industry that has added a quarter of a million jobs since the rescue. It’s significant that Chrysler and GM have repaid their outstanding government loans in full.

The President faced a similar decision when it came to reform health care—an accomplishment that had eluded Presidents for a hundred years. This was equally challenging, and the President decided on the bold course. He knew the present system was unfair, and vastly more expensive than that of any other nation, with high health costs responsible for nearly two-thirds of personal bankruptcy filings. It was also a huge factor in holding wages down. With the passage of the Affordable Health Care Act, which the Republican strategists likened to “Obamacare,” I am convinced America won again.

For any doubters, the proof is in the results. For two years in a row, inflation in health care costs has been less than four percent for the first time in 50 years. Individuals and businesses have already received $1.1 billion in refunds on their health premiums. That’s because the law requires that 80-85% of a person’s premium be spent for health care, not for profits and promotion. And millions of young Americans between the ages of 21 and 26 are now covered on their family’s policies and that’s a tremendous happening.

President Obama believes in the middle-class and is rebuilding our nation’s economy on a foundation of the fundamental middle-class values that made America great—hard work, equal opportunity, shared responsibility and shared prosperity. The President believes America prospers when work pays, responsibility is rewarded and everyone has a fair shot at the American Dream. In the last 36 months alone, the economy has produced over 4.5 million private sector jobs—far more private sector jobs than in the eight years of the Bush Administration—and that’s a major accomplishment. In the current recovery, the economy has outpaced job creation after the 2001 recession by almost 2.5 million private sector jobs.

But all of the progress that has been made over the past three years is on the line in this election. Mitt Romney has made it very clear that he is determined to take us back—by reversing the bold decisions President Obama has made—to the failed policies of the past. Romney basically wants to do what the Republicans did before—cut taxes on the wealthiest Americans, weaken financial regulation, and allow our manufacturing job to be moved overseas. The former New England governor would return to us those failed policies of the past that got us into the financial crisis in the first place.

Mitt Romney is running on a reckless $5 trillion tax plan, with even more tax cuts for millionaires and billionaires, that would either add to the deficit or raise taxes on the middle-class—or both. He is also promoting a plan to end Medicare as we know it. Romney would reduce investments in education, medical research and science and technology programs. That’s something that would hurt all Americans for generations to come.

It’s critically important that we re-elect Barack Obama President of the United States. But even with all of the bad stuff on Mitt Romney, and even with all of his blunders, this race is going to be very close. Thanks to the Citizens United decision, the Super PACs are dumping hundreds of millions of dollars into attack ads against the President. The billionaires and special interests want more tax cuts, and less regulation. They are determined to destroy the capacity of the federal government to help our nation move forward. As President Clinton so aptly said at the convention, this race is a classic contest between “you’re on your own” and “we’re in this together.” It’s time for the 99% who are left out by Gov. Romney to stand by the man who has led us back from the brink of collapse onto the path of recovery. We can’t afford to make a mistake in this race—our nation’s economic and social future depend on us making the right decision—and for that reason we must re-elect President Obama.

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

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

Edmund Burke

Woe to those who decree unrighteous decrees, Who write misfortunes, Which they have prescribed. To rob the needy of My people, That widows may be their prey, And that the fatherless may rob the fatherless.

Isaiah 10:1-2

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

Louis Brandeis, 1937

U.S. Supreme Court Justice
A good friend recently gave me the secret of how to be truly blessed by God on a daily basis. He said it’s very simple and that all we have to do is Trust in God completely and without reservation regardless of our circumstances or what trials or tribulations we are facing. But it also requires constantly walking by faith. We must also be sensitive to His leading and be ready and willing to obey Him. That requires us to be willing to lay aside our own thoughts, plans and desires in order to serve Him. Then my friend gave me this prayer:

Father, I dedicate my life to You and seek your blessing today. Direct me—guide me—Use me to impact others for your Kingdom. In Jesus’ name, in the power of the Holy Spirit—Amen

His advice and the prayer made me reflect on my life and how on so many occasions I tended to believe that I could handle anything that came my way without any “outside help.” I finally came to realize that I couldn’t operate that way any longer and really needed help. I realized then that God was the only answer and that I had to put Him first and foremost in my life. While I still tend to want to go it alone on occasion, I need to be reminded of my need for help and direction from God. Thanks to my good friend for putting things in the proper perspective for me. Hopefully none of our readers have my problem, but in the event some do, the counsel of my friend and his prayer can help them.
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.