



THE
JERE BEASLEY REPORT

NOVEMBER 2012

Beasley Allen

BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, P.C.
Attorneys at law

Helping those who need it most since 1979

Distributed to over 58,000 subscribers each month

www.BeasleyAllen.com

I. CAPITOL OBSERVATIONS

AN UPDATE ON THE RULING ON ALABAMA'S IMMIGRATION LAW

The 11th Circuit Court of Appeals on October 15th, as expected, denied the State of Alabama's request for a rehearing in the lawsuit challenging the state's immigration law. The U.S. Department of Justice and the group of 36 Plaintiffs who sued Alabama over the law had elected not to ask for a rehearing. Apparently they were satisfied with the results. Alabama had asked the Court for a rehearing to take up the parts of the law that a three-judge panel from the Court blocked in its August decision. This denial dealt only with the lawsuit filed by the Justice Department. While the other case wasn't a part of this ruling, I will be shocked if a different result occurs in that case.

Alabama wanted the Appeals Court to lift its injunction on the state's efforts to collect immigration data on new public school students. The state also wanted the Court to allow it to bar contracts with illegal immigrants and permission to enforce a provision that criminalizes harboring and transporting illegal immigrants.

As we have previously written, the 11th Circuit upheld parts of Alabama's law that directs police officers to perform immigration status checks during arrests and traffic stops. Alabama was also allowed to enforce a provision that bars an illegal immigrant from getting a driver's license and business and professional licenses. State officials have said the law is necessary to stem the tide of illegal immigration, but the U.S. Supreme Court declared much of Arizona's similar law unconstitutional, finding that it conflicted with the federal government's authority on immigration policy and enforcement. The Supreme Court did not block Arizona's section of the law allowing law enforcement to engage in immigration status checks, and the 11th Circuit followed suit in the Alabama case.

The 11th Circuit, by refusing the state's request for a rehearing, puts Alabama officials in a real tough spot. The issues before the 11th Circuit arise out of the two lawsuits filed by the Justice Department and the group of Plaintiffs led by the Hispanic Interest Coalition of Alabama. The Plaintiffs had asked the 11th Circuit to block Alabama's law from being enforced while the two law-

suits are ongoing and the Appeals Court shot that request down. Now the officials who are driving the immigration train will have to decide whether to continue spending money the state doesn't have or to concede defeat. The better course of action would be to quit playing political games over the immigration issue and get on with the important issues facing the state.

Source: AL.com

ALABAMA FIRST LADY DIANNE BENTLEY TAKES ON DOMESTIC VIOLENCE

Alabama's first lady has taken on domestic violence and is working to make things better for women in our state. Mrs. Dianne Bentley has made quite an impression on the people of Alabama since her husband, Dr. Robert Bentley, was elected Governor in 2010. The Montgomery native says she has learned a lot about Alabamians' hardships, as well as their triumphs, in her role as First Lady. She is living a new life in the spotlight and in my opinion is handling it very well. Mrs. Bentley says since coming back to Montgomery she has learned "a lot about these things" and is concerned. She had this to say on the subject of domestic violence:

These women could have gone for help, they could have gone for protection. But so many feel trapped. How sad that they didn't have the information about all the resources that were out there.

Mrs. Bentley has made domestic violence awareness one of her main causes, promoting the work of shelters and other programs that aid victims. She has teamed with Verizon Wireless and the Alabama Coalition Against Domestic Violence on a program that collects used cell phones so they can be refurbished and sold, or sold for parts, with proceeds going to victims' resources. Phones also are provided to victims so they can call 911 or a domestic violence hotline if needed. So far this year, Mrs. Bentley has helped collect more than 4,000 phones, in part through promoting drives at schools and among state employees. Folks can donate their phones at Verizon stores. The First Lady should be commended for getting involved in this most worthwhile and needed cause. She is definitely an asset to her husband and Alabamians are fortunate to have both of them working hard for them.

Source: AL.com

II. A REPORT ON THE GULF COAST DISASTER

DEEPWATER HORIZON CLAIMS FACILITY RAMPING UP PAYMENTS

The Court-Supervised Claims Facility continues to ramp up processing of payments since its June debut earlier this year. Since that time, thousands of claimants have stepped forward to assert losses under the oil spill settlement. As of this writing, more than 70,000 claims have been fully

IN THIS ISSUE

I.	Capitol Observations	2
II.	A Report On The Gulf Coast Disaster . . .	2
III.	Drug Manufacturers Fraud Litigation. . .	4
IV.	Purely Political News & Views	5
V.	Court Watch.	7
VI.	The National Scene	8
VII.	The Corporate World.	10
VIII.	Product Liability Update	12
IX.	Mass Torts Update	13
X.	An Update on Securities Litigation	17
XI.	Insurance and Finance Update	18
XII.	Employment and FLSA Litigation	19
XIII.	Premises Liability Update.	19
XIV.	Workplace Hazards	20
XV.	Transportation.	21
XVI.	Healthcare Issues	24
XVII.	Environmental Concerns	25
XVIII.	The Consumer Corner	26
XIX.	Recalls Update.	30
XX.	Firm Activities	37
XXI.	Special Recognitions	37
XXII.	Favorite Bible Verses	38
XXIII.	Closing Observations	38
XXIV.	Parting Words	39

completed and submitted to the Claims Center for compensation, and more than 10,000 additional claims have been started.

The Claims Center issued its first claim determination notices on July 15, and thereafter disbursed its first payments on July 31. Of the nearly 9,000 claimants that have been informed they are eligible to receive payments, 6,460 claimants have agreed to accept payments, totaling nearly \$500 million. Interestingly, claims filing is flowing in consistently, which is a great indicator of confidence in the Facility. We expect claim filings to continue to rise, and payments to increase, as the Facility continues to become more efficient in its handling and payment of claims.

The oil spill settlement also provides many avenues of recovery, and the Facility's numbers reflect the diversity of claims available to claimants. Of the total claims submitted, 32% are for Individual Economic Loss, 22% are for Business Economic Loss, 12% are Coastal Real Property claims, and 10% are submitted under the Seafood Compensation Program. Moreover, the Facility continues to work with claimants each day to shore up deficiencies in claims. By shoring up these deficiencies, the Facility many times ensures that the claimant receives maximum compensation under the settlement.

Considering that the Claims Center is a little more than four months old, this settlement is already shaping up to be a great success. As we reported previously, the fairness hearing is scheduled for November 8, 2012, before Judge Barbier in the Eastern District of Louisiana. The Court will consider arguments regarding the fairness of both the economic and medical settlements before deciding whether to grant final approval. We believe the settlements will receive the Court's approval, as they are fair, transparent and offer significant compensation to those affected by the spill. Indeed, we are finding very few instances where the settlement would provide less than litigation would for the vast majority of claimants throughout the Gulf Coast.

Lawyers in our firm continue to review hundreds of new business cases every week. Any business in any part of Alabama, Louisiana, Mississippi, the Florida Panhandle and the western-most Florida counties down to Key West, and the four eastern-most counties of Texas, could have a claim in the oil spill settlement. If you have any questions about the settlement, or would like to talk to someone in our firm about presenting a claim, contact Parker Miller, at 800-898-2034 or Parker.Miller@beasleyallen.com.

BP OIL SPILL WORKERS MUST REGISTER FOR OIL SPILL HEALTH STUDY THIS YEAR

Federal officials issued a last call last month asking BP oil spill cleanup workers to enroll in the Gulf Study. The study marks the largest health study of oil spill workers in history, and will be conducted by the National Institute of Environmental Health Sciences. It's estimated that the study will involve 35,000 to 40,000 people. Those eligible to participate include volunteers and paid workers. Enrollment is open until Dec. 31, 2012. So far, 29,000 people have signed up, including people who cleaned beaches for as little as one day, and workers who for weeks at a time applied Corexit to oil floating on the Gulf. About 18% of the participants are from Alabama, with 12% being from Mississippi.

NIEHS is seeking all eligible workers and volunteers—those who are healthy as well as those who may have health challenges—to enroll. NIEHS is also making a special request for anyone who worked near the source of the spill, such as oil rig workers and rig support personnel, to enroll. Because of their proximity to the spill, it will be important to understand how their exposure might affect their health. Anyone who helped with the cleanup may have been contacted by mail, text message, or phone call to participate in the study. Those who have not yet enrolled are being urged to do so now.

The study began a year ago with letters sent out by the National Institute of Health addressed to "Mr. Cleanup Worker." Officials had hoped to reach many of the 150,000 cleanup workers by phone, but more than half of the phone numbers provided by the workers three years ago are no longer in service. The study is purported to be the largest examination of oil spill workers ever. Scientists will monitor and assess the physical and mental health of participants over time. But scientists will not be able to measure compounds related to oil exposure in the blood of participants. Those chemicals typically disappear from the body within 24 hours, according to Dale Sandler, Ph.D., chief of the NIEHS Epidemiology Branch and lead researcher of the study.

The investigation will focus on diseases or health problems that might be attributable to the exposure to oil and other chemicals, such as an increased incidence of cancer in the spill workers. Dr. Sandler had this to say about the study:

We are working now to make sure all cleanup workers and volunteers have a chance to take part and share their

stories, whether they are healthy or not. We're making a special call out to enroll rig workers in the study. They had a special opportunity for exposure. We want to understand how their unique experiences may have affected their health.

Any person who took a cleanup worker safety class is eligible to apply, even if no cleanup work was ever performed. The study is expected to follow the health of some individuals for as long as ten years. Participation in the study is confidential, and participants are protected by federal law.

The study begins with a telephone interview, which includes questions about work conducted during the spill, overall health, and job history. About 20,000 people will be included in the second phase of the study, which includes a home visit and a health screening. A \$50 gift card is provided to those subjected to a home visit. Subjects will provide biological samples of blood, urine, hair and toenail clippings. A household dust sample will also be collected. Blood pressure and other physical measurements will be taken. To find out more information, or to join the study, you can call 1-855-NIH-GULF (1-855-644-4853), or visit the study web site, www.gulfstudy.nih.gov.

Source: AL.com

JUDGE BARBIER DISMISSES SOME CLAIMS AGAINST BP

Judge Carl Barbier has dismissed claims by BP fuel stations and convenience stores that the 2010 oil spill diminished the value of BP's brand and cost them business. Judge Barbier's ruling says the dealers' claims against BP PLC aren't viable under the Oil Pollution Act of 1990, general maritime law or state law. BP dealers Tobatex Inc. and M.R.M. Energy Inc. had contended that consumer animosity and bungling by BP corporate executives after the nation's worst offshore spill severely damaged the company's brand name. It was contended that switching brands wasn't an option for the dealers because many are locked into long-term contracts.

The judge's ruling, however, says the BP dealers' allegations "do not state a claim for which relief may be granted." Importantly, the judge didn't pass judgment on whether BP dealers may have viable claims for economic losses based on a decline in tourism after the spill. Therefore, the ruling doesn't completely close the door on BP dealer claims.

Judge Barbier has also dismissed claims against BP by Gulf Coast homeowners who say the spill hurt their property values even though no oil physically touched their property and they haven't sold their homes. A provision of the Oil Pollution Act only allows recovery for "loss of profits" or "impairment of earning capacity," the judge noted. In his order, Judge Barbier wrote:

Such claims concern neither a 'loss of profits' nor 'impairment of earning capacity.' Before real property is sold, there can be no 'profits' to be lost. Furthermore, until property is sold and a loss realized, damages are speculative—it is possible that the value of real property eventually may meet or exceed its pre-spill amount.

This ruling as it affects the BP dealers and Gulf property owners could be appealed, but at this juncture, I don't believe that will happen. If they are appealed, claimants will face many very difficult legal hurdles to overturn the judge's rulings. Judge Barbier has made good decisions based upon applicable law and we have confidence in his rulings.

Source: *Claims Journal*

III. DRUG MANUFACTURERS FRAUD LITIGATION

HAWAII DOES WELL IN MEDICAID FRAUD LITIGATION

Hawaii has collected \$84 million over the past five years from drug companies for alleged Medicaid fraud. It is among the top states with the highest return on investment for its investigations. The amount the state has collected through litigation is 12 times what the state paid to prosecute Medicaid fraud cases from 2006 to 2011. This is according to a new report by Public Citizen, a Washington, D.C.-based nonprofit consumer advocacy group.

Of the 27 states that recovered money from drug manufacturers, Hawaii had the fourth-highest return on investment. The state spent \$6.7 million on Medicaid fraud enforcement in the period and recouped \$12.50 for every dollar spent. Sammy Almashat, health researcher with Public Citizen, observed:

These are states that have pursued these cases completely on their own without the help of the federal government. States expended their own resources to try to recover money for their own Medicaid programs. Pursuing and prosecuting pharmaceutical companies for fraud...can be exceedingly cost effective for the states that choose to prosecute. These investigations pay for themselves in the long run.

It was pointed out by Public Citizen that the Hawaii cases involved overcharging the Medicaid program for drugs for the state's neediest population, which is the most common violation. On a federal level, cases also involved off-label promotion of medications, or illegal marketing activities to increase pharmaceutical sales. The \$84 million Hawaii collected came from two cases. In 2010, Hawaii reached an \$82.6 million settlement with a number of different drug companies in one case. In 2007 a Merck subsidiary paid the state \$1.1 million in the other case. Almashat had this to say about Hawaii's good work:

Sometimes these overcharges can be pretty astronomical. A small state like Hawaii getting an \$82 million settlement is pretty significant. Pricing fraud has gone on for years, over decades or longer...which add up to a lot of money for state taxpayers and the Medicaid program. State budgets are constantly facing shortfalls and cuts so these settlements really are, in many cases, crucial for state Medicaid programs to continue to provide care for the states' poor and disabled patients.

Almashat gave an example, unrelated to Hawaii, of a drug company charging Medicaid about \$5,000 for 200 pills that should have sold for \$80. Based on what we have learned in litigation, I could give numerous similar examples of how the companies are overcharging in other states for their drugs. In the December issue, we will report on a number of very good settlements made in AWP cases on behalf of other states. The details on those settlements were being worked out as this issue went to the printer.

Source: staradvertiser.com

ABBOTT LABS FINED \$500 MILLION

A federal judge in Virginia has fined Abbott Laboratories \$500 million after the pharmaceutical giant pled guilty to unlaw-

fully promoting the prescription drug Depakote for uses not approved as safe and effective by the Food and Drug Administration. In addition to the fine, Abbott was ordered by the court to forfeit \$198.5 million, and \$1.5 million to the Virginia Medicaid Fraud Control Unit. The company will also be subject to a five-year term of probation. In May 2012, Abbott pled guilty to a criminal misdemeanor for misbranding Depakote in violation of the Federal Food, Drug and Cosmetic Act (FDCA).

Abbott's criminal plea related to the misbranding of Depakote by promoting the drug to control behavioral disturbances in dementia patients and to treat schizophrenia when neither of these uses was approved by the FDA. Under the provisions of the FDCA, a company is required to specify the intended uses of a product in its new drug application to FDA. Once approved, the drug may not be marketed or promoted for "off-label" uses—unless the company applies to the FDA for approval of the additional use.

Abbott, in an agreed statement of facts, admitted that from January 1998 to December 2006 it marketed Depakote off-label to treat behavioral disturbances in dementia patients, and from January 2002 to December 2006, Abbott marketed Depakote off-label to treat schizophrenia. Under the terms of the plea agreement, Abbott agreed to pay the second-largest criminal fine for a single drug, executed a fulsome statement of facts revealing the extent of its unlawful conduct, admitted that it engaged in misleading statements, and submitted to a five-year term of probation.

Under the terms of its probation, on an annual basis, Abbott's CEO and board of directors will need to personally certify that the company is complying with the law. Abbott's guilty plea was part of a global resolution involving its illegal promotional activity. Abbott also entered into a civil settlement agreement under which it agreed to pay \$800 million to the federal government and the states to resolve claims that its unlawful marketing and illegal remuneration practices caused false claims to be submitted to government healthcare programs.

The parallel civil settlement covered a broader range of conduct by Abbott. The settlement resolved allegations that in addition to off-label marketing for dementia and schizophrenia, Abbott also marketed Depakote for other psychiatric conditions in adults, including depression, anxiety, obsessive-compulsive disorder, post-traumatic stress disorder, alcohol and drug withdrawal and psychiatric conditions in chil-

dren, including conduct disorders, attention deficit disorder and autism.

Source: *Corporate Crime Reporter*

Pfizer Settles Celebrex Investor Lawsuit For \$164 Million

Pfizer Inc. has agreed to pay \$164 million to settle a shareholder class action accusing the drug maker of misrepresenting the clinical trial results for Celebrex. The settlement was disclosed in court papers filed last month in U.S. District Court in New Jersey. The settlement came about two weeks before the company was to go to trial over allegations that it misled investors by distorting the results of a study of the arthritis drug.

As you may recall, Pfizer acquired Pharmacia Corporation, which manufactured Celebrex, in 2002. Celebrex is Pfizer's fifth biggest-selling medicine, with annual sales of about \$2.5 billion. In 2003, shareholders sued Pfizer and certain former officers of Pharmacia for alleged violations of federal securities laws. It was alleged that the Defendants—from 2000 to 2001—misrepresented the clinical trial results of Celebrex to make its safety profile appear better than rival drugs.

In 2007, U.S. District Judge Anne Thompson certified the investor class in the lawsuit. But subsequently the judge granted a motion by Pfizer to dismiss the case. The 3rd U.S. Circuit Court of Appeals reversed, and reinstated the case in 2009. The U.S. Supreme Court denied Pfizer's petition to review that ruling in May 2010. Pfizer sought again to have the case dismissed in January, but a few months later Judge Thompson denied that motion and a trial was scheduled for October 22nd. The case is *Alaska Electrical Pension Fund, et al. v. Pharmacia Corporation, et al.*, U.S. District Court for the District of New Jersey, 03-cv-01519.

Source: Reuters

IV. PURELY POLITICAL NEWS & VIEWS

THE RACE FOR THE WHITE HOUSE GOES DOWN TO THE WIRE

The Presidential race, as expected, has become very close. Most of the so-called experts are predicting a "photo finish" and I

tend to agree with that assessment. The first two debates caused bumps in the polls for each candidate with Romney getting a badly-needed boost from the first one. The President came back with a strong performance in round two and then won the third debate on foreign policy by a landslide. It was most evident that President Obama was at his best in the last debate. On the other hand, Gov. Romney appeared to be very nervous and seemed to be afraid of making a mistake. It's hard to measure how much the debates help a debate winner, but the President clearly won the last two. Romney most likely righted his sinking ship with his performance in round one. But truthfully, his surge was more attributed to the President's poor performance that night than anything Romney did.

When you consider how Romney has flip-flopped on all of the important issues, it's pretty hard to figure out who the real Romney actually is. Normally you have a clear idea of what the candidate who emerges from the party primaries believes. But Romney, who had been very liberal on most issues in the past, went into the GOP primary as a moderate candidate. He then overnight became a "severe conservative." I suppose we should have expected his next move. Predictably, he became "Moderate Mitt" for the debates. It's sort of like the "flavor of the day" with Romney when reporters try to find out where he really stands on an issue. That makes him a person who is difficult to pin down on the issues. The question remains with just days left in the campaign—who is Mitt Romney?

When you get down to it, the statements Romney made in Florida in the private meeting (where he thought he could tell his supporters who were present how he really felt on issues) are the best evidence of who Mitt Romney really is. I already felt like the man was totally out of touch with folks in the middle-class and the poor, but his private conversation in Florida revealed his true feelings about most Americans. His talking about 47% of the American people being "victims" who won't take "personal responsibility" for anything, tells me that Mitt Romney has no business being President of the United States. That doesn't even take into consideration all of the untruths he has uttered during the campaign and his continuing shifts of position on key issues.

I attempted in the last issue to explain to our readers why I believed President Obama deserves a second term. I am even more convinced now, after watching the debates, that a second term for the President is well-deserved and also badly needed by the American people. The President

faced enormous challenges when he took office, left over from the eight years under George W. Bush, and he has things turned around for the American people. President Obama inherited a vast array of problems, including the worst economy since the Great Depression, a financial crash caused by risky loans and investments and weak regulation, wars in Iraq and Afghanistan (fought on credit) and one against terror that knows no borders. The President has risen to the challenge and he has done an outstanding job. In reviewing his record, we see that President Obama has:

- Put the United States back on track.
- Created millions of new jobs and has our economy growing again.
- Saved the American automobile industry.
- Caused needed reforms to be enacted to prevent another financial breakdown.
- Led the way in tracking down those who attacked our nation on 9/11, ended the war in Iraq, and has developed a plan to wind down our combat role in Afghanistan.
- Begun the long process of rebuilding America's standing in the world community.
- Enacted student loan reforms that will make college a reality for millions of young people, by limiting repayment costs to a small fixed percentage of a graduate's income.
- Accomplished something that was long overdue—health care reform—and thereby improved the lives of tens of millions of Americans.

These accomplishments are even more extraordinary when you consider the vehement opposition the President faced every step of the way from the Republican Party. That was especially true in Congress where members have blocked the President's proposals to put more Americans back to work. As their Senate leader has said, the Republicans' number one goal was not to put Americans back to work, but to defeat the President in this election. That movement started the very day this President took the oath of office.

There is so much to do to get America back to the full employment and shared prosperity essential to rebuilding the middle class. Keeping President Obama in the White House to continue what he started is an absolute necessity. We have seen:

- over the last two and a half years, 4.4 million new jobs have been created in the private sector; and
- over 2.2 million more new private sector jobs were created than the previous administration over the same period following the 2000-2001 recession.

At this stage in our history, the United States needs leaders who will work together to overcome the many challenges our people face to build a 21st Century economy where everyone can work and share in our prosperity. The President deserves the opportunity to complete what he started, and in my opinion he will get it.

THE MOST EXPENSIVE ELECTION IN HISTORY

The election for President this year will wind up being the most expensive in history. It's believed that the total amount spent will exceed \$8 billion. While this amount is unbelievably high, the worst part is that billions of dollars will be raised and spent by secretive, outside groups and super PACs. Much of that money will come from a small group of giant corporations and super-rich individuals. For example, just 22 people and corporations accounted for 50% of all the super PAC money raised last year. It appears that again will be the case right through November 6th. Unfortunately for the American people, a great deal of the spending will be what is referred as "Dark Money," with the source of campaign contributions never revealed. That's very bad for the vast majority of Americans.

I join with groups like U.S. PIRG, Public Citizen, Business Ethics Network, small business representatives and others who believe that the U.S. Chamber of Commerce should disclose the corporate donors behind its electoral advertising. The Chamber should reveal who the funders are behind the millions of dollars worth of political ads the Chamber has purchased throughout the country. The Chamber pledged to spend up to \$100 million in the 2012 elections and it appears as if they will meet that goal. Voters deserve to know exactly who are the corporate and wealthy interests are trying to influence their votes.

Since the 2010 U.S. Supreme Court *Citizens United vs. the Federal Election Commission* decision freed up corporations to spend unlimited money in elections, the U.S. Chamber of Commerce, a 501(c)(6) corporation, has emerged as one of the biggest "Dark Money" outside spenders. Many huge corporations have chosen to fund political ads through the Chamber

since it doesn't have to disclose its donors. Small business owners' interests haven't been served by the U.S. Chamber of Commerce in years and that won't change as long as its huge corporate donors call the shots.

THE BAIN PLAN OF ACTION IS BAD NEWS FOR WORKING FOLKS

I find it interesting that Gov. Romney refuses to talk about his tenure at Bain Capital. But there is a very good reason for his reluctance. A great deal has been written about Romney's tenure at Bain and it paints a pretty ugly record for the man who wants to be our President. Gov. Romney's track record at Bain included some early dealings with some pretty shady individuals who were investors in the start-up of Bain. That has pretty much flown under the radar. But there is one thing for certain and that is the Bain plan of action was very bad for working folks who lived through the "Bain Experience." Let's take a look at the Bain method of operation, which followed a pattern in most of its acquisitions, and which made the principals and their investors very rich. The Bain method followed this pattern in most every case:

- Bain would purchase a company, generally with an agreement of management;
- Bain would put up very little cash up front and borrow the rest of the acquisition costs;
- Bain would then saddle the company with millions of dollars in debt;
- Bain, at the same time, would force the company to pay management fees to the new owners;
- Bain would slash the workforce in order to repay the debt; and
- Bain would then either sell off the stripped-down company, making a tremendous profit, or declare bankruptcy and shut the company down.

During the time that Gov. Romney was in charge at Bain Capital, thousands of working men and women became victims and lost their jobs. I don't believe anybody who falls in the middle class could vote for a man who had so little regard for working men and women. Back when they were bitter political enemies during the primary season, then-candidate Newt Gingrich summed up the Bain Capital operation very well. The Newtster said: They are "rich

people figuring out clever legal ways to loot a company." I can't recall ever agreeing with the former Speaker on anything, but he is right on target in his assessment of Gov. Romney and the Bain gang.

RALPH REED IS A FIRST-CLASS CON MAN

I was shocked to learn that the infamous Ralph Reed is back in business as a political consultant of sorts and is heavily involved with GOP candidates. Actually I believe the title "professional con-artist" is a better fit for Reed. The protégé of the late Lee Atwater for years has been a master of conning the right wing community out of big bucks. Along the way, Reed has taken advantage of lots of well-meaning folks, many of them Christians, and has made a fortune in doing so. He also did very well in his "representation" of Native Americans, bilking them out of millions of dollars, along with his colleague Jack Abramoff. A recent editorial in the *Anniston Star* gave a good account of Reed's activities.

Ralph Reed is bragging that his Faith & Freedom Coalition plans to spend as much as \$12 million between now and Nov. 6 in hopes of turning out Christian conservatives at the polls. The implicit message is that these Christian soldiers will be marching to put Mitt Romney into the White House. Alabamians, including those who are Christian conservatives, could be forgiven for tapping the brakes on Reed's drive toward Election Day. We've seen the unmasked version of Reed, and it's not pretty.

In 1999, Alabama considered legalizing various forms of gambling, including casinos and a statewide lottery. As the former national head of the Christian Coalition, Reed helped lead the charge to defeat those measures. What wasn't known until years later was that Reed had a secret partner in his anti-gambling crusade—an Indian casino in Mississippi. The Mississippi Choctaws had a vested interest in seeing gambling fail in Alabama, namely because passage might mean fewer folks from Alabama making the drive to Philadelphia, Miss., to place a wager.

It was a nifty little shell game. Reed rallied the unsuspecting faithful in Alabama while collecting more than \$1 million from the casino. The

money was laundered through an anti-tax Washington operation to place a fig leaf over the top of this sordid deal. By the time these shenanigans were discovered, the issue of gambling in Alabama was dead and the culprits had moved on. Several of the key players went to prison. Reed didn't serve time in what became known as the Abramoff scandal, named for the lobbyist/schemer Jack Abramoff who served more than three years in federal prison for his leading role in this episode.

Getting rich by cynically trading on the sincere beliefs of Alabama Christians didn't land Reed behind bars. It did leave a crimson stain on an already sordid reputation of a man who once described himself as a commando political operative, "I paint my face and travel at night. You don't know it's over until you're in a body bag." That's similar to what Reed did in Alabama 13 years ago. By the time we caught up to his game, he had moved on to new enterprises, including creation of the Faith & Freedom Coalition. Now, Reed's back with a fresh message in support of Mitt Romney. His intended audience can take a lesson from Alabama, where Reed has already played a dishonest game.

It is difficult to understand how a man like Ralph Reed, considering his sordid past and his associates, could convince anybody to give him money or even ask for his "political advice." But apparently, a good many still do. His close ties to Jack Abramoff and his lack of a moral compass should be enough to raise concerns about the man.

THE RACE FOR CHIEF JUSTICE IN ALABAMA

The race in Alabama for Chief Justice of the Supreme Court between Roy Moore and Bob Vance has stirred up very little voter interest so far. Unless that changes, I'm not sure this helps the Democratic nominee very much. It's evident that Judge Moore has a loyal base that will turn out to vote, especially in the counties north of Birmingham. That gives him a clear advantage in a race between two good and qualified candidates. But the prospects of a Romney sweep in Alabama, combined with a good turnout by Judge Moore's loyal base, will most likely result in Roy Moore becoming the next Chief Justice of the Alabama Supreme Court.

V. COURT WATCH

THE VOTE ON MERIT RETENTION IN FLORIDA IS VERY IMPORTANT

Merit retention is a most serious issue in Florida. The Executive Committee of the Florida Republican Party decided to actively oppose the merit retention of Justices Pariente, Quince and Lewis. Their plan has been exposed and that's good news for Floridians. Florida voters should know that many perceive the GOP position on merit retention to be an "end run" effort to accomplish what the Republican leadership of Florida was unable to do in the 2011 legislative session. In that year, Republican House Speaker Dean Cannon and Republican Governor Rick Scott made an unsuccessful attempt to "reform" the Florida Supreme Court. Had they been successful Gov. Scott would have gained virtual control over the highest court in the state. Fortunately, that effort failed as the people of Florida won that round.

The Florida Senate (including many Republicans) realized this court-packing effort was not in the best interests of their constituents—the citizens of the State of Florida—and killed the legislation. The Senators understood the constitutional principle of "separation of powers" and recognized the judiciary as an independent and co-equal branch of state government in Florida.

Now many perceive the GOP's position on merit retention to be another attempt to restructure Florida's Supreme Court by targeting three Justices on the November ballot for a merit retention vote. Unfortunately for the three Justices, "merit retention" in this type election has nothing to do with their character, their judicial fitness, their diligence or their following and applying the rule of law. The criteria for retention is supposed to be based on the above criteria and whether the Justices have remained impartial, ethical and qualified, not whether voters or any political party disagree with some of their opinions. Many feel the real reason these Justices are being opposed is purely political. That surely seems to be the case.

Justices Pariente, Quince and Lewis participated in a ruling against a ballot issue drafted by the Republican legislature and the Court has cases pending before it which concern public pensions and privatizing prisons which are of great interest to some in the Republican Party. Many believe the

Governor and the Executive Committee of the Republican Party of Florida are attempting to intimidate the Court on matters before it and are attempting to remove those Justices and stack the Court to protect and promote their political agenda. Interestingly, according to reports, the majority of Republicans in Florida don't support the Republican Party Executive Committee's current and public stance on merit retention concerning these fine jurists.

Legal organizations and newspaper editorial departments all over the state have opposed the unprecedented action taken by the GOP. The merit retention process and the tenets upon which it was founded—a fair, impartial and depoliticized judiciary—must be preserved. The current movement by the GOP to remove three highly-qualified Justices from Florida's Supreme Court is wrong. Floridians must go to the polls on Tuesday, November 6th and vote to retain three good and qualified justices. It should be noted that, according to studies, 30% of those voting in the Presidential election don't vote on the merit retention portion of the ballot. Hopefully, that won't be the case this time. Independent judges are necessary if the judicial system of any state is to work properly. Hopefully, the GOP efforts in Florida will fail.

FEMA TOXIC TRAILER SETTLEMENTS APPROVED

A federal judge has given final approval to a \$42.6 million class-action settlement between companies that made and installed government-issued trailers after hurricanes in 2005 and Gulf Coast storm victims who were exposed to hazardous fumes living in the shelters. U.S. District Judge Kurt Engelhardt ruled from the bench after hearing from lawyers who negotiated a settlement agreement resolving nearly all remaining court claims over elevated levels of formaldehyde in trailers provided by the Federal Emergency Management Agency following hurricanes Katrina and Rita.

Roughly 55,000 residents of Louisiana, Mississippi, Alabama and Texas will be eligible for shares of \$37.5 million paid by more than two dozen manufacturers. They also can get shares of a separate \$5.1 million settlement with FEMA contractors that installed and maintained the units. Formaldehyde, a chemical commonly found in building materials, can cause breathing problems and is classified as a carcinogen. Government tests on hundreds of trailers in Louisiana and Mississippi found formalde-

hyde levels that were, on average, about five times what people are exposed to in most modern homes. FEMA isn't a party to the settlements and had downplayed formaldehyde risks for months before those test results were announced in February 2008. As early as 2006, trailer occupants began reporting headaches, nosebleeds and difficulty breathing.

It was reported that only three Plaintiffs opted out of the settlement with the trailer makers. Judge Engelhardt opened the floor to objections during a hearing, but it appears nobody spoke up in opposition. Neither did the judge receive any formal, written objections, either. But that doesn't mean the settlement isn't a disappointment for many residents who blame their illnesses on the cramped trailers they occupied for a very long time. Dan Balhoff, a court-appointed special master, will determine the Plaintiffs' awards. Payments are expected to go out late this year or early next year.

A group of companies that includes Gulf Stream Coach, Inc., Forest River Inc., Vanguard LLC and Monaco Coach Corp. will pay \$20 million of the \$37.5 million settlement with the trailer makers. Shaw Environmental Inc., Bechtel Corp., Fluor Enterprises, Inc. and CH2M Hill Constructors Inc. are among the FEMA contractors that agreed to pay shares of the separate \$5.1 million settlement.

Source: *Montgomery Advertiser*

FACEBOOK IPO LAWSUITS TO BE HEARD IN COURT IN NEW YORK

Dozens of lawsuits against Facebook Inc., the NASDAQ exchange and various underwriters will be consolidated before a federal judge in New York. That court must sort through the legal aftermath of Facebook's botched initial public offering. Last month, a panel of federal judges ordered that cases filed around the United States be transferred to U.S. District Judge Robert Sweet in Manhattan. While Facebook had requested the transfer, some investors sought to keep their cases in California. Even though some of the cases concern different Defendants and claims, the panel said "they (the cases) do involve enough common questions of fact, related circumstances and common discovery to warrant centralization."

Lawsuits against NASDAQ OMX Group Inc., which accuse the stock exchange of being negligent in failing to execute trades in the face of record-breaking volume during the IPO, will also be in Judge Sweet's court. But the exchange has already asked

that their cases proceed on a separate track from the Facebook lawsuits. The case is *In Re: Facebook Inc, IPO Securities and Derivative Litigation, U.S. Judicial Panel on Multidistrict Litigation, No. 12-md-2389*.

Source: *Insurance Journal*

NEW YORK JUDGE APPROVES JUDGMENTS AGAINST IRAN, TALIBAN AND AL-QAIDA

The New York federal judge who found Iran, the Taliban and al-Qaida culpable in the 2001 terrorist attacks has approved a \$6 billion default judgment against them. But the order signed last month by Judge George Daniels is largely symbolic. However, it provides some hope that the relatives of September 11th victims will recover damages in the future. A federal magistrate judge had earlier recommended the damages. Judge Daniels last year signed a default judgment pertaining to a lawsuit brought by relatives of 47 victims. He found al-Qaida, the Taliban and Iran liable and asked the magistrate to determine damages. Judge Daniels said support the Defendants provided to al-Qaida enabled the terror attacks. Iran's president has repeatedly denied any Iranian connection to the September 11th attacks or to al-Qaida, but his credibility is suspect. Hopefully, the victims' families will be able to collect on this judgment.

Source: *Claims Journal*

VI. THE NATIONAL SCENE

LAWMAKER WARNS OF NEW CYBER THREATS TO U.S. FINANCIAL NETWORKS

Rep. Mike Rogers, the head of the U.S. House of Representatives Intelligence Committee, told a cyber-security conference hosted by the U.S. Chamber of Commerce last month that significant new cyber threats to U.S. financial networks appeared to be emerging from an "unusual" source. While Rep. Rogers didn't specifically identify the purported new threat nor its origin, he referred several times to what he described as Iran's growing cyber espionage capabilities. The Michigan Republican made it pretty clear that he considers Iran as a major suspect, and that the country

could cause trouble within our financial services networks.

Classified briefings about the possible new keyboard-launched threats may have revived prospects for stalled measures aimed at boosting cyber-security in the "lame duck" Congressional session after the election on November 6th. Rep. Rogers said these secret briefings for lawmakers have highlighted a "threat that would target networks here from an unusual—careful here—source that has some very real consequences if we are not capable to deal with it." His concern was with nation states that are gaining a cyber-warfare capability beyond those that "we often talk about." An unclassified U.S. intelligence report last year said the governments of China and Russia were expected to remain "aggressive and capable" collectors of U.S. trade secrets, particularly in cyberspace.

Iran says it has been adding to its cyber abilities since its disputed nuclear program was damaged in 2010 by malicious computer code known as Stuxnet, reliably reported to have been developed by the United States. A U.S. financial services industry group has warned banks, brokerages and insurers to be on heightened alert for cyber attacks after the websites of Bank of America and JPMorgan Chase experienced service disruptions. Customers of Bank of America Corp., JPMorgan Chase & Co., Wells Fargo & Co., U.S. Bancorp and PNC Financial Services have reported trouble accessing their websites, as unusually high traffic appeared to crash or slow down the systems in October.

Rep. Rogers reiterated his concerns about alleged Chinese cyber theft of U.S. trade secrets, describing Beijing as "ferocious about seeking information." He also cited what he called media reports that China likely was behind a disruption of a White House computer system disclosed last month. Rep. Rogers observed:

What people don't realize is that we are in war today in cyberspace. And this is the biggest national security threat I can think of that we are not prepared to handle in this country today.

Lots of folk don't know that a Senate bill—backed by President Barack Obama—that would have allowed for greater information-sharing between intelligence agencies and private companies was opposed by a rather weird coalition. Both the U.S. Chamber of Commerce, which objected to additional regulation, and the American Civil Liberties Union, which is worried about privacy issues, opposed the

bill. Rep. Rogers and Rep. C.A. Ruppberger, the top Democrat on the committee, have introduced separate bipartisan legislation that would clear the private sector to share information on cyber threats with the federal government and others on a voluntary basis. Hopefully, members of Congress, in a joint bi-partisan effort, will make this legislation a top priority after the election.

Source: *Insurance Journal*

SORORITY HAZING SAID TO HAVE LED TO FATAL CRASH

The mother of an East Carolina University student, who died in a single-car wreck at the end of a sorority “Hell Week,” has filed a wrongful death suit against the Delta Sigma Theta Sorority. It’s alleged in the suit that hazing played a role in the fatal incident. The Plaintiff, Bernadette Carter, a Raleigh resident, has accused the sorority’s national office, its ECU chapter and members of depriving the 2010 pledges of sleep and forcing them to engage in demeaning activities. She contends these factors led to the death of her daughter. Victoria T’nya-Ann Carter, 20, was one of two ECU students who died on Nov. 20, 2010, when the car they were riding in ran off the highway and crashed into a tree.

Kamil Arrington, a sorority pledge, was driving the Toyota Yaris at about 6:30 in the morning. The Delta big sisters had selected Arrington as a designated driver who would ferry the pledges to practices, pre-dawn hair appointments and other engagements. Carter, who was in the backseat of the car, was killed in the crash. The other student, Briana Gather, 20, died the next day. A fourth student in the car survived the crash.

It was alleged in the lawsuit that the driver, who pleaded guilty last year to two counts of misdemeanor death by motor vehicle, was suffering from “excessive and overwhelming fatigue, exhaustion and sleep deprivation” and “fell asleep behind the wheel.” Officials at East Carolina University conducted an investigation after the incident, and it appears they had difficulty getting information from sorority members. Subsequently ECU put the sorority on a two-year probation. The national organization also investigated the incident and suspended the ECU chapter until at least 2015.

Not only is the Carter family seeking damages, they have another mission: to “change the culture” of hazing activities. The hazing in this case culminated in Delta’s “Hell Week,” which was the last week of pledging. As part of the initiation

process, 17 pledges were forced to live together in a two-bedroom, two-bathroom apartment and engage in other forms of hazing. The lawsuit alleges:

Among the hazing exercises were the “Delta TV,” in which the pledges were forced to get into and hold a push-up position. They were required to do “wall sits” in which they had to push their backs against the wall, then slide down until they were in a sitting position and maintain that stance for a lengthy time. They did the “Delta Chair”—standing on one leg—and held heavy bricks over their heads, subject the entire time to ridicule and humiliation from the Big Sisters. The pledges were forced to wear “Delta Lipstick,” hot sauce rubbed on their lips, and to down a “Delta Apple,” a large raw onion, as well as eat large amounts of cottage cheese and drink buttermilk.

The pledges were required to style their hair a specific way and wear clothes of a certain style. They were required to put in long hours preparing for “probate,” a ceremony in which the sorority makes a public showing of its new members. The night and morning hours before the fatal wreck, the pledges had been practicing and perfecting the “probate death march,” according to the suit.

The pledges were forced by Delta big sisters, Delta advisers and alumni to “practice the march over and over again until they ‘got it right.’” In preparation for the induction ceremony and probate the Delta big sisters arranged hair appointments for Arrington, Carter and two other pledges at 6:30 a.m. The pledges did not have an opportunity to sleep after the practices for the probate death march. Nor had they been able to sleep much with 17 pledges in one apartment. It was that sleep deprivation that Carter contends led to the death of her daughter.

I have to wonder how many parents know that the activities described in this lawsuit, if accurate, may well be a routine part of fraternal life on some college campuses. Hopefully, it’s not, but this case makes me wonder. Who would believe girls in a sorority would act in the irresponsible manner these “sisters” did? John M.

McCabe, a lawyer from Raleigh, N.C., represents the Plaintiffs in this case.

Source: *News Observer*

SOLDIERS’ LAWSUIT AGAINST KBR IS BEING TRIED IN FEDERAL COURT

A civil lawsuit is being tried in a federal court that raises some very interesting issues. It’s alleged in the suit that a war contractor knew a critical southern Iraq oilfield plant was riddled with a well-known toxin, but ignored the risk to soldiers while rushing the project along, firing a whistleblower and covering up the presence of the chemical when faced with exposure. Kellogg, Brown and Root (KBR), the Defendant, claims that the soldiers’ injuries weren’t caused by their exposure to the toxin, called sodium dichromate. KBR claims it had no knowledge of the chemical’s presence at the plant. They say when they found it, they promptly and repeatedly warned the military of the danger.

The suit was filed by 12 Oregon National Guardsmen who were exposed to the toxin, a known carcinogen, and who developed respiratory illnesses. Interestingly, the soldiers had a chemical hazard suit that they would have put on had they had known about the dangerous condition. KBR says it tried to warn the U.S. Army about the dangers of sodium dichromate. But the company didn’t warn the soldiers themselves because “that wasn’t the proper channel of communication.”

The suit dates to prewar Iraq, when the U.S. Army feared then-Iraqi president Saddam Hussein would react to an invasion by setting his own oil fields ablaze, as he had done in Kuwait after the Gulf War. The army contracted KBR and gave it the job of assessing and repairing Iraqi oilfield installations. One of the most central—and critical to a continued supply of oil from the Gulf—was called Qarmat Ali. That facility operated as a water treatment plant, injecting heavier, treated water into the ground to force oil to rise through wells to the surface. One of the chemicals Iraqi workers had been using was sodium dichromate, a substance which has been restricted in the U.S. for years over environmental and health concerns. It appears the ground was contaminated with sodium dichromate.

The soldiers returned to the U.S. suffering from a number of respiratory problems, migraines and lung issues. They filed suit against KBR in June 2009. The Oregon soldiers were joined by Guardsmen from Indiana and West Virginia, some of whom are also involved in suits against KBR.

The soldiers contend a whistleblower was fired by KBR after he, in August or September 2003, tried to blow the whistle on the company's role in the deception of the soldiers. It's claimed in the suit that KBR was seeking an incentive from the U.S. Army Corps of Engineers to finish the work quickly and would not allow complaints from employees about safety concerns. KBR claims the whistleblower was dismissed as a "disruptive force" at meetings and that he didn't know that KBR and the U.S. Army were already in talks about the toxin.

The trial is expected to last for several weeks. It will be watched with interest. Mike Doyle, a lawyer from Houston, Texas, represents the soldiers in this case. Hopefully, he will be successful at the conclusion of the trial for his clients.

Source: CBS News

VII. THE CORPORATE WORLD

BANK OF AMERICA SETTLES SUIT OVER MERRILL ACQUISITION FOR \$2.43 BILLION

Bank of America has reached a \$2.43 billion settlement with investors, arising out of the bank's acquisition of Merrill Lynch. It was alleged that the bank misled investors about the acquisition. This is the largest securities class-action lawsuit settlement arising out of the financial crisis. Shareholders, led by pension funds, including those in Ohio and the Netherlands, accused Bank of America of providing false and misleading statements about the health of Merrill Lynch, which, unknown to the public, was experiencing huge losses in late 2008 amid turmoil in the markets. Even though Bank of America denied the allegations, it's paying billions to settle the case.

The size of this settlement underscores how two deals in 2008—the Merrill acquisition and the purchase of the mortgage lender Countrywide Financial earlier that year—have weighed on Bank of America, one of the country's largest, keeping it from making a full recovery. The Countrywide acquisition, made as the housing market was collapsing, has now cost Bank of America more than \$40 billion in losses on real estate, legal costs and settlements, according to sources close to the bank. That deal alone would have been enough to slow Bank of America down, but

coupled with the questionable acquisition of Merrill Lynch, it nearly crippled the institution. Since 2009, Bank of America has closed bank branches, sold billions of dollars in assets and cut tens of thousands of jobs.

Bank of America has also paid \$150 million to settle a Securities and Exchange Commission lawsuit that contended the bank did not tell its shareholders about big bonus payments Merrill had approved before the merger closed. For a federal securities class action, the size of the Merrill settlement is surpassed only by the Enron, WorldCom, Tyco and Cendant settlements, according to Joseph A. Grundfest, a professor of securities litigation at Stanford University Law School.

It is unclear how much relief the shareholders—those who owned Bank of America shares or call options from September 2008 to January 2009—will receive from the settlement. Bank of America will use its litigation reserves and litigation expenses to cover the settlement, saying that it and other legal expenses cost it \$1.6 billion. Bank of America has agreed to adopt a "say on pay" shareholder vote, an independent compensation committee of the board and policies for committees focused on acquisitions, among other corporate governance changes.

Even with its legal problems, the Merrill Lynch business has helped bolster Bank of America, contributing roughly half the bank's revenue since 2009. But, as we have reported, the Countrywide acquisition has been a much larger problem for Bank of America. The purchase effectively saddled Bank of America with hundreds of thousands of homeowners struggling to keep up with their mortgage payments. Bank of America has spent billions of dollars to defend lawsuits related to Countrywide's mortgage business. For example, in the second quarter of 2011, the bank reported an \$8.8 billion loss, mainly related to a settlement with mortgage investors.

Earlier this year, Bank of America and four other banks agreed to a \$26 billion settlement related to their foreclosure practices. That settlement evolved from an investigation of the mortgage servicing practices by state Attorneys General that was begun in 2010 amid mounting fury over revelations that banks evicted homeowners from their residences with false or incomplete documentation. If any of our readers believe the government over-regulates the banks, perhaps some of the above will change some minds.

Source: New York Times

U.S. SUES WELLS FARGO IN MORTGAGE FRAUD CASE

The U.S. government filed a civil mortgage fraud lawsuit last month against Wells Fargo & Co. This is the latest in a series of lawsuits against big banks for their highly questionable lending practices during the housing boom. The complaint, brought by the U.S. Attorney in Manhattan, seeks damages and civil penalties from Wells Fargo for more than ten years of alleged misconduct related to government-insured Federal Housing Administration loans. The lawsuit alleges the FHA paid hundreds of millions of dollars on insurance claims on thousands of defaulted mortgages as a result of false certifications by Wells Fargo. Manhattan U.S. Attorney Preet Bharara had this to say:

As the complaint alleges, yet another major bank has engaged in a long-standing and reckless trifecta of deficient training, deficient underwriting and deficient disclosure, all while relying on the convenient backstop of government insurance.

In a regulatory filing in August, Wells Fargo said it was being investigated for possible violations of laws and regulations relating to mortgage origination practices, including FHA loans. The U.S. Attorney's office in Manhattan has brought similar cases in the past few years, including one against Citigroup Inc. unit CitiMortgage Inc., which settled the case for \$158.3 million in February, and against Deutsche Bank, which paid \$202.3 million in May to resolve its case. The U.S. Attorney's office in Brooklyn brought the largest such case, against Bank of America Corp's Countrywide unit, which agreed in February to pay \$1 billion to resolve the allegations.

The Wells Fargo case is brought under the False Claims Act, which provides penalties for fraud against the government, and under the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA). It should be noted that FIRREA requires a lower burden of proof than criminal charges. It also has a statute of limitations that is longer than other financial laws and has the potential to result in big fines. A civil fraud unit, created by U.S. Attorney Bharara in March 2010, filed its first lawsuit under FIRREA in December of that year.

At issue in the lawsuit are loans Wells Fargo made through a program that allows banks to originate, underwrite and certify mortgages for FHA insurance. Under the so-called Direct Endorsement Lender program, neither the FHA nor HUD reviews a loan

before it is approved for FHA insurance, but lenders are supposed to follow program rules. Between May 2001 and October 2005, it's alleged in the complaint that Wells Fargo certified more than 100,000 loans for FHA insurance, even though the bank knew its underwriters had failed to verify information that was directly related to the borrower's ability to make payments. It's alleged further that:

The extreme poor quality of Wells Fargo's loans was a function of management's singular focus on increasing the volume of FHA originations (and the bank's profits), rather than the quality of the loans being originated," the complaint said. The bank also failed to properly train its staff, hired temporary workers and paid improper bonuses to its underwriters to encourage them to approve as many loans as possible. During a 7-month stretch in 2002, at least 42% of the bank's FHA loans failed to actual qualify for the insurance they were submitted for, even though the bank's internal benchmark for such violations was set at 5%.

Wells Fargo also kept its defective loans secret from HUD. From January 2002 to December 2010, the bank internally identified more than 6,000 "materially deficient" loans, including 3,000 that had defaulted in the first six months, but did not comply with its self-reporting obligations. Prior to October 2005, the bank did not self-report a single bad loan, and the inadequate reporting continued even after a HUD inquiry that year. All told, from 2002 through 2010 the bank self-reported only 238 loans. Some of the mortgages Wells Fargo suspected of fraud but declined to report to HUD include loans it separately reported as suspicious activity to the U.S. Treasury Department.

The complaint seeks treble damages and penalties for hundreds of millions of dollars in insurance claims already paid to Wells Fargo, as well as penalties on claims HUD may pay in the future. Citi, in its settlement, paid \$158 million to resolve allegations that a "substantial percentage" of around \$200 million in insurance claims failed to meet FHA requirements. The Wells Fargo complaint also includes specific allegations that the lender failed to report another \$190 million in loans it should have flagged as potentially problematic to HUD, which

potentially adds to any eventual payout from the bank.

The lawsuit adds to the growing number of civil cases the government has filed targeting conduct that allegedly contributed to the financial crisis. It should be noted that the Justice Department has indicted few individuals and institutions on criminal charges for roles in the collapse. Officials have said prosecutors determined much of the conduct amounted to greed, but did not rise to the level of crimes. A joint federal-state task force set up earlier this year to continue to probe conduct tied to the 2007-2009 crisis has also acknowledged the bulk of its inquiries are under civil law. I would have thought that there would have been some violations of criminal law, but apparently that wasn't the case. That makes a good case, however, for the need for a strong civil court system.

Source: *Insurance Journal*

CFTC ORDERS JP MORGAN CHASE BANK TO PAY \$600,000

JP Morgan Chase Bank (JPMCB) will pay \$600,000 to settle Commodity Futures Trading Commission (CFTC) charges that it exceeded speculative position limits in Cotton No. 2 futures contracts trading on the Intercontinental Exchange U.S. (ICE). According to an order by the CFTC, JPMCB held net short futures equivalent positions in Cotton No. 2 futures contracts in excess of CFTC speculative position limits on several days between September 16, 2010 and October 5, 2010. The CFTC's speculative position limits for Cotton No. 2 futures are 3,500 contracts in a single month and 5,000 contracts in all months combined.

According to the order, JPMCB had a long-side hedge exemption in Cotton No. 2 futures, but its short-side positions remained subject to the 3,500 and 5,000 contract limits. The order finds that JPMCB held short positions in excess of both the single-month and all-months speculative position limits during the relevant period. JPMCB held those positions as a result of an inadvertent deficiency in its automated position limit monitoring system, which generates a report used by commodity traders to track their current positions relative to the applicable speculative position limits.

As originally configured, the automated monitoring system did not differentiate between the different long- and short-side position limits applicable to JPMCB's trading in Cotton No. 2 futures. After learn-

ing of this deficiency, JPMCB utilized a manual position limit monitoring procedure pending correction of the automated monitoring system. Despite adoption of this manual position limit monitoring procedure, JPMCB violated its short-side speculative position limit on several occasions during the relevant period.

Source: *Corporate Crime Reporter*

READYONE TO PAY \$5 MILLION TO RESOLVE FALSE CLAIMS CHARGE

ReadyOne Industries Inc. has agreed to pay \$5 million to resolve allegations that it violated the False Claims Act by knowingly submitting false certifications regarding the annual percentages of direct labor hours performed by people with severe disabilities. ReadyOne, previously known as the National Center for Employment of the Disabled (NCED), is headquartered in El Paso, Texas, and is a manufacturer of apparel, boxes and other products. NCED was a participant in the AbilityOne Program, which creates employment opportunities for people who are blind or have other significant disabilities in the manufacture and delivery of products and services to the federal government.

The program uses the purchasing power of the federal government to buy approved products and services from participating, community-based nonprofit agencies nationwide. These community-based nonprofit agencies, like NCED, must ensure that 75% of all annual direct labor hours on certain government contracts are performed by employees who are blind or severely disabled. The program is managed by the Committee for Purchase From People Who Are Blind or Severely Disabled, which is a federal agency.

The United States alleges that between 2000 and 2006, NCED employed a large number of non-disabled employees to work on contracts for the manufacture of archival boxes, apparel and other items, and did not appropriately account for their hours as part of the overall ratios it certified and submitted to the committee. Stuart Delery, Acting Assistant Attorney General for the Civil Division of the Department of Justice, had this to say:

The AbilityOne program is an important source of employment for people who are blind or have other significant disabilities. False certifications undermine that program and will not be tolerated.

The settlement arises from a whistleblower lawsuit filed under the False Claims Act by Michael Ahumada, a former employee of NCED. As we have written on numerous occasions, under the qui tam provisions of the False Claims Act a private citizen may file actions for false claims on behalf of the United States and share in any recovery.

Source: *Corporate Crime Reporter*

FINRA FINES GUGGENHEIM SECURITIES \$800,000

The Financial Industry Regulatory Authority (FINRA) has fined Guggenheim Securities, LLC of New York \$800,000 for failing to supervise two collateralized debt obligation (CDO) traders who engaged in activities to hide a trading loss. Alexander Rekeda, the former head of Guggenheim's CDO Desk, was suspended for one year and fined \$50,000. Timothy Day, a trader on Guggenheim's CDO Desk, was suspended for four months and fined \$20,000. Brad Bennett, FINRA's enforcement chief, observed:

Guggenheim's inadequate supervision allowed their traders to engage in extensive and repeated inappropriate actions to try to conceal a trading loss. The traders deceived their customer and supported their scheme through the use of inaccurate books and records, all of which went undetected by the firm.

FINRA found Guggenheim failed to conduct an adequate review of the CDO Desk's trades, documentation concerning transactions by traders on the desk, and the traders' email communications. While Guggenheim, Rekeda, and Day neither admitted nor denied the charges, they consented to the entry of FINRA's findings. As part of the settlement, Guggenheim must retain an independent consultant to review and make recommendations concerning the adequacy of its supervisory procedures.

Source: *Corporate Crime Reporter*

CHEVRON PAYS \$17.3 MILLION FINE FOR OIL SPILL OFF BRAZIL COAST

Chevron Corp. has paid a fine of \$17.3 million for several "irregularities" in connection with last year's oil spill off the coast of Rio de Janeiro. According to Brazil's National Petroleum Agency, Chevron paid the fine for 24 of 25 irregularities detected.

In its news release, the agency did not provide details on the irregularities. Some 155,000 gallons of crude are believed to have been released in the November 2011 spill.

The agency said it granted Chevron a 30% discount because it paid the fine on time and did not challenge it. Chevron says it will "implement a number of process improvements developed from lessons learned in the incident. Chevron Brasil respects and complies with the laws of the countries in which it operates." The company said in a Friday statement that "continuous monitoring of the incident area shows no discernible environmental impact to marine life or human health."

Brazil's state-run oil company, Petroleo Brasileiro SA, has also filed a lawsuit in federal court asking for the suspension of an injunction ordering driller Transocean Ltd. to cease operations in Brazil until investigations into the spill are completed. Chevron said in its news release that the suspension would hurt Petrobras' exploration activities since it is currently using seven Transocean rigs in Brazil. Transocean and Chevron had previously been served injunctions ordering them to suspend operations in Brazil within 30 days.

Source: *Huffington Post*

LAWSUIT INVOLVING DELAWARE PEDOPHILE PEDIATRICIAN SETTLED

The Delaware Medical Society and a southern Delaware hospital have settled a class-action lawsuit filed on behalf of victims of a former pediatrician. Earl Bradley, who sexually abused scores of his young patients over more than a decade, is now in jail. Under the terms of the settlement, \$123 million will be placed into a trust for the benefit of victims. Bradley, 59, is serving 14 life sentences for child rape. Even this severe sentence is too light for what this man did to innocent children. The victims fund is composed mainly of insurance proceeds, with an additional cash contribution from Beebe Medical Center.

Defendants in the lawsuit included Beebe—where Bradley had hospital privileges—the Medical Society of Delaware, and five physicians accused by the Plaintiffs of not reporting suspicions about the ex-doctor to authorities. The settlement resolves claims against all the Defendants. The trial judge has scheduled a Nov. 13th hearing to consider the fairness of the settlement.

Source: *Claims Journal*

VIII. PRODUCT LIABILITY UPDATE

THE GOODYEAR G159 RV TIRE—EVEN MORE DANGEROUS WITH AGE

Each month, lawyers in our firm continue to receive calls from consumers concerning one of the most dangerous tires this country has ever seen, the Goodyear G159 RV tire. Goodyear originally designed the G159 RV tire for metro pickup and delivery trucks, such as those used by UPS. Vehicles like that are used in urban settings and not for extended trips at highway speeds for several hours. The design features that made the G159 RV tire appropriate for delivery trucks made it dangerous and prone to fail when used on large RVs driven at highway speeds. The tire's thick tread and wide belt package caused the tire to run too hot and fail.

Lawyers in the section that handles Product Liability cases have handled several cases and learned that Goodyear's own documents showed the company was aware the tire would fail when operated at highway speeds when used on RVs. Goodyear learned through numerous field complaints and failures that this tire was not safe for RVs. In fact, Fleetwood, one of the largest RV makers, instituted a recall in 1999 that mandated replacing the G159 tires on its large RVs. Despite Goodyear's knowledge concerning the safety issues with the G159, it continued to sell the G159 as RV tires until 2003.

Unfortunately, because RVs are not used as frequently as passenger vehicles, several G159 tires are still on the big RVs and have very little wear or mileage. Most of the G159s in service are at least ten years old, if not older, and that's a problem. The "aging" of the G159 RV tire make this unsafe tire even more dangerous to unsuspecting RV owners.

For decades the tire industry has known that tires more than six year old, regardless of tread depth, pose significant hazards to users. As a tire ages, its components dry out, the rubber deteriorates and the adhesions between the tire's parts begin to break down. The tire's components that were once fused together during the manufacturing process begin to come apart, often leading to a tread separation. This aging process occurs regardless of whether the tires are being stored or are in use. Today, almost all of the tire manufacturers have placed age limits of ten years or

less on the tires they make. For example, Michelin states:

While most tires will need replacement before they achieve 10 years, it is recommended that any tires...in service 10 years or more from the date of manufacture, including spare tires, be replaced with new tires even if such tires appear [safe].

Goodyear should have never sold the G159 as a RV tire. Because of the wrecks, injuries and deaths it caused, Goodyear should have recalled this tire. It did not. Age has only made this dangerous RV tire even more unsafe for use on RVs. If you need additional information on the G159 RV tires, contact Rick Morrison, a lawyer in our Personal Injury/Product Liability Section, at 800-898-2034 or by email at Rick.Morrison@beasleyallen.com. Rick has handled several cases involving the G159 RV Tire and has become very knowledgeable about the tire and its problems.

RULINGS KEEP CHINESE DRYWALL CASES IN U.S. COURTS

A Chinese drywall manufacturer must answer to U.S. courts for defective drywall sold for use in American homes, as a result of rulings in two separate cases. Each judge in those cases rejected arguments by Taishan Gypsum Co., the world's largest drywall manufacturer, and its wholly-owned subsidiary, that U.S. courts lacked personal jurisdiction.

The judges ruled in the two cases that a Chinese drywall manufacturer will answer to U.S. courts for the defective plasterboard it sold for use in thousands of American homes. Each decision rejected arguments by Taishan Gypsum Co. (TG), the world's largest drywall manufacturer, and its wholly-owned subsidiary, Taian Taishan Plasterboard Co. (TTP), that U.S. courts lacked personal jurisdiction. The state and federal judges also denied motions to vacate default judgments imposed for the Defendants' failure to respond to the complaints that were filed against them.

United States District Judge Eldon Fallon of the Eastern District of Louisiana oversees four class actions involving millions of square feet of Chinese gypsum wallboard that were exported to the U.S. from 2005 to 2008, primarily for use in building homes on the eastern seaboard and the Gulf Coast. Judge Fallon, an experienced and well-respected jurist, made this finding in his order:

After installation of this drywall, owners and occupants of the properties began noticing unusual odors, blackening of silver and copper items and components, and the failure of appliances, including microwaves, refrigerators, and air conditioning units.

The state court ruling came in a Florida case in which a home builder sought to recoup the cost of repairing homes constructed with drywall that, according to the complaint, emitted foul odors and caused health problems for occupants. Circuit Judge Joseph Farina, in Miami-Dade County, ruled that TG and TTP "had sufficient business dealings and contact in Florida to satisfy the exercise of jurisdiction." Observing that TG and TTP were "intertwined at the level of daily operations," Judge Farina ruled that the companies were within the reach of Florida's long-arm statute because they "actively courted" customers in Florida by inviting Florida business representatives to visit TG's drywall factory in China, entering into distribution agreements with Florida companies through TTP to sell its products for home construction, and shipping drywall to those companies "with full knowledge of Florida as the ultimate destination." (*Lennar Homes v. Knauf Gips KG*, No. 09-07901 (Fla., Miami-Dade Co. Cir. Aug. 31, 2012).)

Judge Farina similarly dismissed the arguments by the company that TG reasonably believed that Florida courts had no jurisdiction, as well as its claim that "it lacked sufficient mastery of the English language" to fully understand the legal documents. This defense seems frivolous, considering that Taishan Gypsum and its subsidiary were conversant enough in English to get their products to market in America.

Some occupants experienced health problems including skin and eye irritation, respiratory issues, nosebleeds, and headaches. These two judges served victims well by holding both companies to account for the great financial injury and emotional hardship they caused in the states.

Source: *American Association for Justice*

IX. MASS TORTS UPDATE

FUNGAL MENINGITIS OUTBREAK LINKED TO CONTAMINATED EPIDURAL STEROID INJECTIONS

A deadly fungal meningitis outbreak continues to sweep across the country. A CDC and FDA investigation has confirmed that the outbreak of a rare form of fungal meningitis is directly linked to contaminated epidural steroid injections produced by the New England Compounding Center (NECC), in Framingham, Mass. The outbreak stems from three lots of contaminated methylprednisolone acetate steroid injections, which were recalled in September. Now, the company has completely shut down all operations and has recalled all products that were compounded and distributed from its facility in Framingham, Mass. The FDA recommends that health care professionals and consumers not use any product that was produced by NECC at this time. Over 270 people across 16 states have been diagnosed with fungal meningitis linked to the contaminated injections. At press time there had been 23 deaths reported.

Fungal meningitis is an infection of the protective membranes of the brain and spinal cord. Symptoms of fungal meningitis include fever, new or worsening headache, sensitivity to light, stiff neck, new weakness or numbness in any part of the body, slurred speech, and increased pain, redness, or swelling at the injection site. In some patients affected by the current outbreak, fungal meningitis has invaded blood vessels and caused strokes. According to the CDC, the onset of symptoms in most patients has occurred from one to four weeks after receiving the infected epidural steroid injection. However, longer and shorter periods between the injection and the onset of symptoms have been reported, in some instances up to 42 days later. A CDC spokesman emphasized that patients who received injections of the recalled drug should be cautious of subtle symptoms for months, as the potential length of the dormancy period is still unknown. Patients who are experiencing any of these symptoms and are concerned about whether they received a contaminated injection should contact their doctor immediately. The CDC is encouraging physicians to contact patients who have received an injection using any of three

contaminated lots that were distributed to clinics in 23 states beginning May 21, 2012. The CDC has emphasized that fungal meningitis cannot be transmitted from human to human.

Fungal meningitis can be diagnosed through a lumbar puncture, which draws cerebrospinal fluid from the spine that can be tested for signs of the disease. If fungal meningitis is detected, it can be treated with strong antifungal medications. Officials are warning that early treatment is vital. While the length of treatment is currently unknown, the CDC and FDA are advising physicians that patients may need months of treatment. The majority of reported cases have occurred in patients who received spinal epidural injections of the recalled steroid injections. However, joint infections have also occurred in patients receiving the contaminated injections in peripheral joints to treat ankle, knee, and shoulder pain.

NECC, the company that produced the contaminated injections, continues to be at the center of this ongoing controversy. NECC is a compounding pharmacy, which dilutes, mixes, and prepares drugs into formulations not typically available from actual pharmaceutical manufacturers. Compounding pharmacies, such as NECC, are only permitted to make medications based on specific prescriptions for individual patients. They are not allowed to manufacture and distribute drugs on a large scale. Compounding pharmacies like NECC are not subject to full FDA regulations like traditional drug manufacturers. Instead, they are licensed and regulated by state law. It seems very obvious that NECC misled regulators and performed work beyond the scope of its state license. NECC violated Massachusetts state law by producing and distributing large quantities of the contaminated steroid injections linked to the current fungal meningitis outbreak. The Massachusetts Department of Public Health, the CDC, and the FDA are currently investigating NECC, while dealing with the ongoing outbreak. Several states have revoked NECC's state pharmacy license, while NECC voluntarily surrendered its Massachusetts license. Another drug company with the same owners, Ameridose LLC, has temporarily stopped its compounding and manufacturing operations while its facilities are being inspected by regulators.

NECC is now facing lawsuits related to the fungal meningitis outbreak in Minnesota, Michigan, Tennessee, Virginia, and Indiana. Additionally, the officers behind NECC are being targeted in a lawsuit that

seeks to freeze their personal assets during pending litigation. The lawsuit filed in a state court in Boston attempts to pierce the corporate veil and go after the individuals behind NECC. This is not the first time NECC has been sued over its steroid injections. In 2004, a widow sued NECC claiming that her husband was infected with bacterial meningitis by a tainted steroid injection from the company in 2002 and died as a result. NECC settled the lawsuit through a confidential agreement. As the number of people infected with fungal meningitis during the current outbreak continues to rise, NECC is expected to face more legal action.

The full extent of this deadly outbreak is currently unknown, as new cases are being reported daily. Potentially contaminated steroid vials were sent to 76 facilities in 23 states, with an estimated 14,000 people receiving the injections before the recall. The states with clinics that received these contaminated injections are California, Nevada, Idaho, Texas, Minnesota, Illinois, Indiana, Michigan, Ohio, Tennessee, Florida, Georgia, South Carolina, North Carolina, Virginia, West Virginia, Maryland, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, and New Hampshire. According to Alabama health officials, 44 facilities in Alabama received medications from NECC, but none of these medications are believed to be contaminated with the infection.

Although no contaminated injections were sent to Alabama, 19 Alabamians were exposed to potentially contaminated injections by way of medical procedures performed in Tennessee and Florida. One Alabama man who received the injections in Florida has died within the last month. Officials are awaiting autopsy results to establish the cause of death. Five of the other 18 Alabamians are showing possible symptoms, while 12 have shown no symptoms and one person has not been contacted. If you need more information relating to this matter, contact Melissa Prickett or Chad Cook, both lawyers in our firm's Mass Torts Section, at 800-898-2034 or by email at Melissa.Prickett@beasleyallen.com or Chad.Cook@beasleyallen.com.

TRANSVAGINAL MESH LITIGATION UPDATE

A fifth multidistrict litigation (MDL) has been formed in the Southern District of West Virginia for transvaginal mesh products manufactured by Coloplast Corporation. Judge Joseph R. Goodwin is overseeing the new Coloplast MDL which

joins the four others in that court including transvaginal mesh manufacturers C.R. Bard, Ethicon, Inc. (Johnson & Johnson), American Medical Systems, Inc., and Boston Scientific Corporation. Over 1,000 cases have been consolidated in these five multidistrict litigations. Additionally, hundreds of cases have been filed in coordinated state court actions.

The FDA has issued an updated safety communication warning doctors, health care professionals, and patients that the placement of surgical mesh through the vagina to treat pelvic organ prolapse and stress urinary incontinence may present greater risk for the patient than other non-mesh procedures. Pelvic organ prolapse occurs when the muscles and ligaments supporting a woman's pelvic organs weaken and a pelvic organ slips out of place, or prolapses. Prolapse can involve the bladder, uterus, vagina, or rectum.

Coloplast manufactures three vaginal mesh products intended to treat pelvic organ prolapse, including Exair Mesh, Novasilk Synthetic Flat Mesh, and Restorelle Smartmesh. Coloplast also manufactures five bladder sling products intended to correct stress urinary incontinence, including the Aris Transobturator Sling, Omnisure Sling, Minitape Sling, Supris Suprapubic Sling, and T-Sling with Centrasorb. Stress urinary incontinence is the unintentional loss of urine prompted by a physical movement or activity such as coughing, sneezing, or heavy lifting.

Lawyers in our firm's Mass Torts Section are currently investigating transvaginal mesh products manufactured by American Medical Systems, Boston Scientific, Caldera Medical, C.R. Bard, and Johnson & Johnson and Coloplast Corporation. If you need more information on this litigation, please contact Leigh O'Dell or Chad Cook at 1-800-898-2034 or by email at Leigh.Odell@beasleyallen.com or Chad.Cook@beasleyallen.com.

GRANUFLO AND NATURALYTE RECALLED

The FDA has issued a Class 1 Recall of GranuFlo and NaturaLyte, both of which are used in the treatment of acute and chronic renal failure during hemodialysis. Class I recalls are the most serious type of recall and involve situations in which there is a reasonable probability that use of these products will cause serious adverse health consequences or death. A recent study conducted by the manufacturer of GranuFlo and NaturaLyte found that the use of these medications during dialysis resulted in a

four to six times increased risk of cardiac arrest or cardiopulmonary death.

GranuFlo and NaturaLyte are the same medication, but GranuFlo is a powdered concentrate and NaturaLyte is in liquid form. They contain an ingredient that the body converts to bicarbonate. GranuFlo and NaturaLyte contain more of this ingredient than rival products. Many doctors apparently have not been accounting for this extra bicarbonate contribution from GranuFlo and NaturaLyte when deciding how much bicarbonate to prescribe separately. The result can be, in effect, an overdose of bicarbonate, which can lead to sudden cardiopulmonary death, low blood pressure, hypokalemia, hypoxemia, hypercapnia, and cardiac arrhythmia.

Both GranuFlo and NaturaLyte are manufactured by Fresenius Medical Care North America. Fresenius is the nation's largest operator of dialysis centers. Fresenius not only used GranuFlo and NaturaLyte in its dialysis centers but sold these products to other dialysis centers, hospitals, and nephrologists around the country. In November 2011, Fresenius sent an internal memorandum to its centers warning that 941 patients had experienced cardiac arrest (including sudden cardiac death) in 667 of its centers. According to the confidential memo, the data indicated that "the excess bicarbonate, or alkalosis, significantly increased the risk of heart problems in hemodialysis patients."

Though Fresenius conveyed to its own centers that the risk to patients was serious and that the issue should be addressed "urgently," Fresenius did not warn non-Fresenius-owned dialysis centers, nephrologists, the public or the FDA. This meant that patients undergoing dialysis at outside facilities were unnecessarily put at risk, because their dialysis providers were not warned about potential adverse side effects from using GranuFlo or NaturaLyte.

The FDA became aware of the problem only after a copy of the internal memo was anonymously provided to the agency. Non-Fresenius owned facilities were informed when the FDA issued a Safety Communication in May 2012, some six months after the Fresenius-owned facilities. The FDA issued the recall in July 2012 after additional reports of serious adverse events surfaced.

The FDA is investigating the cause of Fresenius' delay in notifying all physicians, facilities and patients about the increased risk. In an interview with the *New York Times*, Mr. Steve Silverman, director or compliance for the FDA's medical device division, said the agency could issue a warning letter to Fresenius if it determined

the company should have reported the safety concerns. But even if the company had no legal obligation, he said, "Candidly, I just think it's bad business and not in the interest of public health to sit on information about risks." If you need more information on this matter, contact Leigh O'Dell, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Leigh.Odell@beasleyallen.com.

MORE LAWSUITS FILED AGAINST MAKER OF YAZ AND YASMIN

More Yasmin birth control lawsuits have been filed against Bayer, alleging the contraception is linked to serious side effects. Bayer has put money aside to settle Yasmin and Yaz side effects lawsuits, but women are still coming forward alleging they were not adequately warned about the risks associated with the birth control. Studies, including a study commissioned by the FDA, show that Yasmin and Yaz are linked to an increased risk of blood clots because of the use of drospirenone. A study published in the journal *IBMJ* found that women who used birth control that included drospirenone—a synthetic version of progesterone (which is sometimes referred to as progestin)—had double the risk of blood clots as women using other oral contraceptives.

We have learned during the litigation handled by lawyers in our firm that Bayer failed to properly test the contraceptives before selling them and then failed to warn the public or medical professionals about the risks associated with using Yaz and Yasmin. Bayer also produced television commercials that marketed Yaz and Yasmin as being safer than other forms of birth control that were available when in fact they were not safer.

Bayer has so far paid a reported \$402 million to settle Yaz and Yasmin lawsuits, while setting aside another \$600 million for future settlements. Approximately 11,000 lawsuits, filed in federal multidistrict litigation, are consolidated in the Southern District of Illinois. Some of those lawsuits allege Plaintiffs suffered blood clots while others allege the Plaintiffs suffered gall bladder problems.

Bellwether trials for Yaz, Yasmin and Ocella were scheduled to go to court earlier in 2012, but the sides sought mediation, resulting in settlements in at least some of the lawsuits. Although settlements have been reached in blood clot lawsuits, so far there have been no settlements of gall bladder claims to my knowledge. In April

2012, the FDA ordered Bayer to increase the warnings on Yaz and Yasmin, to more adequately represent the risk of blood clots. That announcement was made following an FDA review of studies comparing the risk of blood clots between birth controls that contained drospirenone and those that did not.

Some studies found up to three times the risk of blood clots in women who used drospirenone-containing birth control. Even though some settlements have been announced, it is not too late for women who suffered health problems after using Yaz, Yasmin or Ocella to file a lawsuit, providing the statute of limitations has not run out. If you need more information, contact Roger Smith, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Roger.Smith@beasleyallen.com.

Source: Lawyersandsettlements.com

FEDERAL JUDGE IN ALABAMA DENIES REQUEST BY PFIZER TO DELAY CHANTIX TRIAL

On October 16th a federal judge in Alabama, denied a request by Pfizer Inc. to delay by three months the start of a trial in federal court in a lawsuit that claims the pharmaceutical giant's anti-smoking drug Chantix caused a Minnesota man to commit suicide. U.S. District Judge Inge Johnson wrote in her ruling: "Given the current posture of this case, the court is of the opinion that a three-month continuance is not appropriate or needed."

Pfizer made the request to delay the trial after the release on the same day of a new clinical study on Chantix. The trial, which started on October 22nd in Florence, Ala., is the first federal lawsuit to go before a jury out of more than 2,600 lawsuits filed so far against Pfizer over Chantix. The lawsuits, filed by smokers or their families, claim the drug has caused suicides, suicide attempts, or other psychological problems. Judge Johnson was assigned in late 2009 to oversee all the lawsuits. Pfizer denies the claims in the lawsuits and has continually maintained Chantix helps smokers kick the habit.

Judy Ann Whitely, the Duluth, Minn. woman, filed her lawsuit after her husband committed suicide less than two weeks after he began taking Chantix. This case was selected to be the first bellwether case among the 2,600 lawsuits. Pfizer, in its motion, asked for the delay to allow both sides to consider the new clinical study on the safety of Chantix in smokers with major depression. The clinical study was con-

ducted at the request of the European Medicines Agency. Judge Johnson wrote on that issue in her order:

Defendant's concern about litigation getting ahead of science does not create any cause for a sudden halt to litigation which has been pending since 2009, based on a study for which defendant controlled when the results were made public. Similarly troublesome is the fact that there are ongoing studies, some of which have 2017 completion dates. The court will not postpone cases which are already two and three years old for another five years to allow completion of yet more studies.

Judge Johnson ruled that she will allow both sides to use results of the study. The judge also wrote about the inconvenience to the court and jury, stating:

The current trial date has been on the court's calendar for more than a year and in fact, the undersigned has arranged her entire docket around the trial of this action. Court personnel have rearranged other matters to devote those resources to this action. More than ninety potential jurors have traveled to the courthouse and spent their time to complete the jury questionnaire, for which the court has compensated them. Of those, approximately 60 potential jurors have been told to report to the courthouse in Florence, Alabama, for jury selection. The court finds this factor weighs heavily against any such continuance.

It will be most interesting to see how the trial comes out. But regardless of the outcome, it's good to see how Judge Johnson is handling the request for a delay in the trial. Ernie Corey, a lawyer from Birmingham, represents the Plaintiffs in the Florence trial.

Source: AL.com

FIRST LAWSUITS BEGIN OVER STRYKER HIP IMPLANTS

Lawsuits are being filed in the Stryker hip replacement litigation. As we have previously written the Stryker hip replacement system was recalled a few months back. These are the first lawsuits filed against Howmedica Osteonics Corp., the manufacturer. Unlike in other hip implant litigation, the problems with the Stryker

Rejuvenate Modular and ABG II involve the stem of the products, rather than the ball and socket joint. That difference makes the injuries more significant, the fix more difficult and the damages more substantial.

The first cases were filed in New Jersey state court. It's likely that the cases will be consolidated in Bergen County, N.J. The Stryker products are "dual modular" hip replacement systems, meaning there are two places where the pieces fit into each other: one between the stem and neck and the second between the neck and ball. The device was marketed as giving more flexibility to orthopedic surgeons. It received FDA clearance in June 2008. Approximately 30,000 devices have been implanted worldwide, with 20,000 going to U.S. patients.

The stem portion of the device is made of a titanium alloy referred to as TMZF (titanium molybdenum, zinc and iron) and the neck is made of a cobalt-chromium alloy. While this is the first titanium product, it's not the first cobalt-chromium alloy. The manufacturer uses specific, patented variations of these metals, but thus far the company won't tell lawyers handling these cases the actual makeup of the metals. By July 2012, Howmedica had voluntarily recalled the Stryker Modular and Rejuvenate ABG II because of the "potential for fretting and/or corrosion at or about the modular-neck junction, which may result in adverse local tissue reactions manifesting with pain and/or swelling," according to the company's website. Patients are just now starting to get recall notices.

The combination of metals in the product causes corrosion of the portion that is inserted into the femur. Using the dissimilar metals between the neck and the stem causes problems. The clash between the metals causes corrosion, fretting and galvanization, and breaks down. Because the problems involve the stem portion that goes into the femur, corrective surgery is more complex than correcting hip devices that failed at the ball-and-cup joint, such as the DePuy ASR and the Zimmer Durom. If you need more information on this litigation contact Navan Ward, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Navan.Ward@beasleyallen.com.

Source: Lawyers USA Online

WOMAN SUES OVER INJURIES CAUSED BY NUVA RING

An Iowa woman has sued Organon USA, alleging that their vaginal contraceptive NuvaRing caused her to have a pulmonary embolism. The woman, Sherri Howell of

Cedar Rapids, Iowa, first began using NuvaRing in early 2011. On March 30, 2011, at the age of 26, she had shortness of breath and chest pain and was admitted to a hospital where a chest CT revealed she was suffering from a pulmonary embolism. It's alleged in the suit that Organon knew or should have known that use of its products carries a risk of venous thromboembolism, including deep vein thrombosis and pulmonary embolism, as well as death. The suit alleges further that despite this knowledge, Organon failed to warn consumers of these serious risks before Howell began using NuvaRing.

In addition to pain and suffering, the suit also seeks to recover for economic and non-economic losses, including past and future hospital expenses, as well as punitive damages for the alleged willful or wanton disregard for the rights and safety of the Plaintiff. Organon USA, Inc. is a Roseland, N.J.-based sales unit of the health care group of Akzo Nobel NV and Organon International, Inc., both of which are also listed as Defendants in the suit. If you need more information on this litigation contact Melissa Prickett, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Melissa.Prickett@beasleyallen.com.

Source: Lawyers USA Online

STEVENS JOHNSON SYNDROME IS A MOST SERIOUS PROBLEM

We have written on Stevens Johnson Syndrome (SJS) in previous issues. We have tried to let folks know that SJS is a most serious problem for victims. Being diagnosed with a serious condition is stressful enough, but developing a severe allergic reaction, such as SJS, to the medication makes a bad situation into a terrifying ordeal. Unfortunately, since many patients aren't aware of Stevens Johnson Syndrome symptoms, they don't know that when they break out in a rash they may be facing a medical emergency. Because some drugs warn only about a rash, but not about SJS, folks taking those drugs aren't aware of the risks of a life-threatening condition.

Stevens Johnson Syndrome and its more severe form, toxic epidermal necrolysis, are serious allergic reactions to medications. They can arise at any time, even if the medication has previously been well-tolerated, and are linked to a variety of common medications, including ibuprofen.

Patients are often treated in hospital burn wards because their skin can peel off and they suffer burn-related injuries including severe blistering. Some patients who

develop SJS do not survive, while those that do often have permanent injuries including photosensitivity, pain and scarring. Lawsuits have been filed against some drug companies for failing to adequately warn about the risks of Stevens Johnson Syndrome and toxic epidermal necrolysis. If you need more information on SJS, contact Frank Woodson, a lawyer in our firm's Mass Torts Section, at 800-898-0234 or by email at Frank.Woodson@beasleyallen.com.

X. AN UPDATE ON SECURITIES LITIGATION

SONOCO PRODUCTS COMPANY SETTLES SECURITIES FRAUD CLASS ACTION LAWSUIT

Sonoco Products Company, founded in 1899, is based in Hartsville, S.C. Sonoco is a global manufacturer of industrial and consumer packaging products and provider of packaging services. From 2001—2006, Sonoco enjoyed increasing prices across all customers in its flexible packaging division. In mid-2006, however, several of Sonoco's largest customers put out bids on their flexible packaging business and Sonoco was ultimately required to dramatically lower its pricing to retain this business and one of its customers actually took its flexible packaging business elsewhere. As a result, both volume and profits derived from this division of Sonoco were significantly lower in 2007. While Sonoco issued several press releases touting price increases on certain of its markets and customers in late 2006 and early 2007, Sonoco issued no press release announcing price concessions or the loss of a major customer during the same period of time.

On February 7, 2007, Sonoco issued a press release announcing its financial results for the fourth quarter and year end of 2006 as well as its first quarter outlook for 2007. In the press release, Sonoco credited "higher selling prices" in the Consumer Packaging segment for its success and did not disclose to the market the loss of a major customer or significant price concessions. On April 20, 2007, Sonoco issued another press release announcing first quarter 2007 earnings and stated the company was "pleased to be able to recover much of the materials and other cost increases experienced during the quarter through higher selling prices." As a result

of this public statement, Sonoco's stock price jumped to \$43.04 per share, up \$3.31 from the prior day's close. On May 1, 2007, Sonoco filed its Form 10-Q with the SEC stating its quarterly report for the first quarter of 2007. The 10-Q filed by Sonoco failed to disclose the significant price concessions or the loss of a major customer by Sonoco, or the negative impact these events were having on Sonoco's bottom line.

Finally, on July 20, 2007, Sonoco issued a press release with its second quarter earnings and, for the first time, revealed and disclosed "price reductions in certain flexible packaging without offsetting reductions in costs". On this same date, Sonoco's stock price declined 14.22% from \$44.30 per share at close on July 19, 2007 to \$38.00 at the close on July 20, 2007.

The City of Ann Arbor Employment Retirement System filed suit on June 26, 2008 seeking to represent all those persons or entities who had purchased or acquired Sonoco common stock during the class period. City of Ann Arbor asserted the failure by Sonoco and its executives to disclose or reveal the price concessions and loss of a major customer in its flexible packaging division was a material omission or concealment in violation of the federal securities laws. Sonoco and its executives denied the allegation and asserted the price concessions and loss of a major customer were not material to the overall company-wide financial performance and projections and therefore had no duty to disclose them. The company also claimed that because it met its earnings guidance or projection during the time period in question it should not be liable for securities fraud.

On September 30, 2010, Judge Terry L. Wooten of the USDC for the District of South Carolina certified a class of all those persons or entities who purchased or otherwise acquired Sonoco common stock between February 7, 2007 and September 18, 2007. On September 22, 2011, Judge Wooten denied Sonoco's motion for summary judgment as well as the party's respective motions to exclude expert witness opinions and testimony. With the case ready to proceed to trial, the parties reached a settlement agreement in the amount of \$13 million at mediation in April 2012. At a hearing on September 4th, Judge Wooten approved the settlement agreement and awarded Plaintiffs' counsel \$4 million in attorney's fees. Jack Reise and Mike Greenwald of Robbins, Geller, Rudman & Dowd were Lead Counsel for the Plaintiff. Bill Hopkins from our firm served as Liaison Counsel for the Plaintiff. They did a very good job in this case.

If you, or someone you know, has been deceived and bought stock based upon a material misrepresentation or concealment of material facts relating to a company, contact Bill Hopkins, who is our firm's Consumer Fraud Section, at 800-898-2034 or by email at Bill.Hopkins@beasleyallen.com.

NEW YORK SUES JPMORGAN OVER BEAR STEARNS MORTGAGE SECURITIES

New York Attorney General Eric Schneiderman filed a civil fraud lawsuit against JPMorgan Chase & Co. last month over mortgage-backed securities packaged and sold by Bear Stearns. It was the first action to come out of a working group created by President Barack Obama earlier this year to go after wrongdoing that led to the financial crisis. JPMorgan, which bought Bear Stearns for \$10 a share in March 2008, has said that it would contest the allegations in the suit.

The suit accuses Bear Stearns of failing to ensure the quality of loans underlying residential mortgage-backed securities it packaged and sold in 2006 and 2007. Investors lost more than \$22.5 billion on more than 100 of those securities, or one-quarter of their original value. It's alleged in the lawsuit that there were "serious long-standing concerns" about the quality of reviews done by Bear Stearns, and that defects uncovered among the loans sold to investors were largely ignored. The due diligence process was compromised, according to the suit, "in order to increase their volume of securities."

It's also alleged in the suit that a "systematic abandonment of underwriting guidelines" existed. JPMorgan noted in its statement that the allegations concern actions by Bear Stearns before the investment bank was acquired by JPMorgan. The statement said:

The NYAG civil action relates to Bear Stearns, which we acquired over the course of a weekend at the behest of the U.S. Government. This complaint is entirely about historic conduct by that entity.

New York State has a very strong securities fraud law, the "Martin Act." The Attorney General's lawsuit, filed in New York State Supreme Court in Manhattan, was based on this law. The Martin Act doesn't require proof of intent to deceive. It's believed similar cases will be filed against other banks under this law. This is not the first time Bear Stearns has emerged as a central figure in the financial crisis. In June

2008, two former Bear Stearns hedge fund managers were charged by federal prosecutors with lying to investors about the financial health of their funds, which had invested heavily in mortgage securities backed by subprime loans.

The managers were acquitted in a case that still stands as one of the few criminal prosecutions against Wall Street bankers to emerge from the financial crisis. This lawsuit comes in a pretty rough year for JPMorgan and Chief Executive Jamie Dimon. Federal authorities are currently investigating a nearly \$6 billion trading loss in JPMorgan's chief investment office. U.S. power regulators asked the bank recently to demonstrate that it did not violate federal regulations by submitting misleading information and omitting facts in dealings with the regulator and California's electricity grid operator. As we have mentioned in previous issues, the Residential Mortgage-Backed Securities Working Group was formed to probe the pooling and sale of risky mortgages in the run-up to the 2008 financial crisis.

Source: *Chicago Tribune*

NEW GROUNDS FOR LITIGATION AGAINST MERS

A recent ruling by the highest court in the state of Washington has opened up new grounds for litigation against MERS (Mortgage Electronic Registration Systems, Inc.) in Washington, and other states are likely to follow. The court ruled that MERS lacked authority to start out-of-court foreclosures.

In the mid-1990's the nation's major banks set up MERS to bundle and sell loans to investors without having to record every assignment with the local recorder of deeds. The banks saved time and money because MERS permitted the lenders to bypass the process of filing paperwork and paying fees every time a mortgage was sold. Approximately 60% of the nation's residential mortgages are recorded in the name of MERS. However, MERS does not take payments from borrowers or negotiate on behalf of lenders.

The court found that MERS did not meet Washington's definition of a beneficiary and could not foreclose on behalf of a lender that holds the mortgage note. As a result of this ruling, any home foreclosed by MERS in the state of Washington in the past 15 years could become the subject of a consumer fraud suit. If you have any questions, contact Lance Gould, a lawyer in our Con-

sumer Fraud Section, at 800-898-2034 or by email at Lance.Gould@beasleyallen.com.

Source: Reuters

XI. INSURANCE AND FINANCE UPDATE

NATIONWIDE SETTLES HARLEYSVILLE POLICYHOLDER CLASS ACTION FOR \$26 MILLION

Nationwide has settled the lawsuit arising out of the insurer's merger with Harleysville Insurance for \$26 million. The suit, a consolidated class action and derivative suit, was filed by former Harleysville Mutual policyholders. It arose out of the \$834 million merger of Nationwide Mutual and Harleysville, which was completed last May. Harleysville Insurance is now part of the Nationwide family of companies.

Financial terms of the deal had come under attack by some Harleysville Mutual policyholders, as well as by some other third-party observers, including David Schiff, editor of *Schiff's Insurance Observer* and an advocate of mutual policyholders. Critics argued that Nationwide offered a significant premium for common stock of Harleysville Group, a publicly-traded subsidiary of Harleysville Mutual—which critics contend enriched stockholders including top executives at Harleysville Mutual. But the critics also noted that the merger failed to provide for any consideration to the mutual policyholders of Harleysville Mutual beyond the fact that they would become members of Nationwide.

The suit was filed in the Court of Common Pleas of Philadelphia, First Judicial District of Pennsylvania, Civil Trial Division. The Court has not ruled on the merits of the suit, and now is not expected to do so. But the settlement won't be final until it is approved by the Court. As part of the settlement process, the parties involved have requested that the court certify a class for the purposes of settlement only.

Before the Court can approve the settlement, class members must be given notice of the terms of the settlement and their rights with respect to it, and the Court must hold a hearing to determine the fairness of the settlement. The Court must still determine a timeline for when class members will receive written notice of the settlement, their deadline for objecting to or

opting out of the settlement, and the date of the fairness hearing on the settlement.

Source: *Insurance Journal*

AIG TO PAY \$11 MILLION MULTI-STATE SETTLEMENT OVER LIFE POLICIES

Insurer American International Group Inc. has agreed to an \$11 million settlement with a group of states over its claims settlement practices for life insurance policies. AIG is the latest insurer to settle state investigations relating to the handling of unclaimed property and the use of the Social Security Administration's Death Master File (SSDMF) to identify death claims that have not been submitted to the company in the normal course of business. MetLife and Prudential have already reached settlements.

State regulators have alleged that insurers used the list of recently deceased people to stop making annuity payments to dead customers, but, at the same time, did not use the list to check whether any life insurance policy holders had passed away. AIG previously disclosed that its life insurance companies had received regulatory inquiries, including a multi-state unclaimed property audit and related market conduct examination. AIG will pay an \$11 million regulatory assessment to the various state insurance departments to defray costs of the examination and monitoring. In addition to reserving for the regulatory assessment, AIG will increase its estimated reserves for policy holder benefit reserve death claims relating to these audits by \$55 million in the third quarter for interest and expected acceleration of benefit payments under the settlement, including early payment of policy proceeds under certain older industrial life policies.

The company says it is now taking enhanced measures to, among other things, routinely match policyholder records with the SSDMF to determine if its insureds, annuitants, or retained account holders have died and locate beneficiaries when a claim is payable. In 2011, prior to receiving any regulatory inquiries, AIG says it began a review of its policyholder records, including matching records against the SSDMF, to identify policies where the insured may be deceased but no claim had been submitted to the company. To date, as a result of this effort, AIG says it has paid more than \$100 million to more than 22,000 beneficiaries. The states listed on the agreement include: Florida, North Dakota, Pennsylvania,

nia, California, Illinois, New Hampshire and Texas.

Source: *Insurance Journal*

XII. EMPLOYMENT AND FLSA LITIGATION

HANDLING OF TIPS UNDER THE FLSA

The Fair Labor Standards Act of 1938 (FLSA) allows an employer to take a tip credit toward its obligation to pay a minimum wage to tipped employees. Since tips are the property of the employee, an employer is prohibited from using tips for any reason other than as a credit or in furtherance of a valid tip pool. A valid tip pool is a sharing arrangement among employees who customarily and regularly receive tips, such as waitresses and service bartenders. A valid tip pool may not include employees who do not customarily and regularly receive tips, such as cooks and dishwashers.

In 2010, the Ninth Circuit Court of Appeals ruled that the FLSA does not restrict an employer's use of its employees' tips when the employer has not taken a tip credit. Thus, an employer that does not take a tip credit could require its employees to participate in a tip pool that included individuals who do not customarily and regularly receive tips, such as cooks and dishwashers.

Following this ruling, the Department of Labor (DOL) amended its regulations to set out its interpretation of the FLSA's limitations on an employer's use of its employees' tips when a tip credit is not taken. According to the DOL, a tip is the sole property of the tipped employee regardless of whether the employer takes a tip credit. So even where a tipped employee receives direct wages from the employer of at least the minimum wage, the employee may not be required to turn over their tips to the employer. Trade groups have challenged the DOL's interpretation by asking a court to declare the regulation unlawful. But for now, this is the DOL's position. The Department says it will enforce that position nationwide. If you have any questions relating to this matter, contact Brad Smelser, a lawyer in our Consumer Fraud Section, at 800-898-2034 or by email at Brad.Smelser@beasleyallen.com.

Source: www.dol.gov and www.lexology.com

XIII. PREMISES LIABILITY UPDATE

TEXAS JURY AWARDS \$11 MILLION IN OILFIELD LAWSUIT

A jury has awarded \$11 million to a man who was injured by a pipe casing that fell from an oilfield elevator. The verdict in favor of Eliazar Trevino Jr. came last month after a week-long civil trial in Ector County, Texas. The suit, arising out of the September 2009 accident, was filed against M&M Elevator Company. The casing ripped out nerves from the Plaintiff's shoulder and neck. It was proved at trial that the elevator didn't work properly, causing the casing to fall on the Plaintiff. M&M claimed that oilfield workers had failed to latch the elevator correctly. It also questioned why the Plaintiff was under the elevator when the accident happened. Obviously, the jury didn't buy those arguments.

Source: *Insurance Journal*

LAWSUIT FILED AGAINST EXXON OVER YELLOWSTONE SPILL

More than a dozen eastern Montana landowners have filed a lawsuit against Exxon Mobil Corp., claiming the company ignored warnings before a pipeline break that spilled an estimated 1,500 barrels of crude oil into the Yellowstone River. The lawsuit from property owners along the scenic waterway contends that last year's spill could have been avoided if Exxon had followed the lead of other companies and shut down its pipeline during severe flooding in July 2011. The 14 Plaintiffs suffered harm to their property and livestock operations, damage to wildlife, and health problems from exposure to oil. They are asking for compensation for their losses and punitive damages against Exxon to serve as a deterrent against future spills.

From all accounts, Exxon should have known long before this happened that this river floods every spring and produces massive erosive forces. The case was filed in state District Court in Gallatin County. Defendants named in the suit include Exxon Mobil, Exxon Mobil Pipeline Co., pipeline superintendent Jason Montgomery and pipeline builder Barnard Construction Co.

A second lawsuit against Exxon, filed by another group of property owners, is

pending in state District Court in Yellowstone County. Barnard Construction was not named as a Defendant in that suit, which is set to go to trial in October 2013 before Judge Gregory Todd. Exxon was ordered to turn over documents related to the incident to lawyers for the Plaintiffs in the Yellowstone County lawsuit by October 22.

The spill came after officials in the town of Laurel, where the break occurred, repeatedly warned that the pipeline was at risk. It was one of several major accidents in recent years that underscored lax government oversight of the nation's sprawling pipeline system. An estimated 70 miles of the Yellowstone's riverbank were contaminated. Exxon Mobil spent an estimated \$135 million on cleanup work and upgrades to the pipeline where it crosses the Yellowstone and other major waterways along its route from Wyoming to a company refinery in Billings.

The Exxon spill caused more property damage than all other accidents in Montana over the last decade combined. The line was buried only a few feet beneath the riverbed when it was installed in 1991. Investigators suspect that scouring caused by flooding on the Yellowstone River was responsible for the spill, but a final cause has not been determined. During repair work after the spill, the pipeline was re-installed dozens of feet beneath the riverbed. The lawyer for the Plaintiff in the case is Jory Ruggiero, who is with the Western Justice Associated law firm in Bozeman.

Source: *Insurance Journal*

ANOTHER LAWSUIT FILED OVER COLORADO THEATER SHOOTING

Another lawsuit has been filed on behalf of several victims of the Aurora, Colo. theater shooting. The lawsuit was filed in Arapahoe County District Court and contends Plano, Texas-based Cinemark and Town Center at Aurora failed to protect customers and were guilty of gross negligence. Lawsuits filed against Cinemark in federal court also cite a lapse in security at the theater. As a defense, Cinemark has said it couldn't have foreseen the attack. Simon Property Group contends the shooting didn't happen within its Town Center at Aurora mall. It says further that its company has no involvement with the theater's operation.

Twenty-four-year-old James Holmes was charged in the July 20 shooting that killed 12 and wounded 58. This tragic event is just another example of what happens in a

society where reasonable control on the access to guns—especially assault weapons—is virtually non-existent in many states.

Source: *The Denver Post*

GOOD RESULT IN NORTH CAROLINA CASE

A case in North Carolina, involving allegations of inadequate security at a restaurant, was recently settled for \$6.25 million. The Plaintiff, a 26-year-old married man with a young child, was employed as a warehouse supervisor. On June 4, 2007, at about 3 a.m., he went to a fast-food restaurant that was open 24 hours daily to get something to eat. Since the place was very busy, he decided not to eat there. An unarmed security guard, who was controlling access to the restaurant, gave permission for the Plaintiff to enter the restaurant to use the restroom. After using the restroom, the Plaintiff walked out of the restaurant into the parking lot. He was then robbed and shot in the back. The perpetrators were members of the Bloods gang.

The bullet severed the Plaintiff's spinal cord, leaving him permanently paralyzed below the waist. Suit was filed on June 2, 2010, alleging negligence against the franchisor, the franchisee, the president of the franchise, the property owner, and the security company that provided two unarmed security guards. In addition, a claim of successor liability was brought against the franchisor. At the beginning of trial the court bifurcated the liability and damages issues and severed the successor liability claim against the franchisor. A mediation settlement conference had been held prior to the trial. A settlement offer was made in the amount of \$100,000.00, which the Plaintiff rejected.

A security expert testified at trial that there had been armed robberies, assaults, and shots fired on the premises during the three-year period leading up to the date the Plaintiff was robbed and shot, and that violent crime was foreseeable. Evidence was also presented that prior to the shooting the police department had requested the franchisee to hire off-duty police officers to provide security. The franchisee had agreed to hire the officers, but they had not started working on the night when the Plaintiff was shot.

The police had also requested the franchisee to close the restaurant briefly during the bar rush, but the franchisee responded that it did not have the authority to close because of its franchise agreement. The Defendants argued that the perpetrators

were not deterrable and that the crimes against Plaintiff could not have been prevented by the security measures requested by the police and testified to by Plaintiff's security expert. At the close of the evidence, the court granted a motion for directed verdict made by the president of the franchise in his individual capacity and denied the motions of the other Defendants. During the third week of trial, while the jury was deliberating, the franchisee and the security company agreed to settle the Plaintiff's claims.

Charles Bentley, a lawyer from Durham, N.C., and Joe McLeod, who came out of retirement to help try the case, represented the Plaintiff. They did a very good job for him and his life will be much better as a result.

XIV. WORKPLACE HAZARDS

2011 FATAL WORK INJURY STATISTICS

An estimated 4,609 fatal work injuries were recorded in the United States in 2011, down from a final count of 4,690 fatal work injuries in 2010, according to results from the Census of Fatal Occupational Injuries (CFOI) program conducted by the U.S. Bureau of Labor Statistics. The rate of fatal work injury for U.S. workers in 2011 was 3.5 per 100,000 full-time equivalent (FTE) workers, as compared to a final rate of 3.6 per 100,000 for 2010. Over the last three years, increases in the published counts based on additional information have averaged 166 fatalities per year or about 3% of the revised total. Final 2011 data from the CFOI program will be released in Spring 2013.

Key preliminary findings of the 2011 Census of Fatal Occupational Injuries: Fatal work injuries in the private construction sector declined to 721 in 2011 from 774 in 2010, a decline of 7% and the fifth consecutive year of lower fatality counts. Fatal construction injuries are down nearly 42% since 2006. Violence and other injuries by persons or animals accounted for 780 fatalities, or about 17% of the fatal injuries in the workplace in 2011. Included in this count are 458 homicides and 242 suicides.

Work-related fatalities in the private mining industry (which includes oil and gas extraction) were down 10% in 2011 after an increase of 74% in 2010. Coal mining fatali-

ties fell to 17 in 2011 from 43 in 2010. Fatal work injuries in private truck transportation rose 14% in 2011—the second consecutive year that counts have risen in this sector after reaching a series low in 2009. Fatal work injuries increased among non-Hispanic black or African-American workers and among Hispanic or Latino workers in 2011, but declined among non-Hispanic white workers (down 3%).

Fatal work injuries involving workers 55 years of age and older as well as workers under the age of 18 were both lower in 2011, but fatal work injuries among workers in the 20 to 24 age group were up nearly 18%. Transportation incidents accounted for more than two out of every five fatal work injuries in 2011. Of the 1,898 transportation-related incidents, about 57% (1,075 cases) were roadway incidents involving motorized land vehicles. Non-roadway incidents, such as a tractor overturn in a farm field, accounted for another 11% of the transportation-related fatal injuries. About 16% of fatal transportation incidents in 2011 involved pedestrians who were struck by vehicles. Of the 312 fatal work injuries involving pedestrians struck by vehicles, 61 occurred in work zones.

Fatal falls, slips, or trips took the lives of 666 workers in 2011, which was about 14% of all fatal work injuries. Falls to lower level accounted for 541 of those fatalities. Of those 451 cases, about one in four (115) occurred after a fall of ten feet or less. Another fourth (118) occurred from a fall of over 30 feet. A total of 472 workers were fatally injured after being struck by objects or equipment, including 219 workers who were struck by falling objects or equipment and 192 who were struck by powered vehicles or mobile equipment not in normal operation. There were 152 multiple-fatality incidents in 2011 (incidents in which more than one worker was killed) in which 354 workers died.

Source: *Claims Journal*

COSTCO WORKERS WIN CLASS CERTIFICATION FOR BIAS CASE

A class has been certified in a case against Costco Wholesale Corp. Workers who sued the retailer for gender bias will be able to proceed with their claims as a group. U.S. District Judge Edward Chen in San Francisco certified a class of Plaintiffs who are seeking monetary relief. The class includes several hundred women employed since 2002 who have been subject to the company's system for promotion to manage-

ment positions. Judge Chen said in his order:

Costco offers numerous competing explanations for the observed gender disparity in promotions. None of these explanations undermine the companywide nature of the challenged policies and their disparate effects.

Costco, the largest U.S. warehouse-club chain, was sued in 2004 for allegedly limiting promotions of female employees to assistant general manager and general manager by failing to post job openings. The company denies the claims. This ruling is significant since Costco had won a ruling last year voiding another judge's decision to expand the complaint into a class action. The suit was originally filed by three women and sought to include hundreds. It was established that there was a set of company policies set at the corporate level and that senior management was involved in the decisions. Bob Nelson, a spokesman for Costco, didn't immediately return a phone message seeking comment on the ruling.

A federal appeals court in San Francisco ruled last year that lawyers for the Costco workers had to follow standards set by the U.S. Supreme Court in a June 2011 decision throwing out a gender-bias lawsuit, known as the *Dukes* case, against Wal-Mart Stores Inc. involving potential claims for more than 1 million women. Lawyers for Costco workers went back to the trial court with a new proposal to limit the proposed class of employees to two management level positions—assistant general manager and general manager—and that satisfied the court. They also targeted specific employment practices implemented companywide under the influence and control of top management at Costco, including a “tap-on-the-shoulder appointment process” without applications or interviews, and a mandated lack of posting for open positions. Judge Chen, explaining why the *Dukes* case didn't control, wrote:

Unlike in Dukes, in which Wal-Mart permits store managers to apply their own subjective criteria when selecting candidates, here the criteria plaintiffs allege to be subjective and unvalidated derive from top management's own instruction.

Judge Chen has set a tentative trial schedule. In the first stage, a jury would decide whether Costco discriminated against women. The court then would decide whether Costco's practices had an adverse

impact on the group and if he should issue an injunction against the company. Depending on the outcome, individual hearings on back pay and compensatory damages would be held and punitive damages would be determined. The case is *Ellis v. Costco*, 07-15838, U.S. Court of Appeals for the Ninth Circuit (San Francisco).

Source: Bloomberg

XV. TRANSPORTATION

\$700,000 AWARDED TO TEACHER HIT BY VEHICLE IN CROSSWALK

A Lee County, Ala., jury has found in favor of an Auburn area teacher who was seriously injured in a collision that occurred at an intersection in Auburn, Ala. The jury awarded Frankie Askew Bell \$550,000 in compensatory damages and \$150,000 in punitive damages. Mark Sawyer, who was operating his car on South College Street in Auburn at about 5:45 a.m. on November 5, 2010, hit Dr. Marie Wooten and Mrs. Bell in a designated crosswalk. Dr. Wooten, the Dean of Math and Sciences at Auburn University at that time, died on the scene from her injuries. Mrs. Bell suffered severe and permanent injuries and was life-flighted to Columbus Regional Medical Center.

Testimony at trial from the Auburn City Engineer indicated clearly that the intersection was well lit. Sawyer could see the intersection from 200 yards away. Sawyer admitted that he was setting his cruise control on 45 miles per hour when his car hit both women in the crosswalk. He testified that he saw both women, yet never applied his brakes and never slowed down. In fact, Sawyer continued driving his car for more than 50 yards after the impact.

Alabama law requires that every driver of a vehicle must exercise due care to avoid colliding with any pedestrian. Mr. Sawyer did nothing to avoid hitting these women. Dr. Wooten and Frankie Bell were more than halfway through the crosswalk when Sawyer hit them. Sawyer testified that he knew people exercised and jogged in the early morning hours. He disregarded the safety of these women who were in a crosswalk designated for walkers, joggers and bikers. If Sawyer had been paying attention, he could have avoided this tragic and deadly collision. At the time of the incident Sawyer had marijuana in his system. The jury found him guilty of wanton conduct.

Mrs. Bell suffered severe injuries, post-traumatic stress disorder and 25 broken bones including complex fractures of both legs her (right leg shattered from knee to ankle); fractures of both shoulder blades; fractures to transverse process at C7-T12; fractured right wrist; fractured jaw; head injury; concussion; and post-concussive syndrome. She underwent multiple surgeries, extensive rehabilitation and missed almost a year of teaching math to her high school students. Her medical bills were in excess of \$250,000. Considering the severity of her injuries, Mrs. Bell's recovery has been a miracle.

Mrs. Bell is grateful for the EMTs, first responders, medical providers, surgeons, nurses and physical therapists who took excellent care of her. The excellent treatment and care she received helped put the very good teacher back on her feet and into the classroom. She is also thankful to her husband, Felix, her children, her family members, friends, her fellow teachers, her church, and folks at her gym for offering tremendous support during her difficult recovery process. While Mrs. Bell continues to suffer pain, she fights through it every day. She says her faith in God gives her strength to fulfill the purposes He has for her on this earth.

Prior to the collision, Mrs. Bell worked as a Loachapoka High School math teacher and was a doctoral student at Auburn University's College of Education's educational leadership program. She is now teaching math at Lafayette High School. She was working on her Ph.D. at the time of this collision. Mrs. Bell will complete that degree very soon. She and her husband, Felix Bell, live in Opelika and have five children. Julia Beasley, a lawyer in our firm, along with Wes McCollum, a lawyer with McCollum & Wilson in Auburn, represented Mrs. Bell. They did a very good job for her in this case.

JURY AWARDS NORTH CAROLINA COUPLE \$1.7 MILLION IN UNBORN SON'S DEATH

A jury has awarded a Charlotte, N.C., couple \$1.7 million in a lawsuit against a local restaurant in connection with a head-on collision that killed the couple's unborn son. David Canter Huffman, a 25-year-old, was speeding in his Volvo on Oct. 29, 2010, when his car crossed the center line and hit Matt Eastridge's car. Huffman died in the crash, as did the Eastridges' unborn son. Meredith Eastridge was a front-seat passenger and was six months pregnant at the time. Huffman had been

drinking at a local bar, Eddie's Place, and his blood alcohol content was nearly three times the legal limit.

Source: *Claims Journal*

ALABAMA AND MISSISSIPPI NEAR TOP OF THE COUNTRY FOR TEEN DRIVING DEATHS

According to the Insurance Institute for Highway Safety (IIHS), nearly 18,000 teens in the U.S. ages 16 to 19 died in car accidents from 2006 to 2010. In fact the fatal crash rate for 16 to 19 year olds in the U.S. is nearly three times the rate for drivers ages 20 and older. Erie Insurance worked with IIHS to conduct an exclusive analysis of crash data from the U.S. Department of Transportation to show how states compare in terms of the relative danger of car accident deaths when teens are behind the wheel.

It was reported by IIHS that Saturday is the most deadly day for teenage drivers in the South. Alabama and Mississippi are near the top of the list of states with the highest teen driving death rates. The states are third and fourth on the list compiled by the Erie Insurance Company and IIHS. Sadly, Alabama and Mississippi teen driver death rates were far above the national average. The list reveals:

- 31.2 deaths per 100,000 people in Alabama.
- 32.3 deaths per 100,000 people in Mississippi.

The national rate is 16.2 deaths per 100,000 people. According to the study, nearly 18,000 teens, aged 16 to 19, died in car accidents during the reporting period, 2006 to 2010, resulting in a fatal-crash rate nearly three times that of drivers 20 and older. May is the most deadly month for teenage drivers in Mississippi, the study showed, with August being the worst for Alabama teens. Wyoming is the most deadly state for teen drivers followed by Montana, Mississippi, West Virginia, Arkansas and Alabama. It was reported that the District of Columbia, New York, Rhode Island, Massachusetts and New Jersey were the safest states.

Erie Insurance is taking steps to reduce the teen death rate with "Shift," a driver safety program designed for teens to share good driving tips and experiences and warn their peers of bad driving behavior. The program includes a contest to award \$20,000 in cash prizes to teens and their schools for sharing the safe-driving message. The contest is open to teens in

the 11 states and the District of Columbia where Erie Insurance has operations. Karen Kraus Phillips, Vice-President at Erie Insurance, had this to say:

Inexperience combined with a never ending list of distractions can add up to a deadly combination for teen drivers. Our goal is to reduce the high number of teen injuries and deaths that happen on the road every year. We think we've found an engaging way for teens to spread the word about protecting themselves on the road.

IIHS notes that state graduated driver licensing laws (GDL) have helped reduce teen crash rates significantly in recent years, but these laws vary in strength. Research shows that every state could reduce its teen crash rate by adopting stronger GDL laws.

Source: AL.com and *ClaimsJournal.com*

THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION'S CSA PROGRAM

The House Committee on Transportation and Infrastructure Subcommittee on Highway and Transit held a hearing recently to consider changing the current Compliance, Safety, Accountability Program (known as the CSA Program). This program was implemented by the Federal Motor Carrier Safety Administration (FMCSA) in December of 2010. The program was created to address the need to utilize all data more quickly to focus FMCSA's limited resources on intervention with high risk carriers in order to prevent truck crashes and the resulting deaths and injuries.

Most safety experts believe this program is a significant improvement over the previous program which it replaced in December of 2010. The intent is for the CSA Program to retain its ability to efficiently analyze data for timely intervention in a cost-effective manner. That's essential and needed. Lots of folks don't realize it, but the agency has limited resources, which unfortunately is the case for many good programs. The program must remain fair to crash victims and the surviving families. The FMCSA's goals toward fulfilling its Congressional mandate are to save lives and prevent injuries by improving the safety of commercial motor vehicles. From the agency's own evaluation comes the following data:

- The CSA Program is effectively monitoring the industry with an intervention

model that demonstrates an overall 35% increase in the number of carriers reached per safety investigation;

- Since the CSA Program roll out in December of 2010 until the end of 2011, violations per roadside inspection declined by 8% and driver violations per inspection declined by 12%;
- Compliance improved while being less intrusive and time consuming for all motor carriers; and
- For an overwhelming majority, 93% of small carriers do not score poorly in the area of the CSA safety management system, supporting the CSA's programs lack of bias against small carriers.

These results show the most significant improvement in violation rates in the last ten years. The advances achieved with the CSA Program are necessary and long overdue and should not be modified in any manner that would hinder its effectiveness. The FMCSA is considering changing the way the CSA crash BASIC handles crash data. Currently all crashes, regardless of fault, are counted in the crash data. The agency uses this data because past crash history is an accurate predictor of future crash involvement. The change being considered would classify crashes as "preventable," "non-preventable," and "undetermined" based solely upon the police accident report "PAR."

Crashes deemed "non-preventable" would then be removed from the carrier's crash BASIC score. These changes are not only unnecessary, but have the potential to compromise the data integrity short-term when it is used for intervention and compliance as well as when it is used in long-term studies. The crash BASIC is working as intended; to successfully identify high risk carriers for intervention and the data should not be manipulated.

It's well-established in the truck research community that crashes—in and of themselves and regardless of fault—are effective predictors of future crashes. Past crashes are indicative of future crash risk irrespective of the finding of "fault" or "preventability" in a particular crash and support the FMCSA's process of including all crash data.

It is a mischaracterization to say that the process is unfair and that some trucking companies are being blamed for crashes they did not cause. Fault is not, and never has been, part of the FMCSA's process. The FMCSA's materials and public display of crash data clearly states the crash data is based on crash involvement without determination of responsibility. The crash data is

used solely as an analytical tool to identify motor carriers that can benefit prospectively from intervention by the agency. Additionally with all companies being held to the same standard of inclusion, the playing field is level and fair.

The FMCSA doesn't have the resources to properly develop and maintain a system which would require investigation, documentation, and evaluation to prove fault and determine preventability in truck crashes. After all, and properly so, that is the function of the civil courts.

Public access to the CSA Program information, data, and improvements is essential to maintaining a fair and transparent process. The information and data the FMCSA collects for its CSA Program come through public agencies, regarding crashes that occur on public roads, paid by taxpayer's dollars and ultimately affect public health and safety. Perhaps the greatest influence is that the trucking industry and its safety record have high visibility. It should be noted that the trucking industry adds approximately 70,000 new carriers each year. Public access to safety information is essential to obtaining, attaining, and perpetuating safe roadways.

I would hope that Congress preserves the CSA practice of including all crashes

in its crash BASIC because it is an efficient, highly-effective predictor of future truck crashes. In addition, transparency, regarding the methodology and logic behind the threshold settings being employed is essential, as well as insuring public safety in the safety rating information. If you need more information or have questions about any of the above, contact Mike Crow at 800-898-2034 or by email at Mike.Crow@beasleyallen.com.

Sources: Federal Motor Carrier Safety Administration website

The American Transportation Research Institute website

House Committee on Transportation and Infrastructure website

THE NEED FOR ON-BOARD COMPUTERS AND BLACK BOXES FOR HEAVY TRUCKS

By now, most people are familiar with data recorders or "black boxes" found on airplanes and in the majority of automobiles on the road today. These "black boxes" are commonly known as electronic data recorders (EDRs) or electronic on-board recording devices (EOBR). The purpose of these recording devices is to record and keep safe all data in case of a crash. This allows safety engineers and company management to review the events leading up to a wreck and

utilize the data for future safety decisions. In automobiles, these "black boxes" record a variety of events surrounding an automobile accident, such as vehicle speed before the crash, deceleration rates, and vehicle trajectory before, during and after the crash, and seatbelt use. The "black boxes" now play a critical and significant role in determining the cause of an accident.

"Black boxes" are also found in the 18-wheelers that are on our roads and interstate systems. Over the years, the technology found in "black boxes" has greatly improved. And it is the advancement in technology, the ability to record much more and different types of data, that has stirred up a controversy within the heavy truck industry. Recently, the Federal Motor Carrier Safety Administration—a division of the U.S. Department of Transportation—called for "black boxes" with the capability to monitor the hours of service of a trucker to be installed in all heavy trucks. The proposal would mandate the recorders as a way to ensure that truckers do not exceed the federal hours-of-service rules. There are numerous federal regulations that govern hours of service for truckers. The following are just a few of them:

- A driver carrying property cannot drive more than 11 hours following ten consecutive hours off-duty.
- A driver cannot operate a commercial vehicle for any period after having been on duty 14 hours following ten consecutive hours off-duty.
- A driver carrying passengers cannot drive more than 10 hours following eight consecutive hours off-duty or operate a commercial vehicle for any period after having been on duty 15 hours following eight consecutive hours off-duty.

49 C.F.R. § 395.3(a) and § 395.5(a).

Many commercial truckers still keep track of their hours through a paper log book. These paper log books can be easily altered or changed and there is very little oversight to ensure the paper log books are accurate. *USA Today* ran an interesting article in its June 11, 2012, edition which discussed how the new "black box" proposal has divided the trucking industry. The American Trucking Association, the nation's largest trade association for the trucking industry, has supported mandating the recorders; whereas, the 150,000 member Owner-Operator Independent Driver Association, has opposed the legislation. The *USA Today* article explained the controversy within the industry:

The 150,000-member Owner-Operator Independent Driver Association, based in Grain Valley, Mo., opposes the measure, arguing that the devices will invade drivers' privacy, won't increase accuracy of record-keeping and will heap an unnecessary expense on thousands of small-business owners who drive trucks.

"The big fleets...contend that a recorder is more reliable," says Todd Spencer, OOIDA's executive vice president. "But it's not. All it can tell is whether a vehicle is moving or not. It can't tell whether or not that driver is on duty or off duty. ... The reason the big (trucking firms) want real-time tracking of trucks is that for them it's a productivity device. They want to make sure trucks and drivers are moving every single minute ... regardless of whether a driver is too tired or too fatigued."

The American Trucking Associations (ATA), the nation's largest trade association for the trucking industry, supports mandating the recorders. "We all can make mistakes," says Sean McNally, spokesman for Arlington, Va.-based ATA, which represents 37,000 motor carrier and other members that employ hundreds of thousands.

"There are people who are driving illegally because of these paper logs," McNally says. "Our fleet members who are using (recorders) tell us it cuts down on hours-of-service violations, makes it less burdensome to do paperwork, that they have fewer violations and comply with (federal) rules more effectively."

On Monday, auto club AAA and the Commercial Vehicle Safety Alliance, a non-profit group composed of local, state and federal trucking safety officials and industry representatives, joined ATA in urging Congress to support the electronic onboard recorder mandate.

Tilden Curl, 53, of Olympia, Wash., who drives about 110,000 miles a year, opposes the recorders. "I think they're not going to do what they're purported to do," he says. "They're not going to make us safer."

Curl says he worries that companies that hire drivers will be able to manipulate the recorders to force drivers to work longer hours and to "microman-

age” drivers. “I see absolutely no benefit to it,” he says.

From the perspective of a victim of a trucking accident, there are positive benefits to mandating these electronic recording devices in heavy trucks. For a commercial truck that has a “black box” in it, the system may have the capability of recording data concerning the vehicles’ operation including speed, braking, use of the clutch and use of cruise control. This type of information is vital in reconstructing how an accident happened because the information basically provides a snapshot of what was happening with the heavy truck at the moment of the crash event. If the new proposed regulations pass, the electronic recorders will have the capability of recording a driver’s hours of service, a truck’s total driving time, total driving distance, trip driving time, trip distance, average driving speed, and maximum recorded speed. This information can then be compared to the driver’s log book to determine if the truck driver falsified his log book and was driving more than the federal government allows.

Research has shown that driver fatigue contributes significantly to the number of commercial vehicle accidents that result in injury and death. Driving fatigue has been labeled as the number one cause of trucking accidents. Dan Osterberg, senior vice president of safety and security at Schneider National, a Green Bay, Wis.-based international transportation and logistics company, says the firm saw a “significant” reduction in crashes after it required on-board recorders for its 13,000-truck fleet in 2010. He stated:

We actually did an internal study several years ago of a four-year period of crashes involving our trucks,” he says. “We found that fatigue was the No. 1 cause of crashes at that time. Since we started in 2010, we’ve seen a significant reduction in fatigue-related crashes, in fatality crashes and in injury crashes.

As stated earlier, accessing the data found in these electronic data recorders is extremely helpful in determining the cause of an accident. However, a lot of the event recorders only record data for a period of 30 days or less and usually when these recorders reach its capacity, the data will be recorded over with new logs. That means if one waits too long to access the data, the valuable information on how the wreck may have happened could be lost. Thus, if one has been injured in an accident with an 18-wheeler, it is very important to immedi-

ately place the motor carrier on notice to print out any of the data regarding the electronic recording device before it is destroyed and have that data reviewed for evidence of driver distraction, hours of service violation, and speeding.

If you need additional information or have questions about any of the above, contact Dana Taunton, a lawyer in our Personal Injury/Products Liability Section, at 800-898-2034 or by email at Dana.Taunton@beasleyallen.com.

Source: *USA Today*

XVI. HEALTHCARE ISSUES

FDA REGULATION OF PHARMACIES IS BADLY NEEDED

We wrote in the Mass Torts segment of this issue about the deadly meningitis outbreak linked to contaminated pain injections and how it has prompted calls for tighter federal regulation of compounding pharmacies. Poor regulation of the “compounding industry” has periodically been blamed for crippling and sometimes fatal injuries. But all of us must realize that this isn’t the first time Congress has pushed for more authority over that industry. The efforts go back to the 1990s. But because of the vigorous pushback by compounding pharmacists, we now have a patchwork of incomplete, overlapping laws, contradictory court rulings and overall uncertainty about how much power the Food and Drug Administration actually has to regulate compounders. From my perspective, it appears the agency has almost no effectual regulatory control over this industry.

The compounding industry in the U.S. has grown into a \$3 billion business with 7,500 pharmacies, according to its trade group. Deborah Autor, FDA’s deputy regulatory commissioner, had this to say about the agency’s authority:

It’s incredibly complicated to explain what our authority is and is not, and the nuances of that. The world has changed a lot since the days of mortar and pestle, and this is the time for pharmacists, for lawmakers, for regulators and for doctors to sit down to grapple with this new model of pharmacy compounding.

Compounding pharmacies are believed to be important for patients who need solutions, creams and other medicines customized for things like smaller dosages or to remove ingredients that cause allergies. Unlike drugs that are manufactured for mass-market distribution, these products are not subject to premarket review by the FDA.

All pharmacies, including compounding pharmacies, have long been regulated by state pharmacy boards, many of which date back to the 19th century. At that time nearly all drugs dispensed in the U.S. were individually compounded by pharmacists. The law that created the FDA in 1938 gave the agency strict authority over drug manufacturers, which quickly eclipsed pharmacists as the main producers of prescription medicines. For decades, the state-federal divide persisted, with states overseeing compounding pharmacies and the FDA policing drug manufacturers.

But in the 1990s, FDA regulators began to more closely scrutinize compounding pharmacies, as their number multiplied and some grew into big businesses. Instead of making individualized products based on a physician’s prescription, companies began mass-producing products and promoting them broadly. That led to massive direct-to-consumer advertising by the manufacturers (which is another story). The compounding pharmacies continued to operate, but largely under the radar.

FDA officials have repeatedly stressed the challenges the agency faces policing compounding operations. In fact, some former agency officials say that the FDA is hesitant to act after years of legal battles with lawyers and lobbyists for the industry. The International Academy of Compounding Pharmacists has spent big bucks lobbying Congress in the past decade and has a track record of defeating measures opposed by the industry. A 2003 provision to set up an FDA advisory committee to oversee compounders was killed by then-House Majority Leader Tom Delay, who said it would create unnecessary federal interference. Interestingly, Delay represented Sugar Land, Texas, which had in its town the headquarters of the compounding academy.

Even when the FDA has succeeded in getting legislation through Congress, the agency has gotten tangled up in the courts. In 1997 Congress passed an FDA-supported law that allowed the agency to regulate compounding pharmacies if they overstepped certain standards for drug production, labeling and advertising. Specifically, the law said that compounding pharmacies were subject to FDA oversight if they adver-

tised their products. A federal appeals court sided with the compounding pharmacies and ruled that this last requirement was unconstitutional and the U.S. Supreme Court agreed with that decision in 2002. But the High Court did not rule on whether the other requirements in the law should stand, creating a legal limbo for regulators. Since then, different appeals courts have issued conflicting judgments on the remainder of the law, which could wind up back at the Supreme Court.

Interestingly, some former FDA lawyers believe new laws are not necessary when dealing with companies that have clearly crossed the line from compounding drugs to full-blown manufacturing. Sheldon Bradshaw, former FDA chief counsel during the Bush administration and now a lawyer in Washington, stated:

Legislation isn't necessary here. FDA already has all the authority they need to go after the New England Compounding Centers of the world. I'm honestly shocked by how FDA is now downplaying its authority in this regard.

Considering the tragic events arising out of the meningitis health outbreak caused by the New England compounding pharmacy, Congress may now do the right thing and give the FDA the clear authority to regulate this industry. Unfortunately, lots of folks have been hurt and at press time 23 had died in the recent meningitis outbreak. Unfortunately, this is a tragedy that is still unfolding. But the bottom line is this industry must be properly regulated. Congress must act to see that it happens.

Source: *Claims Journal*

LAPSES AT BIG DRUG FACTORIES ADD TO SHORTAGES AND DANGER

But it should be noted that there are other health and safety issues facing drug manufacturers. In the last three years, six of the major manufacturers of sterile injectable drugs—which are subject to inspections by the federal government, as opposed to compounding pharmacies, which as stated above are generally overseen by the states—have been warned by the Food and Drug Administration about serious violations of manufacturing rules. Four of the manufacturers have closed factories or significantly slowed production to fix the problems. Nearly a third of the industry's manufacturing capacity is off line because of quality issues, according to a Congressional report. These recent

quality lapses at big drug companies are a clear indication that contamination and shoddy practices extend well beyond the loosely-regulated compounding pharmacies that have attracted attention because of their link to the very serious outbreak of meningitis.

The manufacturing process garnered more attention in 2009, when Dr. Margaret Hamburg took over as commissioner of the FDA and pledged to get tougher on plant inspections. While she has certainly done that so far, the FDA must take whatever additional steps are necessary to correct a most serious problem. Congress must also appropriate additional funds needed by the FDA so the agency can do its job of protecting the American people.

Source: *New York Times*

XVII. ENVIRONMENTAL CONCERNS

THE GREAT DIVIDE: ALASKA'S PEBBLE MINE CAUSES SPLIT AMONG GOVERNMENT AND NATIVES

Britsol Bay, Alaska, and its surrounding streams and rivers are home to the largest wild salmon source in the world. But, it is also home to the proposed site of the Pebble Mine—the second largest gold and copper deposit ever found. The Pebble deposit contains 80 million pounds of copper and 100 million ounces of gold. The value placed on this deposit was estimated at 200 billion dollars in 2007. The Pebble Mine's potential impact on the fishing industry and Bristol Bay ecosystem has divided the Alaskan natives and the government.

The Pebble Mine will consist of an open pit mine that will be two to three miles wide and one mile deep. It will be one of the largest mines in the world. A tailings dam will go next to the mine and will rise 700 feet high and hold billions of pounds of waste from the mine. It is the dam that most opponents of the Pebble Mine fear, as it is the most likely to leak or break and cause contamination. Even further, the Pebble Mine sits on Lake Clark Fault and has the potential for devastating earthquakes, which could cause a disastrous spill.

The natives are divided on whether the Pebble Mine is a good idea. Some natives support the Pebble Mine's potential for economic development and job creation. But

others argue that the Pebble Mine will destroy the fishermen's way of life by polluting the streams, rivers and bay. While proponents argue that the mine is needed to meet the high global demand for copper, opponents argue that copper is plentiful elsewhere in areas that are less sensitive to the disruptive nature of a mine.

The Environmental Protection Agency stepped in and conducted its own investigation of the Pebble Mine's effect on Bristol Bay and its surrounding areas. The EPA's investigation concluded that even if there were no leaks or accidents, the mine would remove 70 miles of stream and five square miles of wetlands, causing the loss of habitats where salmon lay their eggs. However, it is likely that one or more leaks will occur, directly impacting the salmon habitat. The EPA is now determining whether it should stop the Pebble Mine from being built pursuant to its power under the Clean Water Act.

Challengers to the EPA's unilateral authority to shut down the Pebble Mine argue that the EPA is usurping Alaska's right to determine what happens to its own resources and scaring off large investors from coming to Alaska. It remains to be seen whether the EPA will use its authority under the Clean Water Act and strike down the Pebble Mine project. Dr. David Chambers, an engineer and geophysicist who has been studying the Pebble Mine, stated:

I can't tell you that this mine is going to be a disaster. They can't tell you that this mine won't be a disaster. But, I can tell you from a probability standpoint, it's not a good bet that there won't be problems.

Source: pbs.org

CHESAPEAKE ENERGY UNIT PLEADS GUILTY

Chesapeake Appalachia, a unit of Chesapeake Energy, has pled guilty in federal court in Wheeling, W. Va. to three criminal violations of the Clean Water Act. The company was fined \$600,000 and placed on two years probation. Federal officials charged Chesapeake with discharging 60 tons of crushed stone and gravel into Blake Fork in Wetzel County, W. Va. on at least three different occasions in December of 2008. David McLeod, a special agent in charge of the Environmental Protection Agency's criminal enforcement program in West Virginia, stated:

Chesapeake illegally filled at least three sensitive wetlands. In one

instance, Chesapeake obliterated a natural waterfall.

In its plea agreement, Chesapeake admitted that after discharging the stone and gravel that it then spread the material in the stream to create a roadway for the purpose of improving access to a site associated with Marcellus Shale fracking activity.

Federal officials alleged that Chesapeake violated the Clean Water Act when, in 2008, it selected the location for an access road to a site associated with its drilling activities, hired construction contractors to discharge and spread rock and gravel in Blake Fork in order to develop access to the Hohman Pit, and supervised and directed the work of the construction contractors. The contractors hired by Chesapeake discharged gravel from dump trucks into Blake Fork, also known as Blake Run, on at least three separate and distinct occasions.

The parties agreed that separate violations committed by Chesapeake, and occurring in connection with impoundments constructed in Marshall and Wetzel Counties, would be addressed by civil penalties and not by way of criminal charges. Chesapeake's contractors, under the supervision of a Chesapeake employee, subsequently used bulldozers to spread the 60 tons of gravel in Blake Fork to develop access to the Hohman Pit in order to facilitate Marcellus Shale gas drilling activities. Chesapeake failed to obtain a Clean Water Act permit prior to this discharge.

Source: *Corporate Crime Reporter*

EPA PROBES HEALTH RISKS LEFT BY OLD LEAD FACTORY SITES

The Environmental Protection Agency is re-examining more than 460 former lead factory sites across the USA for health hazards left by toxic fallout onto soil in nearby neighborhoods. The massive effort comes as a result of a *USA Today* investigation. It involves locations in dozens of states and has already identified several sites needing further investigation and some so dangerous that cleanups are being scheduled. For example, in Portland, Ore., the yard at one home is so contaminated with lead and arsenic that 20 tons of soil will need to be removed. Additionally, three nearby homes also likely will need similar cleanups.

There are also problems in a number of other states, including New York, New Jersey, Michigan, Illinois, Ohio and Maryland.

In April, *USA Today's* "Ghost Factories" investigation revealed that the EPA was

given a list in 2001 of forgotten lead factories that primarily operated and shut down during the 1930s through the 1960s, before the era of environmental regulation. The EPA was warned by the researcher who compiled the list from old industry directories that many of the long-closed factories had likely contaminated the soil in surrounding properties with a toxic layer of lead fallout from their smokestacks, thereby creating a risk to children playing in the dirt and putting dusty hands and toys in their mouths.

Despite the warnings, *USA Today's* examination of all 464 sites on the list found that federal and state regulators had done little to investigate many of the sites or warn thousands of families and children in harm's way. Ingesting even tiny amounts of lead dust can cause irreversible loss of intelligence, attention disorders and other health problems. The series is available at ghostfactories.usatoday.com.

Interestingly, *USA Today* has been able to document locations and operations of factories that government regulators said couldn't be found. It remains unclear how thorough the latest round of hazard assessments will be. Many of them are being done for the EPA by state regulators. State officials cite limited resources and the difficulty of proving that off-site contamination came from the old lead factories among the reasons for their approach. Other sources of lead in soil can include emissions from flaking lead-based paint and vehicles that once burned leaded gasoline. But the old factories present a real problem.

Source: *USA Today*

XVIII. THE CONSUMER CORNER

TOYOTA CONTINUES TO SWEEP UNINTENDED ACCELERATION PROBLEM "UNDER THE RUG"

The public is convinced that unintended acceleration in Toyota vehicles has been resolved. After all, the National Highway Traffic Safety Administration has reassured the public that "the verdict is in . . . there is no electronic-based cause for unintended high-speed acceleration in Toyotas. Period." Toyota blamed the unintended acceleration problem on driver error and floor mats and recalled millions of vehicles to install proper floor mats. The public's confidence in this resolution is evident in Toyota's sales

numbers. In the first six months of 2012, Toyota sold 5 million vehicles, making it the second manufacturer in sales, just behind GM.

But what the public doesn't know could hurt it. Despite the recalls and efforts by NHTSA to convince the public that individuals are at fault and responsible for unintended accelerations, complaints of unintended acceleration continue to come in. Safety Research and Strategies, Inc. found that between June 1, 2011 and July 17, 2012, 368 total incidents of unintended acceleration were reported to NHTSA by Toyota consumers. Of these incidents, 36 involved vehicles that had already been recalled prior to the accident, meaning the floor mats could not possibly have been the problem. Injuries were reported in 95 of the incidents.

In July 2012, Iowa Senator Charles E. Grassley sent a letter to NHTSA asking the agency to reopen its investigation of the Toyota unintended acceleration issue. Senator Grassley claims that he received evidence from whistleblowers that electronic issues caused unintended acceleration. The Senator was not satisfied by NHTSA's and NASA's conclusion that electronic defects did not cause Toyota's unintended acceleration. In its report, NASA found evidence of tin whiskers in a Toyota pedal assembly. Tin whiskers are "electronically conductive, crystalline structures of tin that sometimes grow from surfaces where tin (especially electroplated tin) is used as a final finish." The tin whiskers found in the Toyota pedal assembly were said to have caused a short circuit, which could cause unintended acceleration.

Of course, Toyota maintains that unintended acceleration can only be caused by driver error and floor mats entrapping the gas pedal. In response to Senator Grassley's probe, Toyota stated that "no one has ever found a single real-world example of tin whiskers causing an unintended acceleration event." NHTSA has refused to reopen the investigation and has concluded that while tin whiskers may cause a "jumpy" throttle, they did not cause the Toyota unintended acceleration problem.

Toyota cannot continue to blame floor mats for unintended acceleration when the same cars that were recalled and equipped with secure floor mats are continuing to experience unintended acceleration. If you would like more information on unintended acceleration, please contact Stephanie Stephens or Graham Esdale, lawyers in our Personal Injury/Products Liability Section, at 800-898-2034 or by email at Stephanie.

Stephens@beasleyallen.com or Graham.Esdale@beasleyallen.com.

Sources: Safety Research and Strategies, Autoguide.com, NHTSA

RENTAL CAR COMPANIES AGREE NOT TO RENT RECALLED CARS

The nation's four largest rental car companies have banded together in a pledge not to rent out any vehicles that are subject to a manufacturer safety recall and to support legislation that would legally enforce the promise. Enterprise/National/Alamo, Hertz/Advantage, Avis/Budget joined Hertz in the agreement pushed by Sen. Charles Schumer (D-N.Y.), Sen. Barbara Boxer (D-California) and by Cally Houck, a California mother whose daughters died in the crash of a rental car that was under recall.

Mrs. Houck's two daughters, Raechel and Jacqueline, were killed in 2004 after the PT Cruiser they had rented from Enterprise apparently began leaking steering fluid and suddenly caught fire before crashing into an oncoming semi-tractor trailer. The car had been under a safety recall for the potential fire hazard. After a lengthy court battle, Enterprise had to pay the Houck family \$15 million in damages. Under current law, car dealerships are banned from selling vehicles that are under a safety recall, but the restriction does not prevent rental agencies from renting out recalled cars. New legislation sponsored by Senators Boxer and Schumer (the Raechel and Jacqueline Houck Safe Rental Car Act of 2012) is designed to close that loophole. Mrs. Houck had this to say:

If this bill had been the law, and the rental companies complied, my beautiful, precious daughters would still be alive. My abiding hope is that it will be enacted, and other families will be spared our devastating loss.

After the 2010 ABC News report, the National Highway Traffic Safety Administration launched an investigation to see how quickly rental car companies repair vehicles that have been recalled. With the exception of Hertz, all the major American rental car companies originally declined to sign a pledge, saying they wouldn't rent cars under recall. At the time, they said that while they supported safe rental car legislation, they wanted it to extend to other businesses that transport passengers in vehicles, like limousine and taxi companies. All the companies said then that they address safety recalls in a timely manner and representatives for

Enterprise and Avis said their policy was already not to rent cars that were under recall.

But the companies' recent decision to sign the pledge—along with the newfound support of several safety auto agencies—is a “breakthrough years in the making,” according to Sen. Schumer, who observed:

Consumers will no longer have to worry about what they aren't being told when they go to the rental car counter. With the industry's full backing, we think we have a great shot to get this legislation passed before the end of the year.

The decision of the rental companies is a good thing and regardless of their prior conduct, they are to be commended. If we were able to ask the public whether a rental company should rent a car under a safety-related recall, I don't believe there is any doubt as to what the response would be.

Source: ABC News

DODGE DART GETS TOP CRASH TEST RATING

The Dodge Dart was among four new vehicles on the U.S. market to receive a top crash test rating by the Insurance Institute for Highway Safety, an influential safety group. The 2013 Dart, the first model jointly engineered and designed by Fiat SpA and Chrysler Group LLC, was named a “Top Safety Pick” by IIHS. Three other 2013 models, each one redesigned from previous model years, also earned the top rating: the Hyundai Motor Co. crossover Santa Fe, the Lexus ES 350 midsize luxury sedan, the Subaru XV Crosstrek hatchback.

The rating means that each vehicle performed well in test crashes evaluating front, side and rear impacts, as well as rollovers. Reid Bigland, chief of Chrysler's Dodge brand, said the company “had high expectations for the Dart and our engineers delivered.” Of the 180 vehicles IIHS tested for the 2012 model year, 132 were awarded the Top Safety Pick designation, according to Russ Rader, a spokesman for IIHS.

The IIHS will issue its annual list of the safety report for vehicles sold in the U.S. market in December. These four models were tested after manufacturers requested the tests ahead of the normal IIHS schedule. Each of the four models were introduced to the U.S. market within the last several months. Hyundai's Santa Fe sold the most among the new models in September, at 7,378, an increase of 19% over last year, a marked improvement over August sales of

4,524, indicating the attractiveness of the newer model.

Hyundai said in September that its goal was to sell 100,000 of the newly-remodeled Santa Fe vehicles in the 2013 model year in the U.S. market. The Lexus ES, from Toyota Motor Corp, sold 6,553 vehicles in September in the U.S. market, up 81% from a year ago. A Lexus spokesman said that 80% of the cars sold in September were the new 2013 model. Dart's September U.S. sales were 5,235, up from August sales of 3,045. Chrysler has said the Dart will become a top-selling small car.

In its first full month of sales, Subaru's XV Crosstrek's September sales were 192. While 73% of the models IIHS tested last year received the top safety rating, next year's test will be more stringent. The new front crash tests will evaluate a vehicle's safety in a crash that impacts the front corners. This will be more demanding because most manufacturers create a structure for vehicles that can better absorb middle-front collisions. In a recent test of 11 luxury midsize cars using the new corner-front crash evaluation, only two models earned the top safety ranking, according to the IIHS. As you know, Subaru is owned by Fuji Heavy Industries of Japan.

Source: Claims Journal

MOTORISTS WARNED ABOUT COUNTERFEIT AIR BAGS

Car owners whose air bags have been replaced in the past three years may have had dangerous counterfeit bags installed, according to a warning from the Obama Administration last month. The National Highway Traffic Safety Administration says only 0.1% of the U.S. vehicle fleet—about 250,000 cars on the road—are makes and models for which counterfeit airbags are known to be available. Industry officials briefed by the government said tens of thousands of car owners may be driving vehicles with counterfeit air bags. In government tests last month of 11 counterfeit bags, ten didn't inflate or failed to inflate properly. In one test, a counterfeit bag shot flames and shards of metal shrapnel at a crash dummy instead of inflating, according to NHTSA Administrator David Strickland, who showed a video of the test at a news conference. He calls the problem “an extreme safety risk.”

NHTSA is asking car owners to check a government website, www.Safercar.gov, for information on how to contact a call center established by auto manufacturers to learn if their vehicle model is among those for

which counterfeit air bags are known to have been made. No deaths or injuries have been tied to the counterfeit bags, according to NHTSA. But industry officials say it's unclear whether police accident investigators would be able to differentiate a counterfeit bag from a genuine bag.

NHTSA has compiled a list of dozens of vehicle makes and models for which counterfeit air bags may be available, but the agency cautioned that the full scope of the problem isn't clear yet and the list is expected to "evolve over time." If a car is on the list and has had its air bags replaced during the past three years by a repair shop other than a new car dealership, NHTSA is asking owners to take the vehicle into a dealership to be inspected at their own expense to determine whether the replaced air bags are counterfeit. Fees for checking out air bags could run \$100 or more, industry officials said. Some types of cars have as many as eight air bags.

Officials at NHTSA made clear that the airbag problem isn't the result of a manufacturing defect by automakers and isn't a recall. The counterfeit bags typically have been made to look like air bags made by automakers and usually include a manufacturer's logo. Government investigators believe many of the bags come from China, an industry official said. The bags are marketed to auto repair and body shops as the real deal, industry officials said. Auto dealerships that operate their own body shops are usually required by their franchise agreements to buy their parts, including air bags, directly from automakers and therefore are unlikely to have installed counterfeit bags, according to industry officials.

About 2,500 counterfeit airbags have been seized by law enforcement authorities so far this year. Investigations are in progress in several locations around the country, according to John Morton, director of U.S. Immigration and Customs Enforcement.

Source: ABC News

NHTSA EXPANDS AIRBAG INJURIES PROBE

Following reports of a serious airbag injury to the occupant of a vehicle, NHTSA has started an investigation into the vehicle model involved in the incident. This is not the first time an airbag failure has been linked to injuries. Recalls have been announced in other situations where defective airbags were found in numerous vehicles of the same model. In some cases, defective airbags have been linked to serious injuries and even fatalities.

The NHTSA investigation began following a complaint that loose metal was flung from the side airbag in a 2012 Hyundai Elantra when the airbag deployed, cutting the driver's ear in half. According to a report by Associated Press, NHTSA initially investigated only 2012 Elantra models but expanded the investigation to include 2011 and 2013 vehicles. NHTSA is upgrading the investigation to an engineering analysis. Hyundai has said the severed ear was an isolated incident and the company has not received any other reports of injury from side curtain airbags in 2012 Elantras. In July 2012, more than 220,000 Hyundai Santa Fe and Sonatas were recalled because of a problem with the system used to classify types of vehicle occupants.

Although they are designed to protect vehicle occupants, airbags require great force to deploy, putting passengers at risk of injury. According to a report by NHTSA titled "What You Need to Know About Air Bags," airbags generally deploy rapidly, at a speed of more than 100 miles per hour. Most injuries associated with airbag deployment are minor, such as abrasions or burns.

Some vehicle passengers suffer serious or fatal injuries, especially if they are too close to the airbag when it deploys (including being in direct contact with the module). For example, if an airbag deploys too late after an accident and the occupant is unconscious and slumped over the steering wheel, the occupant could be seriously injured when the airbag deploys. If something is defective within the airbag, such as loose metal or other components, the force of the airbag deploying can fling that debris into the cabin of the vehicle, causing serious injury to vehicle occupants. Furthermore, if the airbag deploys too late or does not deploy at all, passengers can sustain severe injuries.

Source: Lawyersandsettlements.com

CHRYSLER'S JEEP PATRIOT PROBED AFTER STALLING COMPLAINTS

U.S. safety officials have begun a "preliminary evaluation" into complaints of stalling engines in 2011 and 2012 model year Jeep Patriots made by Chrysler Group LLC. The stalling occurred while the vehicles were running at high speeds. One of 12 incidents of engine stalling led to a crash and an injury, according to NHTSA. In ten of the incidents reported to NHTSA, the Patriot stalled while it was being driven at speeds of 65 miles per hour or faster.

The preliminary evaluation involves about 112,000 Jeep Patriots in the United

States. Such an evaluation could eventually lead to a recall, which would involve vehicles sold in other countries as well. The Chrysler Group says it's cooperating fully with NHTSA in this preliminary investigation. Chrysler said, "The 2011-2012 Jeep Patriot (which is a small crossover vehicle) meets or exceeds all applicable federal safety standards and has an excellent safety record."

Through September, Jeep Patriot U.S. sales were up 15% at 49,061, according to Autodata Corp. While there is no recall, owners of 2011 and 2012 Jeep Patriots, because of the complaints, should consider consulting their local Jeep dealers. Michigan-based Chrysler is majority owned by Fiat SpA.

Source: Claims Journal

NHTSA IS INVESTIGATING STEERING IN HYUNDAI SANTA FE

NHTSA is investigating a steering problem in Hyundai Santa Fe SUVs. According to the agency, a fastener can come loose, causing the steering shaft to come apart and drivers to lose control of the vehicle. The investigation covers about 70,000 Santa Fes from the 2011 model year. NHTSA will determine if the problem is bad enough for Hyundai to recall the SUVs. No injuries or crashes have been reported. According to NHTSA, one driver complained about a complete loss of steering. Hyundai also got a complaint that a loose bolt caused a similar problem.

Source: Montgomery Advertiser

HIGHER EDUCATION IS RAMPANT WITH FEDERAL STUDENT LOAN FRAUD

Lawyers in our Consumer Fraud Section are aggressively investigating several cases involving the fraudulent misuse of federal student loans by for-profit and public colleges and universities. The federal student loan programs involve several different programs including the Pell Grant program, Stafford, PLUS, and Perkins loans. These programs were instituted to serve as a means for students to obtain a higher education who otherwise would not be able to do so due to the high costs of college attendance.

Unfortunately, colleges and universities across the country have begun engaging in fraudulent practices to obtain as many federal dollars as possible. The for-profit higher education sector has boomed over the past 20 years as Congress has allowed

these shareholder-driven “colleges” to be financed through the federal student loan program. Currently, for-profit colleges are allowed to operate off of 90% of federal taxpayer dollars.

Congress allowing for-profit colleges to operate on federal dollars has given these schools a negative incentive to increase tuition as much as possible without going over the “90% rule.” But, many for-profit colleges are outright ignoring the 90% rule and falsely obtaining more federal dollars than they are legally allowed. Additionally, both for-profit and traditional higher education institutions have been caught manipulating and lying on unsuspecting students’ FASFA applications in order to fraudulently obtain federal taxpayer dollars. This is a shocking revelation and can’t be tolerated.

The Department of Justice intervened recently in a False Claims Act lawsuit filed against ATI Enterprises, Inc., which owns several for-profit colleges in Texas, Florida, Oklahoma, and New Mexico. From 2007 through 2010, ATI knowingly misrepresented job placement statistics to the Texas Workforce Commission in order to maintain its state licensure and keep its eligibility to receive federal student loans, according to the complaint. ATI is also accused of enrolling students who did not have high school diplomas, or a GED, and falsifying their records to defraud the federal government of taxpayer-financed student loans.

Lawyers in our firm are investigating the claims of whistleblowers across the nation who are aware of for-profit and traditional colleges that are defrauding the federal government of student loans. Whistleblowers are protected under the False Claims Act from discrimination, harassment, threatening acts, demotion, and termination. In the event an employer retaliates against a whistleblower for standing up for the truth, and reporting fraudulent conduct, the False Claims Act requires that a whistleblower be reinstated to his or her previous job grade and receive double back pay. Furthermore, if a whistleblower files a suit on behalf of the federal government, he or she is entitled to receive at least 15% and potentially 30% of the funds recovered. This is a hefty incentive for employees everywhere to stand up for the truth and tell their employers to stop defrauding the American taxpayer.

If you have any direct information about a higher education institution defrauding the federal government, do not hesitate to contact us. Currently, the typical fraud includes falsifying student records; manipulating graduate job placements; and/or

fraudulent acts to maintain accreditation/licensure in order to maintain federal student loan eligibility. If you are aware of any fraud committed against the federal government to obtain taxpayers’ funds then you may be protected as a whistleblower and have a potential False Claims Act case. If you have any questions as to whether you are a potential whistleblower, please contact Andrew Brashier, a lawyer in our Consumer Fraud Section, at 800-898-2034 or by email at Andrew.Brashier@beasleyallen.com.

Source: www.justice.gov

REPORT SAYS SOME DIETARY SUPPLEMENTS ILLEGALLY LABELED

It appears that a large number of weight loss and immune system supplements on the market are illegally labeled and lack the recommended scientific evidence to back up their purported health claims. Government investigators have issued a warning relating to a new review of the \$20 billion supplement industry. The report, released last month by the Department of Health and Human Services’ inspector general, found that 20% of the 127 weight loss and immune-boosting supplements investigators purchased online and in retail stores across the country carried labels that made illegal claims to cure or treat disease. Some products went so far as to state that the supplements could cure or prevent diabetes or cancer, or that they could help people with HIV or AIDS, which is strictly prohibited under federal law.

Consumers may not just be wasting their money on pills or tablets, but they could be endangering their health if they take a supplement in place of a drug believing it will have the same effect, the report concluded. If you agree that companies in the highly lucrative supplement industry should always tell the truth in their product claims, but also that the FDA should do a better job of regulation, let your U.S. Senators and House members know how you feel. It’s only when some members of Congress hear from their home folks that they respond favorably on consumer issues. Otherwise, the highly-paid and very powerful corporate lobbyists will certainly get and keep their attention.

Source: Associated Press

GENERIC VERSION OF ANTIDEPRESSANT PULLED OFF THE MARKET

Teva Pharmaceuticals has pulled its generic version of a popular antidepressant off the market after a federal analysis showed the pill does not work properly. The Food and Drug Administration called on Teva to withdraw Budeprion XL 300 after chemical testing showed the drug releases its key ingredient faster than the original drug Wellbutrin, made by GlaxoSmithKline. The action contradicts the FDA’s previous update on the issue in 2008, when regulators said the drugs are essentially the same. That review came after hundreds of patients complained that Teva’s drug did not work or caused side effects like headaches, anxiety and insomnia. The FDA said it completed its own study of the two pills in August, which showed Budeprion does not release into the blood at the appropriate rate.

Source: *NBC News*

FTC SUES FIRMS IN MORTGAGE AID SCAM CRACKDOWN

The Federal Trade Commission has sued three companies, alleging that they have cheated homeowners out of millions of dollars by falsely claiming that they could save troubled homeowners from foreclosure. The suits, which seek to immediately shut down the companies, are part of the “distressed homeowner initiative,” which is a federal effort to halt predatory home rescue, mortgage modification, short-sale and bankruptcy frauds that target financially struggling homeowners.

Since 2008, the FTC has brought more than 40 cases under the initiative. According to the agency, it has saved hundreds of millions of dollars in bogus charges as a result. The FTC, which is charged with enforcing fraud and false advertising laws, also passed a new rule in 2010 that banned mortgage foreclosure rescue and loan modification companies from collecting fees until homeowners had received written proof that their lender was willing to provide the requested relief. FTC Chairman Jon Leibowitz said that with many homeowners still struggling to hold onto their homes, the FTC is taking “a hard line against con artists who are seeking their next victim.”

In all three cases, the FTC charged that the 3 companies peddled bogus mortgage relief schemes in violation of the FTC Act and the Mortgage Assistance Relief Services rule, which ban advance payment for mort-

gage relief services. The companies named as Defendants do business under dozens of corporate aliases, including Prime Legal Plans, Consumer Legal Plans, (also known as Reaching U Network and American Legal Plans) American Mortgage Consulting Group, (also known as Home Guardian Management Solutions), Expense Management America and New Life Financial Solutions. The FTC alleges that while the mortgage scams were similar, they all followed somewhat different paths. All of these companies were taking advantage of folks who needed help—who trusted them—and who were cheated. Fortunately, each of these companies was caught and action taken against them.

Source: CBS News

BREACH OF SECURITY INVOLVING PERSONAL RECORDS OF 400 AMC EMPLOYEES

The Army Materiel Command on Redstone Arsenal is investigating a security breach involving personal records of more than 400 AMC employees. According to the command, an AMC employee took hard copies of employee documents to the employee's home in Huntsville, against Army regulations. The command said "the probability is low" that the documents were used for any illegal purpose. No further information will be released by AMC during the ongoing investigation. The news release stated:

We're reasonably certain the information wasn't removed for nefarious reasons. It is just very important that people be aware. The documents were retrieved and are currently secured. The compromise was immediately reported to the AMC Privacy Office, the Army Privacy Act Office and the Army Criminal Investigation Division. There was no evidence of criminal or fraudulent activity.

All AMC employees were notified, and employees whose information was compromised will be provided details as to what specific information was taken off base, the news release states. Those employees will also be provided a credit-monitoring service, the release said.

The employees affected are assigned within the AMC headquarters and its subordinate commands, with the majority on Redstone Arsenal. Brig. Gen. Darrell Williams, AMC Chief of Staff, stated:

The Army takes this loss very seriously and is reviewing current poli-

cies and practices with a view of determining what can or must be changed to preclude a similar occurrence in the future. At a minimum, we will be providing additional training to personnel to ensure that they understand that personally identifiable information must at all times be treated in a manner that preserves and protects the confidentiality of the data.

Source: AL.com

HACKERS TAKE \$400,000 FROM CITY ACCOUNT

It was reported last month that Burlington, a small northwest Washington town, was victimized by computer hackers who transferred \$400,000 out of a city account. The money was electronically transferred to various personal and business accounts throughout the United States during a two-day period in October. The theft was reported by city officials. Employees with the City were notified that personal information may have been taken as well. Authorities say the transfers took place between a Tuesday night and the following Wednesday morning. The hacked Bank of America account was frozen and police and the Secret Service are investigating. Burlington is a city of about 8,400 people, located roughly 60 miles north of Seattle.

Source: Claims Journal

XIX. 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 October 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.

FORD RECALLS 262,000 FIESTAS TO REPROGRAM AIR BAGS

Ford Motor Co. has recalled 262,000 Fiesta subcompacts from model years 2011-2013 to reprogram the passenger side curtain air bags. The vehicles originally were programmed so the passenger side curtain air bags would not deploy in certain crashes if the front passenger seat were empty, according to Ford. That information is not explained in the vehicle owner's manual, according to the official recall notice posted by the National Highway Traffic Safety Administration. The recall includes 154,604 Fiestas in the United States, with the rest in Canada, Mexico and South America. The cars were built in Mexico from November 3, 2009 to September 21, 2012. Ford said it will reprogram a computer module on the vehicles so that the passenger side curtain air bags will not be suppressed in a crash when the front passenger seat is unoccupied.

TOYOTA RECALLS 7.43 MILLION VEHICLES GLOBALLY

Toyota Motor Corp. has recalled 7.43 million vehicles in the U.S., Japan, Europe and elsewhere around the world for a faulty power-window switch. This is the latest of a series of massive quality woes for Japan's top automaker. The recall affects more than a dozen models produced by Toyota from 2005 through 2010. The power-window switch on the driver's side didn't have grease applied evenly during production, causing friction in the switch and sometimes smoke, according to Toyota.

The carmaker says no crashes or injuries have been reported related to the defect. But more than 200 problems were reported in the United States. A fewer number of problems were reported elsewhere, including 39 cases in Japan. Some 460,000 vehicles are being recalled in Japan. The models there are the Vitz, Belta, Ractis, Ist, Auris and Corolla Lumion. The Yaris, Corolla, Auris, Camry and Rav-4 are being recalled in Europe, totaling 1.39 million vehicles. In the U.S., the 2.47 million vehicles involved in the latest recall include:

2007—2009 Camry sedans, approx. 938,100 vehicles;

2007—2009 Camry Hybrids, approx. 116,800 vehicles;

2007—2009 RAV4 crossovers, approx. 336,400 vehicles;

2007—2009 Tundra pickups, approx. 337,100 vehicles;

2007—2008 Yaris subcompacts, approx. 110,300 vehicles;

2008 Highlander SUVs, approx. 135,400 vehicles;

2008 Highlander Hybrids, approx. 23,200 vehicles;

2008—2009 Scion xD models, approx. 34,400 vehicles;

2008—2009 Scion xA models, approx. 77,500 vehicles;

2008- 2009 Sequoia SUVs, approx. 38,500 vehicles;

2009 Corolla compacts, approx. 270,900 vehicles; and

2009 Matrix crossovers; approx. 53,800 vehicles.

The massive recall also applies to cars in Australia, China and elsewhere in Asia and the Middle East. Toyota has been trying to fix its reputation after a series of massive recalls of 14 million vehicles over several years. Interestingly, Toyota has boasted a reputation for pristine quality, centered around its super-lean production methods that empowered workers to zero in on quality control. Toyota executives have acknowledged the escalating recalls were partly caused by the company's overly ambitious growth goals.

To check whether your car is involved, go to Toyota's recall web page. The maker estimates the inspection and repair process will take little more than an hour and involves the disassembly of the master switch and, if necessary, the application of a special fluorine grease. NHTSA has received more than 200 reports of problems involving the defective switch including fires, though there are no known crashes or injuries. At least 39 similar problems were reported in Japan.

GM RECALLING 40,859 CARS FOR POTENTIAL FUEL LEAKS

General Motors Co. has recalled more than 40,000 cars and SUVs sold in warm-weather states because a plastic part might crack and cause a fuel leak. The company is recalling Chevrolet Cobalt and Pontiac G5 sedans from the 2007 through 2009 model years and Chevrolet Equinox and Pontiac Torrent SUVs and Saturn Ion sedans from the 2007 model year. The recall affects vehicles sold or currently registered in Arizona, California, Florida, Nevada or Texas. Owners in Arkansas and Oklahoma also are included in the recall of the 2009 Cobalt and G5.

GM said the fuel pumps in those vehicles could crack and cause a potentially dangerous fuel leak. The vehicles have plastic parts connected to the fuel pump which could crack. If the crack gets large enough, fuel could leak out of the vehicle and cause a fire. GM says there have been no reports of fires or injuries related to the defect. The company began investigating the issue in 2011 after a dealer reported fuel leaking from some vehicles. GM says its warranty data indicates that the problem is far more common in warm-weather states. It will repair the vehicles for free in those states. Owners will be notified of the recall by mail. Owners can get a free replacement by contacting a GM dealer.

But the company also plans to send letters to owners in other states offering a free repair within a limited time period if the parts are cracked. That offer is valid for ten years or 120,000 miles from the date the vehicle was sold, a GM spokesman said.

GM RECALLS CHEVROLET, PONTIAC AND SATURN SEDANS

General Motors Co. has also recalled Chevrolet, Pontiac and Saturn mid-size sedans to fix a transmission problem that could cause the cars to roll away after the driver has left the vehicle. The recall affects more than 426,000 model year 2007-2010 Saturn Aura and model year 2008-2010 Chevrolet Malibu and Pontiac G6 vehicles, equipped with a 4-speed automatic transmission and sold in the U.S. GM is contacting the owners to tell them how to get their cars fixed.

The problem results from tabs on the transmission shift cable end that may fracture and separate in the cars. Such a fracture can put the transmission shift lever out of sync with the actual position of the transmission gear. For example, the transmission might look like it is in park but could be in another gear. This could cause the car to roll away unexpectedly and cause a crash. According to GM, the problem has caused at least four accidents, but no injuries have occurred. Technicians will install a retainer over the cable end or replace the shift cable as necessary in the recalled vehicles.

CHRYSLER RECALLS TRUCKS BECAUSE OF AXLE NUT ISSUE

Chrysler has recalled Ram 1500 and Dodge Dakota trucks from the 2009-2010 model year because a lack of adhesive may cause the rear axle pinion nut to loosen. The National Highway Traffic Safety Administration says that if that happens, the axle can lock up, and the vehicle could lose control and crash. Government and company officials say there have been 15 reports of rear axle failure, including four that resulted in a loss of vehicle control. The driver crashed into a concrete barrier in one case. There have been three minor injuries. The recall involves 44,300 vehicles manufactured from July 1 to Nov. 30, 2009. Chrysler will notify owners of the recall beginning next month. Dealers will install a retainer to secure the pinion nut free of charge.

HONDA EXPANDS RECALL TO INCLUDE 600,000 ACCORDS

Honda Motor Co Ltd has expanded its recall in North America to include more than 600,000 Accord mid-size sedans to address a potential power steering fluid leak problem that could cause a fire under the hood. Honda is recalling 573,147 Accords in the United States equipped with V6 engines from model years 2003 through 2007. In Canada, the number of affected Accords is 30,058, according to a company spokesman.

The addition of the Accords to already recalled Acura TL cars from model years 2007 and 2008 raises the number of affected vehicles in the United States and Canada to 660,086. The power

steering hose in the cars may deteriorate prematurely due to high temperatures, resulting in cracks and leaks that could cause a loss of power steering assistance or smoke and possibly a fire, Honda said. The Japanese automaker said no crashes or injuries have been reported related to the issue, but one engine fire has been reported.

The company said the updated power steering hose necessary for the affected Accords will not be available until early 2013. If owners feel their cars exhibit symptoms related to a power steering hose leak, they should go to a dealer for an interim repair, Honda said. Owners will be notified by mail next year when the new hoses are ready for installation, but initial notification of the issue will begin later this month. The parts for the Accords are different from those used in the affected Acuras. In May, the Japanese automaker announced the recall of 56,881 Acuras, including 52,615 in the United States.

HONDA RECALLS 820,000 CIVICS AND PILOTS

Honda has also recalled more than 820,000 Civic compact cars and Pilot SUVs because the headlights can fail. The recall affects Civics from the 2002 and 2003 model years and Pilots from 2004 and 2005. The company says wires connecting a switch that controls the headlights and turn signals can overheat and melt, knocking out the low-beam headlights.

No crashes or injuries have been reported from the problem. Honda says it will fix the wiring for free. The company began sending notices to owners in late September. The Civics and Pilots were added to a similar recall announced in March. That recall affected more than 550,000 CR-V small SUVs from the 2002 through 2004 model years and Pilots from 2003.

NISSAN RECALLS ALTIMAS IN THE U.S. FOR LOOSE STEERING BOLTS

Nissan Motor Co has recalled 13,919 of its top-selling Altima sedans in the United States because bolts that may not have been tightened properly during production could fall off, increasing the risk of a crash. The Altima sedans are from the 2012 and

2013 model years and were made at the Nissan plant in Canton, Miss., from May 10 to July 26th.

Nissan says that, "Some of the subject vehicles may have been manufactured with four transverse link bolts and two power steering rack bolts that were not torqued to the proper specification." As a result, the bolts may shake loose during driving, and drivers may notice rattling noise. There has been no report of any injuries or crashes as a result of this issue. Altima owners are being asked to bring their cars into Nissan dealerships, where the bolts will be torqued to the proper specification. The cars are under warranty protection. "Based on engineering judgment, it was determined that if a loose bolt falls out completely, the driver may experience difficulty in controlling the direction of the vehicle," Nissan told NHTSA.

Nissan said that on July 26, the last day the vehicles involved in the recall were produced with the potential problem at the Canton plant, workers noticed the issue during a routine test. On September 21, Nissan confirmed that some of the subject vehicles were at its dealers. On October 3, it decided a safety defect existed and a recall should be conducted.

KUBOTA RECALLS OFF-ROAD UTILITY VEHICLES DUE TO CARBON MONOXIDE HAZARD

Kubota Manufacturing of America Corporation, of Gainesville, Ga., has recalled about 970 Off-road Utility Vehicles. Carbon monoxide can accumulate in the vehicle cab when the engine is idling and the vehicle is not moving, resulting in carbon monoxide poisoning. Two instances of headaches attributed to carbon monoxide gas have been reported. The recalled vehicle is the Kubota RTV500 with cab. It is a 4x4 utility vehicle with side-by-side seating for two people, a small cargo bed and an optional cab. The vehicle is gasoline-powered and available in the colors orange or camouflage. The model number "RTV500" is on the doors of the vehicle. "Kubota" and "4x4" are on the outside of the cargo bed.

The off-road vehicles were sold at authorized Kubota dealers nationwide from September 2008 through April

2012 for between \$12,900 and \$13,200. Consumers should contact their Kubota dealer to schedule a free repair of the recalled vehicle, including the installation of a high-velocity exhaust tail pipe, the installation of special seals inside the cab and a check of the ventilating system. For more information, contact Kubota toll-free at (800) 752-0290 between 8:30 a.m. and 4:30 p.m. PT Monday through Friday, or visit the company's website at www.kubota.com and click on Safety/Safety Notices. Kubota is contacting its customers directly.

BANANA BOAT RECALLS SUNSCREEN DUE TO FIRE RISK

The maker of Banana Boat sunscreen has recalled about a half-million bottles of spray-on lotion after reports that a few people caught on fire after applying the product and coming in contact with an open flame. The recall includes aerosol products like UltraMist Sport, UltraMist Ultra Defense and UltraMist Kids. A company spokesman said there have been five reports of people suffering burns after using the sunscreen in the last year. Four burn cases were reported in the U.S. and one in Canada. More than 20 million units have been sold since UltraMist launched in 2010, according to the spokesman.

The problem appears to be caused by UltraMist's spray valve, which is over applying the product, The company said in a statement. As a result the lotion is taking longer to dry, which raises the flammability risk. "If a consumer comes into contact with a flame or spark prior to complete drying of the product on the skin, there is a potential for the product to ignite," the company said. Consumers who purchased the products are being told not to use them. More information is available from the manufacturer at 1-800-SAFESUN.

CABOT RECALLS WOOD CLEANER AND WOOD BRIGHTENER WITH SPRAY PUMP DUE TO IRRITATION AND BURN HAZARD

Cabot Stains, a division of Valspar Corp., of Newburyport, Mass., has recalled Wood Cleaner and Wood Brightener in container with spray pump. The spray pump used for both products can lose its seal, causing the

product to leak. Chemicals in these products can cause burning or other serious injuries if the product comes into contact with skin or eyes or is ingested. Three incidents of leaks have been reported. No injuries have been reported. Both products come in 1.3 gallon white handle tanks with black pump assembly and sprayer hose. The front has a yellow Cabot label with the product name. The back panel label contains instructions for use and product information and UPC codes 080351810503 on the Wood Cleaner bottles and 080351810497 on the Wood Brightener bottles.

The pumps were sold at Ace Hardware, Do It Best, Farm & Fleet, Lowes Home Improvement Stores, United Hardware, and other hardware stores nationwide from March 2011 until June 2012 for about \$25. Consumers should immediately discontinue use of the products and return them to the store of purchase for a full refund. Consumers should also not attempt to reuse empty containers. For additional information, contact Cabot toll-free at (877) 755-3336 between 8:00 a.m. and 8:00 p.m. 7 days a week, or log on to www.cabotstain.com/recall.

SHARPER IMAGE USB WALL CHARGERS RECALLED BY ATOMI DUE TO FIRE AND BURN HAZARDS

About 80,000 Sharper Image USB wall chargers have been recalled by Atomi, of New York, N.Y. The chargers can overheat and smoke, posing fire and burn hazards to consumers. Atomi has received 13 reports of the chargers overheating, smoking and acrid smells. No injuries have been reported. This recall involves Sharper Image USB wall chargers with model numbers "TSI202" and "TSI260." The wall chargers are used to recharge electronic devices through a USB connection including MP3 players and other devices. The chargers are black plastic and measure about 2 ½ inches high by 1 ½ inches wide. "The Sharper Image" is printed on the top. The model number is printed on bottom of the charger.

The chargers were sold at Burlington Coat Factory, Tuesday Morning and TJ Maxx stores and on various websites from October 2011 through September 2012 for between \$8 and \$13. Consum-

ers should immediately stop using the recalled wall chargers and contact Atomi for instructions on returning the chargers for a full refund at (800) 790-1440, 9 a.m. to 5 p.m. ET Monday through Friday, or by email at info@atominy.com.

TREND LAB RECALLS CHILDREN'S UPHOLSTERED CHAIRS DUE TO LACERATION AND CHOKING HAZARDS

Trend Lab LLC, of Burnsville, Minn., has recalled their children's upholstered toddler chairs. Staples in the binding on the back of the chair may come loose, posing a laceration or choking hazard if swallowed. The recalled children's upholstered toddler chairs in Club style and Mod style are 24" wide by 18" tall by 17" deep. The Club style chairs come in three fabrics and colors: 1) suede in brown, pink, avocado green, red and turquoise blue; 2) velour in blue, green, pink and red; and 3) print fabric in chocolate dot on pink or blue. The Mod style chairs come in dark pink or zebra printed velour in chocolate on blue or pink; or on printed fabric of chocolate stripes on pink or blue. The Trend Lab name is on a label attached to the bottom of the chair with date codes TL1007C through TL0812C, which are read as TL two-digit month and two-digit year followed by C. These date codes include 10/07 through 08/12 or October 2007 through August 2012 production. All chairs were sold with matching ottomans, which are not part of the recall. New chairs with "Remedy 2012" stamped in ink on the bottom side of the chair are not subject to this recall.

The chairs were sold online at trend-lab.com, Amazon.com, BabiesRUs.com, Target.com, Walmart.com and Seussland.com, as well as in Buy Buy Baby and other specialty stores from November 2007 to August 2012 for about \$100 to \$140. Consumers should immediately take the chair away from children and inspect the binding. Contact Trend Lab for a repair kit with instructions. Call Trend Lab toll-free at (866) 814-7978 between 8:00 a.m. and 4:30 p.m. CT Monday through Friday, email Recall@trend-lab.com, or website www.trend-lab.com and link to Recall Information.

HAIER AMERICA RECALLS 42-INCH LED-TVs DUE TO RISK OF INJURY

About 5,000 Haier® 42-inch LED television sets have been recalled by Haier America Trading L.L.C., of New York, N.Y. The TV stand's neck support can break and cause the TV to tip over, posing a risk of injury to the consumer. Haier America and CPSC have received 184 reports of the TV stand's neck cracking or breaking. No injuries have been reported. This recall involves Haier 42-inch LED TVs with model number LE42B1380. "Haier" is printed on the front of the TV and the model number is printed on a label on the back of the unit.

The TVs were sold at Fry's Electronics and other retail stores nationwide and online at Amazon.com and other online retailers from September 2011 through March 2012 for about \$450. Consumers should immediately stop using and detach the TV from the stand and keep both the TV and the base in a safe location. Consumers should contact Haier America to request a free replacement stand neck to be used with the original base. Consumers with a wall-mounted TV may continue to use it but should request a free replacement stand neck in case the TV is used with the stand in the future. For more information, contact Haier America toll-free at (877) 813-8516 between 7 a.m. and 10 p.m. ET Monday through Friday, between 8 a.m. and 9 p.m. ET Saturday and between 8 a.m. and 8 p.m. ET Sundays. Consumers can visit the company's website at www.haieramerica.com and click on Product Recalls.

VENTLAB CORPORATION ISSUES NATIONWIDE RECALL OF ITS MANUAL RESUSCITATORS

Ventlab Corporation has issued a nationwide recall of 14,602 manual resuscitators. The manual resuscitators have been found to potentially deliver little to no air/oxygen through the patient valve to the patient, which could result in life threatening health consequences that include hypoxia and hypoventilation. End users who have manual resuscitators that are in the recall should stop using them and immediately contact Ventlab Corporation for further instructions on the return of these products.

Recalled manual resuscitators were manufactured and distributed nationwide to distributors that sold and distributed products to hospitals, clinics and EMS units from March 2012 to July 2012. Products can be identified by the part number, description and lot number on case labels, as well as a small white label on the individual packaging bag. Ventlab Corporation recalled the above listed products after becoming aware of a product incident where the nature of the complaint was that the resuscitators were delivering little or no air through the patient valve to the patient. Ventlab Corporation notified the FDA of this action. Thus far no injuries have been reported.

Ventlab Corporation notified its distributors and customers by e-mail notification followed by a direct mailing and is arranging for the return/replacement/ rework of all recalled manual resuscitators in the recall. End users with questions may contact the company via telephone at 1-800-593-5654 between the hours of 8:30 AM to 5:00 PM (EST) Monday through Friday. Consumer may also contact the company via e-mail at csr@ventlab.com.

FITNESS ANYWHERE RECALLS EARLY MODEL SUSPENSION TRAINER DEVICES DUE TO FALL HAZARD

About 40,000 Suspension Trainer Devices have been recalled by Fitness Anywhere LLC, of San Francisco, Calif. The strap length-adjustment buckles can break, posing a fall hazard. Fitness Anywhere has received 570 reports of the strap length-adjustment buckles breaking with 82 reports of the user falling, including 13 reports of head, face, shoulder and hip injuries. This recall involves older model "Professional" (P1) and "Tactical" (T1) TRX Suspension Trainer devices manufactured between January 2006 and July 2007.

The recalled products' anchor straps are yellow or khaki nylon with a carabiner at the top end and a black nylon loop on the bottom end. A black and yellow or black and khaki nylon strap is threaded through the black nylon loop on the anchor strap to form a "Y." On each side of the "Y," the strap has a cam buckle, which is used to adjust the length of the straps. Each end of the

"Y" strap has a foam-covered hand grip and a foot cradle.

The recalled devices have hand grips with no end bumpers, which are black plastic caps covering the ends and preventing the plastic under the foam from being exposed. They do not have an extra nylon loop, called a locking loop, attached at the point where the anchor strap and the "Y" straps are joined and designed to limit the slippage of the straps. The recalled products also have badges on the straps with the TRX logo and the word "Professional" (for P1 devices) or "Tactical" (for T1 devices) on them. The words and logo are surrounded by raised dots or have double lines through them.

They were sold at health and fitness stores and studios nationwide and online at www.FitnessAnywhere.com from January 2006 through December 2009 for about \$150 to \$200. Consumers should immediately stop using the recalled product and contact Fitness Anywhere to arrange to return the recalled product for a replacement TRX Suspension Trainer device. Return authorization is required prior to returning the units. For additional information, contact Fitness Anywhere toll-free at (888)-221-7417 between 9 a.m. and 5 p.m. PT or CustomerCare@trxtraining.com, or visit the company's website at www.trxtraining.com.

GE RECALLS FRONT LOAD WASHERS DUE TO INJURY HAZARD

About 62,000 GE Profile™ Front Load Washers have been recalled by GE Appliances, of Louisville, Ky. The washer's basket can separate during use and break the washer's top panel, posing an injury hazard to consumers. GE has received 19 reports of washer baskets separating, including ten reports of top panel breakage. No injuries have been reported. This recall involves GE Profile™ frontload washing machines with model numbers beginning with WPDH8800, WPDH8900 and WPDH8910. All serial numbers with these models are included in this recall. The washers were sold in gold, red and white colors. The model number is located on the washer's right side near the bottom and behind the door near the door frame visible when the door is opened.

The washers were sold at Best Buy, Lowe's, Sears, The Home Depot and other department and retail stores nationwide, from July 2008 to August 2011 for between \$1,199 and \$1,599. Consumers should immediately stop using the recalled washers and contact GE for a free repair. For additional information, contact GE Appliances at (888) 641-9739 between 8 a.m. and 5 p.m. ET Monday through Friday or visit the company's website at www.geappliances.com/products/recall.

DREAM ON ME RECALLS HIGH CHAIRS DUE TO STRANGULATION HAZARD

About 90 Bistro high chairs have been recalled by Dream On Me Inc., of South Plainfield, N.J. The front openings between the tray and seat bottom and on the side openings of the high chair between the armrest and seat bottom can allow a child's body to pass through and become entrapped at the neck. This poses a strangulation hazard to young children if the belt is not engaged. In addition, exposed springs between the seat and armrest on both sides of the high chair can create a pinch hazard to the child. This recall involves all Bistro high chairs with model/style number "255" which is printed on a tag attached to the back of the seat. The high chair was sold in blue or pink. The fabric on the seat has a polka-dot design and "Dream On Me" is printed on a label attached to the front of the white tray. The recalled high chair was manufactured in July 2011 and has a date code printed on a label on the back of the chair.

The high chairs were sold at Americas Kids, Kid Pro USA and independent juvenile specialty stores and online at Toysrus.com between November 2011 and September 2012 for about \$75. Consumers should immediately stop using the recalled high chair and contact Dream On Me Inc. for instructions on receiving a free replacement high chair. For additional information, contact Dream On Me Inc. toll-free at (877) 201-4317 between 9 a.m. and 5 p.m. ET Monday through Friday, or visit the company's website at www.dreamonme.com.

GRACO RECALLS CLASSIC WOOD HIGHCHAIRS DUE TO FALL HAZARD

Graco Classic Wood Highchairs have been recalled. The high chair's seat can loosen or detach from the base, posing a fall hazard to the child. This recall involves all Graco brand Classic Wood Highchairs sold in three wood finishes. The high chair has a top seat, bottom leg assembly and removable tray. The high chair is sold with a beige fabric seat cover. Model number 3C00BPN, 3C00BPN TC, 3C00CHY, 3C00CHY TC, 3C00CPO or 3C00CPO TC is printed on a label on the underside of the seat assembly. Graco has received 58 reports of the high chairs' seats loosening or detaching from the base. There have been nine reports of children falling as the seat detached from the base, resulting in reports of bumps, bruises and scratches. Graco has received one report of a concussion in Canada. Consumers should immediately stop using the recalled high chairs and contact Graco for a free repair kit. You may contact Graco; (800) 345-4109, 8 a.m. to 5 p.m. ET Monday through Friday, or www.gracobaby.com for more information.

BIG LOTS RECALLS GARDEN SWINGS DUE TO FALL HAZARD

About 6,900 Wilson & Fisher Garden Swings have been recalled by Big Lots of Columbus, Ohio. The wooden swing's seat can break while in use, posing a fall hazard to the consumer. Big Lots has received 14 reports of swing seats breaking, resulting in four reports of back pain and five reports of scratches and scrapes. This recall involves Wilson & Fisher log-style swing sets sold in a natural wood finish. The swing's two-person bench seat is suspended between two wooden A-frame supports. Assembly instructions sold with the swings have item number JY1107 and SKU number 210020400 printed on the sheet.

The swings were sold exclusively at Big Lots stores nationwide from March 2012 through June 2012 for about \$130. Consumers should immediately stop using the recalled swing sets, detach the bench seat and return it to any Big Lots store for a full refund. Consumers should destroy the remaining components. For additional information, contact the company toll-free

at (866) 244-5687 between 9 a.m. through 5 p.m. ET Monday through Friday, or visit the company's website at www.biglots.com and click on recalls.

CHILDREN'S APPAREL NETWORK RECALLS FLEECE HOODIE AND T-SHIRT SETS

About 6,200 Fleece Hoodie and T-Shirt Sets have been recalled by Children's Apparel Network, Ltd. of New York, N.Y. The surface coating on the zipper of the fleece hoodie and t-shirt sets contain excessive levels of lead, violating the federal lead paint standard. The recalled product is a two-piece coordinated set with fleece hoodie and t-shirt. They were sold in red/white, gray/red, and black/blue color combinations and in assorted sizes from 12M to 5T. The hoodies have Disney character designs in three different styles. "RN 16435" and an identification number, corresponding to the style, are printed on the label along the hoodies' side seam.

The clothes were sold exclusively at Target stores nationwide and Target.com from October 2011 through December 2011 for approximately \$18. Consumers should take the product away from the child immediately and return the set to any Target store for a full refund. For additional information, contact Children's Apparel Network at (800) 919-1917 between 9 a.m. and 4 p.m. CT Monday through Friday, or visit the company's website at www.childrensapparelnetwork.com and click on the "Press" link. 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.

U.S. PEANUT BUTTER RECALL EXPANDS TO MORE STORES INCLUDING WHOLE FOODS AND TARGET

In an ongoing recall of peanut and almond butter products over possible salmonella contamination, New Mexico-based Sunland Inc. has expanded its recall to include cashew butters, tahini and blanched and roasted peanut products sold at many U.S.

supermarkets. New products recalled include varieties of cookies sold at Whole Foods that contain peanut butter, peanut butter cracker snacks sold at Stop & Shop supermarkets, and various ice cream and chocolate snack products. Sunland's recall now includes 101 products, and several retailers have issued additional recalls including items made with Sunland ingredients. Sunland Inc. sells its nuts and nut butters to large groceries and other food distributors around the country. The company recalled products under multiple brand names after salmonella illnesses were linked to Trader Joe's Creamy Salted Valencia Peanut Butter, one of the brands manufactured by Sunland.

The recall was again expanded to include other peanut and almond butter products manufactured by Sunland, 76 products at the time. The Center for Disease Control and Prevention (CDC), at our press time, said there were 30 illnesses in 19 states that can be traced to the Trader Joe's peanut butter. No other foods have been linked to the illnesses, but Sunland recalled other products manufactured on the same equipment as the Trader Joe's product. Those sickened reported becoming ill between June 11 and Sept. 11, according to the CDC. Almost two-thirds of those who became ill were children under the age of ten. No deaths have been reported.

In addition to Trader Joe's, the recall includes nut products sold at Whole Foods Market, Target, Fresh & Easy, Giant Food, Harry and David, Stop & Shop Supermarket Company and several other stores. Some of the stores used Sunland ingredients in items they prepared and packaged themselves. Brand names recalled include Archer Farms, Earth Balance, Fresh & Easy, Late July, Heinen's, Joseph's, Natural Value, Naturally More, Open Nature, Peanut Power Butter, Serious Food, Snaclite Power, Sprouts Farmers Market, Sprout's, Sunland and Dogsbut-ter, among others.

The peanut processing plant in Portales, N.M. was shut down after the outbreak of salmonella was linked to peanut butter made at the facility. The Sunland Inc., plant was scrubbed top to bottom and tests were being done to see if the bacteria is on the plant's equipment.

Several manufacturers announced recalls in light of the expansion, according to the FDA. Stop & Shop alerted customers to avoid Late July Organic Snacks organic mini peanut butter sandwich crackers with sell-by dates between May 19, 2013 through July 11, 2013. Newman's Own Organics recalled 8-ounce and 13-ounce packs of Peanut Butter Newman-O's cookies with expiration dates of May 3 and May 27, 2013. Whole Foods pulled Treasure Trove Mix and Peanut Butter Power Chews bulk items in seven Florida stores and one southern California store. Fairytale Brownies pulled peanut butter brownies and cookies manufactured by Sunland. Jer's Chocolates recalled some of its Gourmet Peanut Butter Bars and Gourmet Jer's Squares produced through Sept. 24, 2012. A full list of products can be found on the Food and Drug Administration web site at www.fda.gov/food/foodsafety/corenetwork/ucm320413.htm

As we have written previously, salmonella can cause diarrhea, fever and abdominal cramps 12 hours to 72 hours after infection, which is known as salmonellosis. It is most dangerous to children, the elderly and others with weak immune systems. The bacteria is microscopic and passes from feces of people or animals to other people, according to the U.S. Department of Agriculture's Food Safety and Inspection Service. Salmonellosis causes an estimated 1.4 million cases of food-borne illness and more than 400 deaths annually in the United States.

SALMONELLA RECALL EXPANDS TO RAW AND ROASTED PEANUTS

Raw and roasted peanuts made by Sunland, Inc. have been included in an ongoing nationwide recall of peanut and other nut products over potential salmonella contamination that has affected many popular brands. Both in-shell and shelled raw and roasted peanuts within their current shelf life should not be eaten and the products should be disposed of immediately or returned for a refund. The raw and roasted peanuts available to retail customers were distributed primarily under Sunland's own label and were distributed primarily to produce houses and nationally to numerous large supermarket, grocery and retail chains in addition to online sales, the

company said in a Food and Drug Administration press release.

The roasted peanuts being recalled were distributed April 12, 2012 to October 12, 2012 and will have best by/expiration dates on the packaging from October 12, 2012 through April 12, 2013. The raw peanuts being recalled (shelled and in-shell), were distributed from October 12, 2011 to October 12, 2012, and will have either best by dates from October 12, 2012 through October 12, 2013 on the packaging, or a "Crop Year" marking on the package of 2011 or 2012, up to and including October 12, 2012. More than 240 products are now included in the company's recalls. A full list of peanuts and other products can be found on Sunland's web site.

MEAT SOLD AT KROGER PART OF NATIONAL RECALL

The USDA's Food Safety and Inspection Service (FSIS) has expanded the Public Health Alert for XL Foods (Canadian Establishment 038), sold at Kroger stores, to include all beef and beef products produced on August 24, 27, 28, 29 and September 5. FSIS was notified that XL Foods had expanded their recall to include all beef and beef products produced on the above dates. Because FSIS has been informed that all beef and beef products produced on the above dates have been recalled by XL Foods, the Agency made the public aware that these products are considered adulterated and should be returned to the place of purchase or destroyed.

Products subject to the recall include, but are not limited to, steaks, roasts, mechanically tenderized steaks and roasts, and ground beef. Previously, FSIS reported that approximately 890,000 pounds of boneless beef trim were received by U.S. firms from XL Foods, Inc. After conducting effectiveness checks, FSIS now estimates that approximately 1.1 million pounds of trim and approximately 1.4 million pounds of primal and sub-primal cuts used to produce steaks, roasts, mechanically tenderized steaks and roasts, and ground beef were received from U.S. firms. Information for consumers and the current retail distribution list are posted on FSIS' website at www.fsis.gov/FSIS_Recalls/Open_Federal_Cases/index.asp.

KELLOGG'S RECALLS MINI-WHEATS DUE TO METAL PIECES

Kellogg's has recalled some of its Frosted Mini-Wheats Bite Size Original and Mini-Wheats Unfrosted Bite Size products due to the possibility of flexible metal mesh fragments in the food. Frosted Mini-Wheats Bite Size Original and Mini-Wheats Unfrosted Bite Size products with the letters KB, AP or FK before or after the Best If Used Before date are part of the recall. The products vary in size from single-serve bowls to large 70-ounce cartons. Use by dates range from April 1, 2013 to Sept. 21, 2013.

A complete list of products and affected UPC codes can be found on the FDA web site. Although the recall information was put out on a Monday on the official Frosted Mini-Wheats Facebook page and Kellogg's website, many consumers only became aware of the potential problem on the following Thursday. Some were very upset and posted their complaints online. One YouTube user, mdillard13, recorded himself running a rare earth magnet through a plate of the recalled cereal. It was said that a fair amount of the product was picked up by the magnet.

So far, no one has reported any injury from the metal fragments. Concerned customers who have bought the products or have questions should contact the company through the Contact Us feature on Kelloggs.com or call 800-962-1413 from 8 am to 6 pm Eastern Time, Monday through Friday.

CHICKEN JERKY DOG TREATS RECALLED BY U.S. FIRM OVER SALMONELLA RISK

An American maker of chicken jerky dog treats has recalled 2.5-pound packages of the product because it may be contaminated with salmonella bacteria that could cause illness. Kasel Associated Industries of Denver has pulled its Nature's Deli Chicken Jerky Dog Treats, which were distributed through 57 Sam's Club stores in a dozen states. The recall is not related to ongoing concerns about chicken jerky pet treats made in China, which have not been recalled, according to the FDA.

This was the second recall in a relatively short time for Kasel, which in

September removed from market packages of “bully treats”—pet snacks made from dried bull penises—because of salmonella contamination. The new recall of jerky treats was launched after routine sampling by the FDA found salmonella in the finished products. The firm has stopped distribution of any lots that were possibly contaminated, according to a company statement. The product comes in a clear plastic bag with the Nature’s Deli logo and the UPC bar code 647263800208. The recall includes lot number BEST BY 091913. The treats were distributed to stores in Colorado, Iowa, Idaho, Illinois, Kansas, Missouri, Montana, Nebraska, Oklahoma, South Dakota, Utah and Wyoming. No illnesses in pets or humans have been reported in connection with the recall, the company said. Consumers who bought the 2.5-pound bags of dog treats are urged to return the products to the place of purchase for a full refund.

DOG TREATS RECALLED DUE TO POSSIBLE SALMONELLA

Nature’s Recipe has recalled “Nature’s Recipe Oven Baked Biscuits with Real Chicken” which were manufactured at its plant in Topeka, Kan., and distributed nationally, primarily through pet specialty retailers. Nature’s Recipe is a brand of Del Monte Foods. The company says the product has the potential to be contaminated with salmonella, which can affect animals eating the products and pose a risk to humans from handling contaminated pet products.

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.

XX. FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

WILLA CARPENTER

Willa Carpenter, who has been with us for more than 19 years, serves as the Human Resources Liaison for our firm. Without dispute, Willa is the firm’s spiritual leader. In fact, in much of her work Willa really is more like a Chaplain. She provides guidance and support to the firm’s employees by listening, counseling, and praying with them whenever they are in need. Willa is also available to help with small and practical matters. She sees to it that flowers are sent to our employees or their close family members when accident or sickness occurs.

On many occasions, Willa makes hospital visits when firm employee or their families are involved. In case of the death of an employee’s loved one, Willa often represents the firm by attending the funeral. Willa oversees the firm’s weekly devotions. She says these are a wonderful testament to the spirit of Christian fellowship that exists, as well as an acknowledgement of our need for God’s blessings on our firm. Willa also has regularly-scheduled prayer meetings with the spouses of several of the male shareholders.

Willa says it is exciting to see how God comes in to answer prayer in mending broken relationships, healing broken hearts, and providing many and various needs that confront our employees. She says God has opened the hearts of so many wonderful people in our firm, making it possible to accomplish many things and fulfill many needs.

My observations over the years have allowed me to see that this saintly woman is totally committed to Jesus Christ, totally unselfish, and that she cares deeply for folks. Willa and Sam, who have been married for 58 years, have three children and six grandchildren. They are faithful members at First Assembly Church of God where Sam serves as deacon. They are both heavily involved in their church. The Carpenters enjoy entertaining and have spent many years serving in events, ranging from the celebration of a couple’s anniversary, to larger group prayer meetings and dinner parties. Sam and Willa believe that family and friends are their greatest asset. At the risk of offending some of our folks in the firm, if I had to say that there is one person

who we simply couldn’t do without at Beasley Allen, it would be Willa Carpenter.

BRUCE HUGGINS

Bruce Huggins, who heads up the Investigative Section for the firm, is a most valuable employee. We learned very early in our existence that having in-house investigators is a definite advantage for the firm and the clients we represent. This Section of the firm employs six full-time investigators, all of whom are professionally-trained law enforcement officers. Bruce, as Chief Investigator, sets a great example for his team. He has provided excellent leadership for all of the investigators in his Section.

Bruce celebrated 24 years with the firm earlier this year, having come on board in April of 1988 from the Montgomery County Sheriff’s Office. During his tenure with the Sheriff’s office, Bruce won numerous awards, including Officer of the Year. He was the first person from the Sheriff’s Office to attend and graduate from the prestigious FBI National Academy in Quantico, Va.

Bruce and Cindy, his wife of 36 years, have two children. Their daughter Amanda followed in her mother’s footsteps and became a registered nurse. She has recently returned to the University of Alabama to pursue a writing degree, but still does contract Travel Nursing in California during the summer to pay tuition and expenses during the school year. Their son Daniel, a graduate of Birmingham Southern, works as a Product Manager/Lead Software Developer for Ingenuity, Inc. Daniel’s wife, Maridi, is a lawyer in Birmingham.

Bruce is an excellent employee who sets the right example for all who work with him. He is totally dedicated to the welfare of the clients we represent. We are truly blessed to have a man like Bruce with the firm.

XXI. SPECIAL RECOGNITIONS

AN UPDATE FROM PAIGE WETZEL

I asked Paige Wetzel to give me an update on how she and Josh are doing these days. Paige reports that Josh is doing really well. She says that “nothing compared” to her seeing Josh make his first step. Paige says her “bionic husband” can now walk, and for that, she is “so thankful.” The couple

returned to Alabama on October 19th for a visit and they were welcomed in Josh's hometown of Glencoe. A celebration was held there with a large crowd attending to welcome Josh back home.

Josh is still undergoing rehab at Walter Reed, but now as an outpatient. He is part of a "Warrior Transition Brigade," which is set up just like regular army. Paige says Josh's focus now is physical therapy and occupational therapy. The mailing address for Josh and Paige is P.O. Box 680488, Ft. Payne, Alabama, 35968 in the event you want to communicate with them. Paige tells me she and Josh appreciate very much the prayers, words of encouragement and the financial assistance they have received from folks. Since Paige had to give up her teaching job, they are still incurring a great deal of expenses. But Josh is doing great and that's an answer to prayer.

XXII. FAVORITE BIBLE VERSES

Pam Sexton, who works at Pickwick Antiques in Montgomery, sent in a verse for this issue. Pam, an excellent interior designer, has things figured out and hopefully this message will help others do the same.

But Jesus beheld them, and said unto them, With men this is impossible; but with God all things are possible.

Matthew 19:26 KJV

Rev. Allen Newton, the lead pastor at St. James United Methodist Church in Montgomery, also furnished a verse for this issue.

And I thank Christ Jesus our Lord who has enabled me, because He counted me faithful, putting me into the ministry, although I was formerly a blasphemous, a persecutor, and an insolent man; but I obtained mercy because I did it ignorantly in unbelief. And the grace of our Lord was exceedingly abundant, with faith and love which are in Christ Jesus. This is a faithful saying and worthy of all acceptance, that Christ Jesus came into the world to save sinners, of whom I am chief. However, for this reason I obtained mercy, that in me first Jesus Christ might show all long-suffering, as a pattern to those who are going to believe on Him for ever-

lasting life. Now to the King eternal, immortal, invisible, to God who alone is wise, be honor and glory forever and ever. Amen.

1 Timothy 1:7-8

Vincent Rosato of Friendship Mission in Montgomery sent in two verses this month. The Mission does a tremendous job in the Capital City helping folks who badly need help.

And my God shall supply all your needs according to His riches in glory by Christ Jesus.

Philippians 4:19

So I say to you, ask, and it will be given to you; seek, and you will find; knock, and it will be open to you.

Luke 11:9

Maxine C. Moses, a lawyer from Moody, Ala., sent me the following verse. I believe she intended it just for me, but all of us can benefit from the message.

For the time will come when they will not endure sound doctrine, but according to their own desires, because they have itching ears, they will heap up for themselves teachers; and they will turn their ears away from the truth, and be turned aside to fables.

2 Tim. 4:3-4

Laura Birmingham, a long time friend from Montgomery, sent in the following verse.

The king's heart is in the hand of the Lord, Like the rivers of water; He turns it wherever He wishes.

Proverbs 21:1

Charles A. Bentley, Jr., a lawyer in Durham, N.C., sent in a most timely verse for this issue.

The Lord is my shepherd; I shall not want. He makes me to lie down in green pastures; He leads me beside the still waters. He restores my soul; He leads me in the paths of righteousness For His name's sake. Yea, though I walk through the valley of the shadow of death, I will fear no evil; For You are with me; Your rod and Your staff, they comfort me. You prepare a table before me in the presence of my enemies; You anoint my head with oil; My cup runs

over. Surely goodness and mercy shall follow me. All the days of my life; And I will dwell in the house of the Lord Forever.

Psalms 23

XXIII. CLOSING OBSERVATIONS

THE DURRS OF MONTGOMERY

Alabama Public Television (APT) did an excellent job on its documentary on the life story of Clifford and Virginia Durr. The film, "The Durrs of Montgomery," covered events from the Great Depression through the New Deal to the Anti-Communist Hunt—and finally to the Civil Rights Movement. Mr. and Mrs. Durr, who were from Montgomery, were active participants in some of the most historic events of the 20th Century. The APT documentary tells the most interesting story of this remarkable and courageous couple. The story is told by way of interviews with historians, oral history recordings and trips into the archives. The result was a portrait of a couple who lived lives of principle and integrity.

Clifford and Virginia Durr were part of an era that most Alabamians would most likely rather forget. But it's important not to forget what happened during the Civil Rights fight in Alabama and in the rest of the country. We can learn from the tragic mistakes of the past and that's important today and for our future. It was a period of time when many Alabamians closed their eyes to the inhumane treatment of black folks in our state and the many wrongs committed. Some of our elected officials of that era were largely responsible for what happened in Alabama. Sadly, while they were helped politically, they hurt our state badly.

We need more folks today like Clifford and Virginia Durr, a couple who weren't afraid to swim against the current for a just cause. I firmly believe that this couple, even though they paid the consequences for their beliefs and actions at the time, helped chart the course of a more just and equitable society.

Among his many commitments supporting a just society, Clifford Durr's service during the 1930's on the newly formed Federal Communications Commission left a

lasting legacy to the nation. His insistence on reserving air rights for public broadcasting, and his admonishment to guard the separation of church and state in public broadcasting, shaped the future of National Public Radio and the Public Broadcasting System in the United States. In commemoration of the Public Broadcasting Act of 1967 and Clifford Durr's legacy to public broadcasting nationally, "The Durrs of Montgomery" was broadcast on APT, the nation's first statewide educational television network, in October. It will be shown again on November 1, 12, 18, and 22.

Viewers who missed the broadcasts of "The Durrs of Montgomery" in October and who don't see it this month can stream the documentary from APT's website at <http://video.aptv.org/program/alabama-public-television-documentaries/>. This posting, through the PBS COVE system, enables any affiliate PBS station that so chooses to stream the documentary from its own website. If you haven't seen the APT documentary, I strongly recommend that you do so. It will brighten your day and renew your faith in humanity!

Source: APT Letter

A MONTHLY REMINDER

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

2 Chron 7:14

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

Edmund Burke

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

Isaiah 10:1-2

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

Louis Brandeis, 1937

U.S. Supreme Court Justice

XXIV. PARTING WORDS

Rev. Walter Albritton preached recently on a Christian's duty to spread the Gospel message at our church. Walter focused on Jesus' mandate that we should "go and make disciples." He stressed that our mission to disciple others begins with Jesus, pointing out that His last command should be our first concern. If we truly worked at spreading the word and making the invitation known to unbelievers, I am totally convinced our world (and that includes the United States) would be a

better place for all of us. We should take the command in Matthew 28:19-20 to heart.

The mission to spread the word—according to Walter—continued with Paul. He taught Timothy how to continue the "multiplying principles of discipleship." Others in that day followed the lead, shared their faith and inspired others to trust Jesus. Walter is correct when he said that "the ball is now in our court." He said, and I believe it, that "God is depending on us to share the good news about Jesus with folks who need to hear." That mandate covers lots of folks, including me, and the targeted folks are many in number.

Getting this job done may require a new understanding of what it means to be a faithful follower of Jesus. Actually, it's really very easy—we must first acknowledge and ask forgiveness of our sins and accept Jesus as our Lord and Savior. Then we must consistently keep the faith and obey Jesus in our daily lives. Simply put, accept, trust and obey is the answer, and it works. But then the question becomes: will we answer the call and ask God to help us share our faith and make disciples of others? Read 2 Timothy 2:2. While we have plenty of opportunities every single day, the question is what will we do when an opportunity arises?

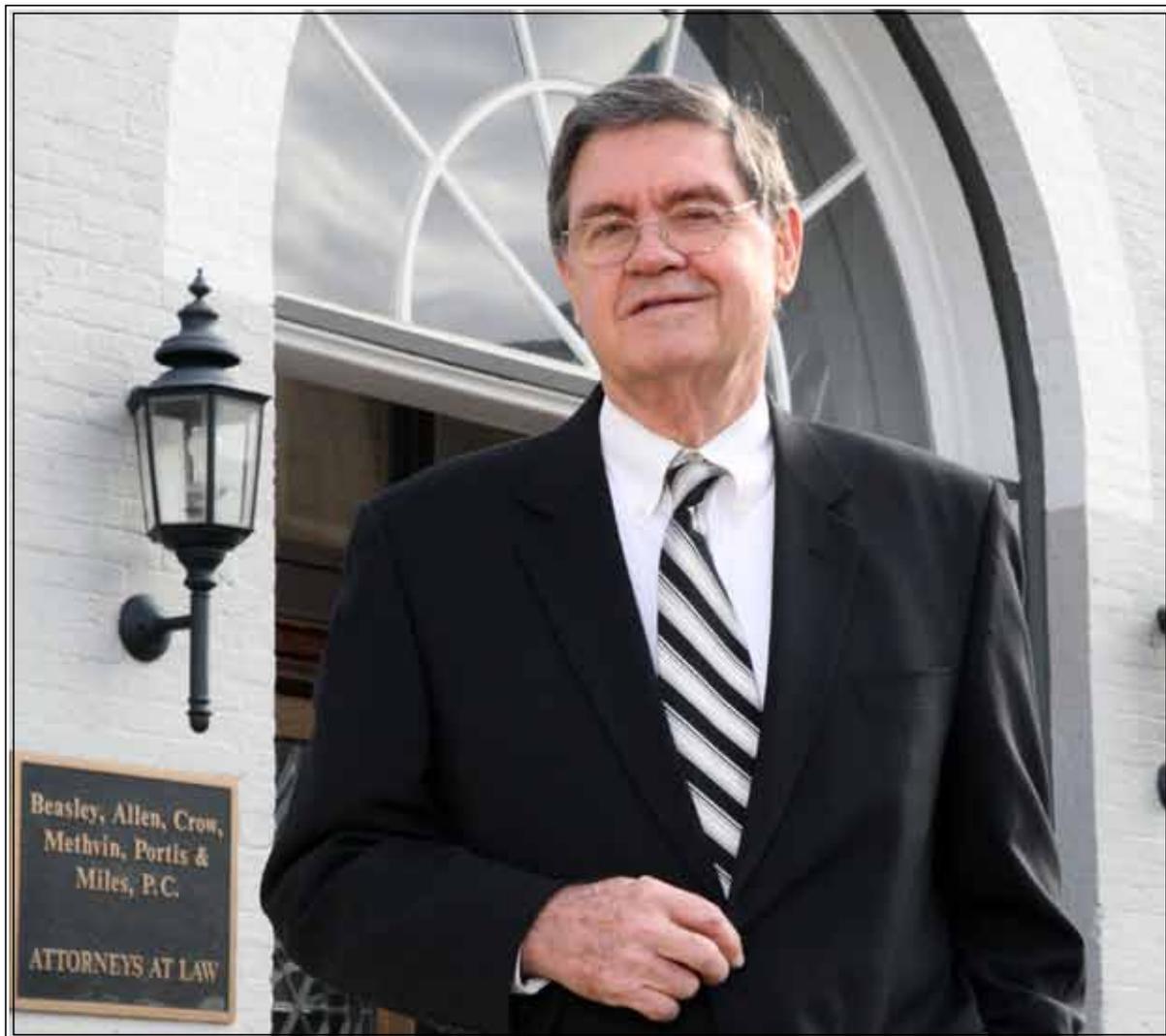
***To view this publication on-line, add or change an address,
or contact us about this publication, please visit our Website: BeasleyAllen.com***

No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.

218 COMMERCE STREET (36104)
POST OFFICE BOX 4160
MONTGOMERY, ALABAMA 36103-4160
(334) 269-2343
TOLL FREE
(800) 898-2034
TELECOPIER
(334) 954-7555
WEB PAGE
www.BeasleyAllen.com

PRESORTED
STANDARD
U.S. POSTAGE
PAID
MONTGOMERY, AL
PERMIT NO. 275

RETURN SERVICE REQUESTED



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.



Beasley Allen
BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, P.C.
Attorneys at Law

No representation is made that the quality of services to be performed is greater than the quality of legal services performed by other lawyers.