I.
CAPITOL OBSERVATIONS

THE PRESIDENT EARN A SECOND TERM

President Obama won a tremendous victory, and one that was extremely hard fought, on November 6th. He now faces a number of real challenges that come with his second term. These are major problems which must be dealt with. Unfortunately some of them can’t wait for Inauguration Day. It will take a unified and bi-partisan effort on the part of all concerned in Washington to solve these problems. It is absolutely necessary for all of us to pray for the President and his family and for all members of the U.S. House and Senate.

When Sara and I watched the huge crowd in Chicago on election night we saw folks from all walks of life. We saw Americans—not just Democrats whose candidate had just won a very tough race. The faces in that crowd reflected what our country is all about. The United States is a diverse country and instead of dividing us, our diversity should be a good thing. President Obama had this to say about our diversity:

We are greater than the sum of our individual ambitions, and we remain more than a collection of red states and blue states. We are and forever will be the United States of America.

Now that the elections are over the American people have every right to expect the President and members of Congress to lead and act in a unified, bi-partisan and constructive manner. That doesn’t mean they must always agree, but it does mean that total cooperation on the big ticket issues is an absolute necessity. The first test will be the sequester issue, the so-called fiscal cliff, and it must be dealt with before year’s end. A long-term solution should be sought rather than a stop-gap measure that would only make matters worse. Putting the problem off to another day of crisis is not the answer.

Our prayer for America should be based on 2 Chronicles 7:14 which is a pretty simple approach, but one that is critically important and it’s guaranteed to work. In addition to praying for the First Family, we must also pray for Gov. Romney and his family. Having lost an election myself, I know firsthand that prayers for that family are needed. I sincerely believe the next four years will be good ones for our nation and for all of our people. May God bless our nation!

5,837 ALABAMIANS WILL BE GETTING MORGAN KEEGAN SETTLEMENT

More than 5,800 Alabama investors in Morgan Keegan & Co. will receive checks totaling $14 million. According to Alabama Securities Commission Director Joe Borg, the checks are the result of a recent settlement with Morgan Keegan that stemmed from a multi-state investigation. The investigation involved seven mutual bond funds created by Morgan Keegan and sold by its agents. The seven funds lost about $1.5 billion in 2007 and 2008.

Director Borg said the reimbursement fund administrator, A.B. Data Ltd., began mailing checks on November 5th from the States’ Fund set up by the settlement. The checks are going to the 5,837 Alabama investors who filed an approved claim. The Securities and Exchange Commission will distribute other settlement funds later.

Source: Associated Press

ALABAMA IS A TOP STATE FOR DOING BUSINESS

Area Development Magazine has ranked Alabama among the top five states for doing business for the third consecutive year. Alabama was also first for competitive labor costs and near the top of the list of its workforce development programs. The rankings are based on a survey of a select group of highly-respected location consultants who work with a nationwide client base. The consultants were asked to name their top-five state choices in 14 site selection categories.

Alabama’s overall business environment, including its cost of doing business, corporate tax environment, incentives programs and cooperative state government were also cited among the top five by the responding consultants. The state’s certified sites and competitive utility rates placed in the top five among the states as well. While this is very good news for Alabamians, it’s not such good news for those in and outside of Alabama who claim our state is not a good place for business.

Source: Area Development Magazine

II.
A REPORT ON THE GULF COAST DISASTER

FEDERAL GOVERNMENT SETTLES CRIMINAL CHARGES WITH BP

As has been widely publicized, BP has settled all federal criminal charges with the Department of Justice. The total payments under the settlement will be $4.5 billion. The majority of that money goes to a group of federal agencies which in turn could send it back to the Gulf Coast. As

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expected, Louisiana will be the biggest beneficiary. When, where and how the money gets distributed remains to be seen, but it should be noted this is just an initial payment on the total amount owed by BP for its role in the catastrophe.

The bigger money yet to come will be in civil penalties BP faces for violations of the federal Clean Water Act and Oil Pollution Act, with estimates ranging from $5.4 billion to $22 billion. The difference depends on whether BP is guilty of simple negligence—at a fine of $1,000 for every barrel of oil spilled—or of gross negligence, which carries a fine of $4,300 per barrel. It is that spilled—or of gross negligence, which a fine of $1,000 for every barrel of oil whether BP is guilty of simple negligence—at $22 billion.

With estimates ranging from $5.4 billion to

The $4.5 billion settlement breaks down as follows: $2.4 billion to the National Fish and Wildlife Foundation, which said it will use the money for environmental remediation on the Gulf Coast; $1.3 billion in criminal fines, which could go to the U.S. Coast Guard’s Oil Spill Liability Trust Fund; $525 million to the Securities and Exchange Commission to settle criminal charges that BP misled investors; and $350 million to the National Academy of Sciences, which said it will use the money to establish a new, 30-year program on human health and environmental protection in the Gulf of Mexico.

Exactly how the money will be divided among the states remains uncertain. Much of it will be paid out by BP over the next three to five years. Louisiana, which suffered the brunt of environmental damage from the spill, will receive the biggest share of proceeds from the criminal penalties. I hope the Attorney General will be tough in the negotiations with BP on the civil fines. He should have a very strong position since BP’s conduct clearly rises to the level of gross negligence.

Source: AL.com

THE FAIRNESS HEARING BEFORE JUDGE BARBIER WENT WELL

As we have reported, the fairness hearing for the oil spill settlements occurred on November 8, 2012, and based on all indications, the settlements received very high marks. While the parties had already provided significant briefing to the court in support of the settlements, Judge Barbier heard hours of arguments from the Plaintiffs’ Steering Committee, BP and claims administrator Pat Juneau in support of the settlements. In all fairness hearings, the essential question is whether the settlements are fair, reasonable and adequate to class members.

Based on the testimony and evidence offered to the court, the settlements appeared to make a very favorable impression. Most, if not all, class action settlements do not have a fully-functioning claims facility before the fairness hearing, and rarely, if ever, are class members actually paid before the fairness hearing occurs. In the case of the oil spill settlements, claims facilities have been functioning for months, and Economic Settlement administrator Pat Juneau reported that the Economic Settlement had already paid, or was in the process of paying, nearly $1.3 billion in compensation to class members. More importantly, 95% of claimants were agreeable to offers made by the claims facility, which is an astonishing statistic given how young the facility is and the complex nature of the claimants along the Gulf Coast.

As expected, a settlement this large and complex was not without objectors. However, Judge Barbier pointed out that a vast majority of objectors was limited to a handful of law firms that objected on behalf of a large portion of their clients. Statistics offered by the parties during the hearing further emphasized the point, as objectors (and opt-outs) were dwarfed by the vast number of participating class members. In fact, representatives from BP noted that the number of opt-outs and objectors was well below expected projections.

Based on the evidence offered by the parties and the settlement’s accomplishments thus far, there is no debating that this settlement may go down as one of the best ever. The settlement is paying businesses throughout the coastal states significant and meaningful compensation—many of which never had a chance at compensation in the Gulf Coast Claims Facility. Moreover, traditional legal hurdles such as pure causation and strict proof requirements have been lessened significantly and replaced with a transparent, claimant-friendly process.

Judge Barbier is currently considering all of the parties’ arguments and briefings, and we expect him to rule on granting final approval to the settlements very soon. Based on the evidence offered to the court, we feel very confident that Judge Barbier will grant final approval and the settlements will go forward. If you have any questions about the settlements, please contact Parker Miller, a lawyer in our firm who has been involved in the BP litigation from the outset, at 800-898-2034 or by email at Parker.Miller@beasleyallen.com.

COURT PUSHES OPT-IN DEADLINE TO DECEMBER 15, 2012

Recently, the Plaintiffs’ Steering Committee and BP jointly filed a motion requesting Judge Barbier to extend the deadline for settlement opt-outs to opt back in. Previously, any party that opted out of the Economic Settlement had until November 5, 2012 to opt back in without BP approval. We are pleased to report that on November 16, Judge Barbier granted the parties’ motion, and has extended the opt-in deadline to December 15, 2012. Importantly, parties objecting to the settlement must drop their objection before they will be permitted to opt back in.

Judge Barbier also clarified the opt-in deadline for Medical Settlement participants. Class members of the Medical Settlement who opted out may opt back in by December 15, 2012, or by the date of a final order and judgment approving the Medical Settlement, whichever is later. But like the Economic Settlement, Medical Settlement class members must drop their objections to the settlement before they will be permitted to opt back in.

OIL SPILL TRIAL CONTINUED UNTIL FEBRUARY 2013

Judge Carl Barbier continued the start of the trial to determine liability from the 2010 Deepwater Horizon oil spill. Instead of January, the next trial will now start on February 25, 2013. This short delay was because of tourist events that will keep New Orleans’ hotels booked. Judge Barbier, who is presiding over the three-part hearing to decide liability for the oil spill, postponed the trial when originally set last year because of the settlement by BP with private Plaintiffs. Judge Barbier explained the recent change was a result of lodging difficulties arising from two huge events to be hosted in New Orleans in early 2013—the NFL’s Super Bowl on Feb. 3, and the Mardi Gras festival set for February 12th. This should not be taken as a negative in any respect. The trial will go forward on the new date and BP knows it. This short delay wasn’t good news for BP.

ALABAMA AGENCIES AND CITIES TO SPLIT $8 MILLION IN BP TOURISM GRANTS

Nearly two dozen nonprofit groups and government agencies in Alabama will share $8.3 million in BP funds that were awarded to promote Gulf Coast tourism and seafood industries in states impacted by the 2010 oil spill. Patrick Juneau, administrator of the claims process for the 2010 Gulf oil spill, announced the first round of Gulf Tourism and Seafood Promotion grants on November 7th. A total of $57 million in tourism and seafood promotion grants will
be awarded by BP as part of proposed settlement following the 2010 Deepwater Horizon disaster with each applicant limited to a $500,000 request. Of the total amount, $43.7 million was awarded to 110 grant recipients who were picked from a pool of more than 350 applicants.

In addition to 21 Alabama groups that will split $8.3 million, Louisiana received the largest amount as 43 recipients will get $15.9 million. Florida follows with 33 organizations to receive $13.4 million and 13 organizations in Mississippi will get $6 million. Projects in the Alabama cities of Foley, Gulf Shores and Orange Beach were approved. Some of the Mobile agencies that will receive grants include Mobile Chamber of Commerce, Bellingrath Gardens, Bayfest and Mobile Museum of Art.

While most organizations will receive one payment, five of the Alabama agencies will be funded for two years, totaling $4,204,000. Alabama Gulf Coast Chamber of Commerce, Gulf Shores Orange Beach Tourism, Gulf Shores and Orange Beach will receive two $500,000 grants each, and Dauphin Island Park and Beach Board was awarded two $102,000 payments.

To give an indication of how these funds will be used, Foley will create a year-round seafood and farmers market. In Gulf Shores, the city’s award will help begin work within the newly-created Intracoastal waterfront entertainment district. According to the grant application, “the goal of the plan is to create a compact, pedestrian friendly, mixed used, neighborhood downtown district. The plan capitalizes on the working waterfront history and heritage of this area of the city affectionately known as ‘Old Gulf Shores.’”

Source: AL.com

**BP CAN AFFORD TO PAY OIL SPILL FINES**

BP sold its stake in TNK-BP to Rosneft, which gives the oil giant additional resources which can be used to cover all of its financial exposure and legal costs arising from the 2010 Gulf of Mexico oil spill. Experts say this will help to keep BP’s total exposure from impairing its financial profile. A statement from the ratings agency Fitch Ratings indicated an upgrade to BP’s debt rating of “A” would require “evidence that its new upstream business strategy is being successfully implemented, or of a better-than-expected settlement with the U.S. Department of Justice.” Regardless of how all of this affects BP’s financial ability to pay all claims, the Justice Department has a duty to maximize the recovery. BP and Rosneft agreed to the sale of BP’s 50-percent stake in TNK-BP for $28 billion in cash and Rosneft shares.

Fitch said that the sale itself—which will swap BP’s stake in TNK-BP for an 18.5-percent stake in Rosneft and around $12.3 billion in cash—is broadly neutral for BP’s rating. That’s because it would not reduce the company’s reserves or production. However, the sale will take BP well beyond its $38 billion target for asset sales, thus increasing its ability to meet potential future issues related to the oil spill. The rating agency said:

We estimate that BP’s total costs arising from the Macondo spill will end up at between $45 billion and $50 billion, with the key remaining uncertainty being the amount it will have to pay to settle with the Department Of Justice.

It was pointed out by Fitch that the rating agency would consider a settlement with the Department of Justice of $15 billion or less as a positive development for the company. Fitch made this observation:

We said in July—when we changed the outlook for BP’s [Issuer Default Rating] to Positive—that a favourable settlement with the DoJ could be supportive of an upgrade to ‘A+’. However, the most likely route to an upgrade would be for BP to also show progress in its 10-point plan to improve its upstream business performance, which was set out in October 2011.

Without getting into the upgrade aspect of the deal with Rosneft and its effect on the claims against BP, I will simply say that BP and all responsible parties should not only pay claims in full, but they should all be severely punished for their very bad conduct. That’s especially true when it comes to BP. When you check the oil giant’s quarterly profits, I believe you will agree that BP can afford to pay whatever amounts it is ordered to pay, whether by settlements or trial.

Source: Rigzone.com

**III. DRUG MANUFACTURERS FRAUD LITIGATION**

**Settlements over Fraud by Big Pharma at Record High**

The U.S. Department of Justice announced late last year that the pharmaceutical industry was still the biggest defrauder of the federal government under the False Claims Act, as measured by the size of civil and criminal settlements reached with the federal government in fiscal year 2011. Public Citizen documented this trend in its landmark 2010 report, “Rapidly Increasing Criminal and Civil Monetary Penalties against the Pharmaceutical Industry: 1991 to 2010,” which showed that Big Pharma had long surpassed the traditional offender, the defense industry, to top the list of defrauders of federal taxpayer-funded programs. At the time of the report’s publication, the pharmaceutical industry had paid almost $20 billion over the previous two decades to the federal and state governments in civil and criminal penalties for fraudulent activities ranging from illegal

Source: Montgomery Advertiser
marketing of drugs to widespread bribery of physicians to prescribe those drugs.

In September 2012, Public Citizen published “Pharmaceutical Industry Criminal and Civil Penalties: An Update,” which showed that this trend has continued unabated. From November 2010 through mid-July 2012, drug companies were forced to pay an additional $10 billion to settle allegations of fraud. The first half of 2012 alone saw record financial recoveries, with $6.6 billion paid by the drug industry to the federal and state governments.

The 2012 report outlined the focus certain states have placed on rooting out the fraud, as much of the increase in enforcement activity has taken place at the state level. The 2012 report presented for the first time a 50-state analysis of enforcement efforts against drug companies defrauding state Medicaid programs, which assist poor, elderly and disabled patients. The analysis included a ranking of states based on the amount of money recovered through settlements and court judgments.

The report found that individual states are settling more cases than ever with pharmaceutical companies accused of defrauding their Medicaid programs and are recovering record amounts of taxpayer money. Since 2009, state governments have finalized more than twice as many settlements (94 versus 41), for nearly six times more money ($5.37 billion versus $660 million), than they had during the previous 18 years combined. By far, the most common allegation against drug companies in these settlements has been fraudulent overcharging of Medicaid programs. The way many Medicaid programs pay for drugs has made them uniquely vulnerable to such pricing fraud.

As we have written in previous issues, many Medicaid programs reimburse intermediaries, which include pharmacies and drug wholesalers, using the “average wholesale price” (AWP) for a drug, which is based on the manufacturer’s assessment of value. Drug companies often report to Medicaid AWP figures that are much higher than the actual prices they charge intermediaries. The difference between the AWP figures and the actual prices paid by the intermediaries is called the “spread.” The spread represents a source of profit for the intermediaries. By significantly inflating the AWP figures and then highlighting the large profits that will result for pharmacies and other intermediaries, a drug manufacturer can induce these intermediaries to purchase the manufacturer’s drugs. The drug manufacturer ultimately benefits from this fraudulent scheme by increasing its market share.

This practice has resulted in astronomical overpayments by Medicaid. In 2002, the U.S. House of Representatives Energy and Commerce Committee investigated a case in which a drug manufacturer charged intermediaries $82.62 for a pack of 2,000 fluoxetine capsules (the generic version of the popular antidepressant PROZAC). The AWP paid by many Medicaid programs for the same product was $5,300, or nearly 65 times the price the intermediaries paid for the drug.

Fortunately, most of the states are cracking down on corporate fraud in the Medicaid programs. Since 1991, Kentucky has concluded the most settlements with drug companies—almost all pricing-fraud cases—while Texas leads all states in settlements made possible by private-sector whistle-blowers. Arkansas, Louisiana, South Carolina and Texas have recovered a total of $2.3 billion in penalties, representing more than two-thirds of the financial penalties recovered in single-state settlements since 1991. Particularly salient in an era of ever-tightener state budgets, 17 states recouped the equivalent or more of their entire Medicaid fraud-enforcement budgets (including that spent on enforcement of non-pharmaceutical fraud) with money from settlements with the pharmaceutical industry alone. Arkansas, South Carolina, Alabama and Hawaii had the highest return on investment, between $12 (Hawaii) and $84 (Arkansas) for every dollar spent on Medicaid fraud enforcement.

The federal government has concluded almost as many settlements since 2009 as in the previous 18 years combined (49 settlements since 2009 compared with 55 from 1991 to 2008) and has recovered more in financial penalties from drug companies in that same timeframe ($14.5 billion since 2009 compared with $11.3 billion from 1991 to 2008). Most of these penalties were made possible by the actions of a few private-sector whistle-blowers who have come forward to reveal the widespread fraud perpetrated by the drug industry. Under the Federal Claims Act, private-sector whistle-blowers (either former company employees or others with knowledge of illegal activities) can be awarded up to 25 percent of any settlement proceeds resulting from an investigation initiated by their revelations.

Whistle-blowers were responsible for initiating investigations that resulted in 21 federal settlements and $6 billion in penalties under the FCA during the most recent period studied, November 2, 2010, through July 18, 2012. Almost half of the whistle-blower-prompted federal and state settlements during this time were made possible by a single informer, Ven-a-Care, a small pharmacy located in Key West, Fla. This pharmacy has been responsible for recovering at least $1.3 billion for the federal government from the pharmaceutical industry since 2001.

Other whistle-blowers were partly responsible for the largest health-fraud settlement in history, which GlaxoSmithKline (GSK) reached with the federal government in July 2012. The settlement required GSK to pay $3 billion to resolve numerous violations, including the concealment of vital data concerning fatal cardiovascular side effects from its dangerous diabetes drug, Avandia. GSK has been the worst offender over the past two decades, with more than $7.5 billion in penalties paid to the federal and state governments, according to Public Citizen’s 2012 report. Though the penalties in these settlements are unprecedented in scale compared with any other industry, they are still miniscule compared to the drug industry’s bottom line. The $30 billion paid out by pharmaceutical companies in settlements to the federal and state governments since 1991 represents just a little more than two-thirds of the profits made by the ten largest drug companies in 2010 alone.

This disparity has led some, including Sen. Bernie Sanders (I-Vt.), to ask whether the penalties are merely a cost of doing business for an industry as large and pervasive as Big Pharma. The revenues generated from illegal activities likely far outweigh current penalties, and as such, the fraud has continued unabated. To alter the cost-benefit scenario, Sen. Sanders introduced legislation in May 2012 mandating that drug companies lose “data exclusivity” privileges (branded drugs’ market monopoly for a number of years after approval, granted by the Food and Drug Administration) for the specific drugs involved in any criminal activity. This could mean a loss of billions of dollars per year in sales and would likely give pause to companies contemplating unlawful behavior. Unfortunately—and perhaps predictably, given the industry’s power as the biggest corporate lobbyist in Washington—the legislation was defeated.

Regardless of the penalties against companies, the executives responsible for overseeing, or neglecting to stop, illegal activities almost always escape without repercussions. Only a handful of pharmaceutical executives have ever faced criminal charges for presiding over fraud against the federal government, and only one, Marc S. Hermelin, formerly of KV Pharmaceutical, has been handed any prison time (and that for only 30 days). Executive impunity is more than just a moral issue—it goes to the heart of why fraud continues undeterred. As long as the people who run a company believe they will be shielded from any personal accountability, they are free to pursue the maximization of profits in the short term, leaving long-term costs to their successors. It is precisely for this reason that individuals need to be held accountable through criminal charges.

Pharmaceutical fraud has now become so commonplace that investors barely take notice when a billion-dollar settlement with a major drug company is announced. When the record $3 billion settlement with GSK was tentatively announced, the company’s stock actually rose to a near 52-week high. Many believe that the corporate executives should have to pay a high price for the wrongful activities of these companies.
Our firm has been heavily involved in the AWP litigation. As previously written, we represent eight states in this litigation. Federal and state governments have greatly increased their efforts to end pharmaceutical fraud. I have been encouraged by what Governors and Attorneys General in many states are doing to combat the fraud in their Medicaid programs. All should be involved, and the people of those states which aren’t involved should demand that they join the fight.

Source: worstpill.org

IV.

COURT WATCH

STATE COURT JUSTICES WERE Elected Around The U.S. On November 6th

I thought it might be good to take a look at how judicial races turned out around the country last month. Voters, for the most part, stood by incumbent state Supreme Court justices. This was in spite of Republicans, business groups and others targeting a number of judges for defeat. There was, however, an exception in Ohio where two incumbents on the state’s High Court lost. The following is a recap of the state court elections:

Alabama

ROY MOORE ELECTED CHIEF JUSTICE IN ALABAMA

Roy Moore was elected Chief Justice of the Alabama Supreme Court on November 6th. Bob Vance, a Circuit Judge from Jefferson County, was defeated by a 52%—48% margin. Consumers and victims of corporate wrongdoing had a fighting chance for justice when Judge Moore first served as Chief Justice and that was a good thing. Judge Moore was independent and fair then and I am convinced that won’t change when he returns to the high court. Unfortunately, there are still groups who want more than fairness.

Florida

Three Florida Supreme Court Justices have won a retention bid despite an unprecedented push by the Republican Party of Florida to oust them. Justices R. Fred Lewis, Barbara Pariente and Peggy Quinn each won by huge margins. As we wrote in November, the Republican Party’s executive committee opposed the three Justices, calling them extremists. It marked the first time a Florida political party has taken a position in a retention race. The Justices’ supporters include some prominent Republicans who said the GOP was endangering judicial independence and that the three had done nothing that deserved removal. I see this vote as one for a fair and impartial judicial system. Hopefully, the Tea Party wing of the Republican Party got the message from this vote.

Iowa

Iowa voters retained state Supreme Court Justice David Wiggins, who faced opposition because he supported a unanimous 2009 ruling that legalized gay marriage in Iowa. Social conservatives campaigned to oust Justice Wiggins because of the ruling, following their success in removing three of his colleagues two years ago. The Iowa State Bar Association worked to keep Justice Wiggins on the bench.

Kentucky

Kentucky Supreme Court Justice Will T. Scott will return to the state’s Highest Court, winning a second term in a district that covers most of the state’s Appalachian region. Justice Scott received 57 percent of the vote to 42 percent for his challenger, Appeals Court Judge Janet Stumbo. The 58-year-old Stumbo was the first woman elected to the Supreme Court in 1993. She was re-elected without opposition, but was defeated by Justice Scott in her bid for a third term.

Michigan

Republicans protected their 4-3 majority on the Michigan Supreme Court with the re-election of two Republican incumbents, Justices Stephen Markman and Brian Zahra. Democrat Bridget McCormack also won a seat. Ms. McCormack, who is best known for leading the Innocence Clinic at the University of Michigan law school, will be the first non-judge elected to the Supreme Court since 1986. She beat Oakland County Judge Colleen O’Brien, a Republican. The McCormack victory staved off a potential Republican sweep that would have given the GOP a 5-2 majority. Justice Marilyn Kelly, a 74-year-old Democrat who had been on the Court since 1997, couldn’t run again because of age restrictions. The Court’s conservative bloc typically votes together in civil disputes involving contracts, insurance companies, medical malpractice and auto coverage. Business groups including farmers, bankers, doctors and insurers contributed heavily to Justices Markman and Zahra and Judge O’Brien. Unions and trial lawyers donated to Ms. McCormack and the rest of the Democratic slate.

Mississippi

Mississippi Supreme Chief Justice Bill Waller Jr. won another term on the state’s Highest Court. Waller, Chief Justice since 2009, won an eight-year term that begins in January 2014 and runs until 2022. He was first elected to the Supreme Court in 1996. Before that, he worked as a lawyer in Jackson. The Chief Justice represents the central, or 1st District. In other races, newcomer Josiah Coleman won a seat on the Supreme Court and incumbent Supreme Court Justice Mike Randolph won re-election handily.

North Carolina

Incumbent state Supreme Court Justice Paul Newby defeated challenger appellate Judge Sam Ervin IV, grandson of the late Senate Watergate Committee chairman Sam Ervin. The supposedly nonpartisan race saw a flurry of advertising paid for by outside interests, most of it favoring Justice Newby. Republican organizations, business and conservative groups backed Chief Justice Newby while the state’s Democratic party and trial lawyers supported Judge Ervin.

Ohio

Challengers unseated the Ohio Supreme Court’s lone Democrat and a Republican justice, meaning the Court will have new faces, but with the same political makeup. Republican Sharon Kennedy, a Butler County domestic relations judge, ended Democratic Justice Yvette McGee Brown’s bid to serve an unexpired term through 2014. Judge Kennedy will need to run again in two years to get a full, six-year term. Justice McGee Brown had been appointed in 2010 to fill a vacancy left when Maureen O’Connor became Chief Justice. The court’s new Democrat will be William O’Neill, a retired appeals court judge, who beat Republican Justice Robert Cupp. Republican Justice Terrence O’Donnell retained his seat by defeating Democratic state Sen. Mike Skindell in the third race.

Louisiana

No candidate garnered the necessary 50 percent of the vote in Louisiana’s Supreme Court race to fill the seat of retiring Justice Kitty Kimball. That means there will be a runoff election on December 8th between Democrat John Michael Guidry and Republican Jeff Hughes.

West Virginia

A longtime West Virginia Supreme Court law clerk will become its newest justice. Voters elected Republican Allen Loughry. He joins Justice Robin Davis, who won re-election to the state’s only appeals court. Justice-elect Loughry chronicled West Virginia political corruption in a recent book. That research became a major theme in his court campaign. The Loughry campaign also received public money from a pilot program created as an alternative to traditional fund-
Supreme Court Rejects John Hancock Appeal Over Retirement Plan Lawsuits

The U.S. Supreme Court has refused to consider two appeals in a case weighing the ability of tens of millions of Americans to bring lawsuits over their retirement plans. Without comment, the High Court let stand an April ruling by the 3rd U.S. Circuit Court of Appeals in Philadelphia that revived part of a case accusing John Hancock Life Insurance Co., a unit of Canada’s Manulife Financial Corp., of charging excessive fees on annuity insurance contracts in 401(k) plans.

In its appeal, John Hancock claimed that allowing the lawsuit to proceed could discourage employers from setting up retirement plans governed by the Employee Retirement Income Security Act of 1974 by driving up costs to account for litigation.

John Hancock said plans under that law in recent years have held more than $5 trillion of assets covering in excess of 86 million workers. The Supreme Court’s decision would help 401(k) participants by allowing them to sue plan providers directly, rather than being forced to sue individual employers in numerous lawsuits.

In its decision, the 3rd Circuit partially reversed a lower court decision in finding that former plan beneficiaries could pursue ERISA claims without first demanding that fund trustees take action and adding the trustees as parties. But the Court agreed with the trial court that beneficiaries could not sue under the Investment Company Act of 1940 because they did not invest in the funds throughout their lawsuit and therefore could not adequately represent similar Plaintiffs. The plan participants appealed that part of the decision to the Supreme Court, saying that failing to allow a private cause of action conflicted with the ICA’s provision for “rescission at the instance of any party” and recovery for “unjust enrichment.”

Co-lead Plaintiff Danielle Santomenno was an investor in the relevant funds until June 2010. Co-lead Plaintiffs Barbara Poley and Karen Poley were investors until January 2010. The 3rd Circuit said each of them lacked standing to sue under the ICA because the second amended complaint was filed in October 2010. The U.S. Supreme Court disagreed. The cases are John Hancock Life Insurance Co. et al v. Santomenno et al, U.S. Supreme Court, No. 12-202; and Santomenno et al v. John Hancock Life Insurance Co. et al, U.S. Supreme Court, No. 12-208. Source: Insurance Journal

Supreme Court To Hear Comcast And Amgen Cases On Class Action Limits

The U.S. Supreme Court is considering appeals by Comcast Corp. and Amgen Inc. that could help determine what kind of evidence must be presented before companies may be the subject of class-action lawsuits. The companies want to further limit class actions, which are needed so that large groups of corporate victims can have access to justice. Most recently, in June 2011 the Court decertified a class of as many as 1.5 million Wal-Mart Stores Inc. female workers who accused the world’s largest retailer of bias in pay and promotions, saying they raised too many different claims.

In the Comcast case, subscribers led by Caroline Behrend accused the largest U.S. cable TV company, which is also majority owner of NBC Universal, of overcharges that resulted from Comcast’s effort to monopolize the market in the Philadelphia area. The $875 million lawsuit was brought on behalf of a potential 2 million customers in Pennsylvania, New Jersey and Delaware. Comcast said the subscribers were too different to sue as a class, but in August 2011 the 3rd U.S. Circuit Court of Appeals in Philadelphia said a trial judge could decide whether they had a common methodology to justify awarding damages to a class.

The main issue, as framed by the Justices ahead of oral arguments, had been whether the trial judge could rely on testimony from an expert witness for the subscribers before certifying a class. The subscribers’ lawyer, Barry Barnett, and some Justices suggested during oral arguments that Philadelphia-based Comcast could not press that issue because it had not done so in the lower courts, and that perhaps the Supreme Court should not rule on the company’s appeal for that reason.

In the Amgen case, shareholders accused the Thousand Oaks, Calif.-based biotechnology company of fraudulently inflating its stock price between April 2004 and May 2007 by exaggerating the safety of its anti-anemia drugs Aranesp and Epogen. Shareholders led by the Connecticut Retirement Plans and Trust Funds sought class certification based on the “fraud on the market” theory endorsed by the Supreme Court in a 1988 case. This assumes that the price of a stock in an efficient market reflects all public information, and that a purchaser is presumed to have relied on the truthfulness of that information.

Amgen said the shareholders should have been forced at the class certification stage, rather than at trial, to prove that alleged mis-statements materially inflated the company’s stock price. But last November, the 9th U.S. Circuit Court of Appeals in Pasadena, Calif., let the class action proceed. Amgen’s lawyer told the Court the shareholders cannot raise the “fraud on the market” theory without showing material misstatements. It was argued by the lawyer that “Absent materiality, the market price cannot be presumed to reflect the statement in question.”

Comcast and Amgen were supported in their appeals by various business groups, including the U.S. Chamber of Commerce, as well as former commissioners and officials at the U.S. Securities and Exchange Commission. Decisions are expected by the end of June 2013. The cases are Comcast Corp. et al v. Behrend et al, U.S. Supreme Court, No. 11-864; and Amgen Inc. et al v. Connecticut Retirement Plans and Trust Funds, U.S. Supreme Court, No. 11-1085. Source: Insurance Journal

V. THE NATIONAL SCENE

The Challenges Of A Second Term For President Obama

There are some very serious challenges that come with the second term for President Obama. But the challenges he will face also offer some great opportunities for the President over the next four years. There can be little doubt that a Mitt Romney presidency would have been a disaster for this country. An America under Romney would have been less secure, less safe, dirtier, more unjust, more unequal and downright meaner. His post-election comments have made me realize even more just how badly out of touch with political reality this man really is.

On a positive note, President Obama’s re-election offers some important and time-critical opportunities for our country. But there are also a number of perils that lie in waiting that must be overcome. Congressional Republicans and the U.S. Chamber of Commerce have shown their ability during the past four years to set much of the policy agenda, even with a popular President in the White House. If the country is to move forward, the Obama Administration must set the agenda for the next four years.

I would like to see the President work much like Bill Clinton did during his second term and be able to leave office with the ship of state in excellent shape for the next President. I believe this is more than just a possibility. I am convinced it will happen.
Now that the Presidential election is over, I had hoped that the hate factor against President Obama, which I believe was the underlying theme of the Romney-Ryan campaign, would fade away into the political sunset. Unfortunately, that has not been the case with some top level Republican operatives. Most notably those include Donald Trump, Rush Limbaugh and Karl Rove, each of whom will most likely profit financially by continuing to fan the flames of hate around the country. It should be noted that none of these men were successful in their efforts during the General Election. In fact, each of them, because of their negative and misleading message, most likely helped Democrats at the polls in a number of races. I am convinced they helped re-elect the President.

The sad truth is that GOP campaigns were based largely on hating some person or hating some thing. For example, lots of things were said and accusations made against President Obama that would never have been made against any other sitting President. Groups of people were also singled out and senseless accusations made throughout the election process that were highly offensive. Not only was all of this sad and disheartening, it was also counterproductive for those in the GOP ranks who wanted to run their campaigns on important issues and also wanted to keep things on a high plane. I am firmly convinced the tactics used by the Tea Party faction of the Republican Party actually energized those folks who supported President Obama and even brought Independents over to the President on November 6th in significant numbers.

The time has come to put the politics of hate and division on the shelf and do it permanently. There is no place for this sort of thing in American politics. We in Alabama saw how our state suffered during the days of racial segregation and the fight for Civil Rights. I really thought we had learned our lesson from that painful period in our state’s history, and that things were heading in the right direction. But then the immigration battle erupted in Alabama last year. This unfortunate development created more problems for our state. Our leaders should come to their senses and allow the federal government to handle the immigration issues. I predict they will regret their efforts if they continue to politicize the immigration issue.

Finally, on the national level, it’s high time for both political parties to realize that the American people deserve for Presidential campaigns to be run on the real issues that face our country. Those who preached hate and division during this election, based on the result, should have learned their lesson. The politics of hate and division took a real beating in this election when the American people rejected this sort of politics.

Hopefully, even the Tea Party zealots learned a lesson, but that remains to be seen.

The Nation’s Economy Will Continue To Improve

I am convinced that once the shock in some quarters wears down, the re-election of President Obama will have a positive effect on our nation’s economy. All businesses in our nation will then benefit. The economy was already heading in the right direction before the election and it now should improve across the board at a more rapid pace. I believe many business owners were waiting to see how the Presidential race would turn out before taking a more positive approach on investing in expansions and adding workers.

I also believe that President Obama and the members of Congress got a message from the voters. That message was “work together to solve the many problems that have not been dealt with in a bi-partisan manner over the past four years.” If our elected leaders do the right thing, which means to cooperate and work together, we will see a dramatic upswing in our nation’s economy. I predict that we will experience a spirit of cooperation on critically important matters in Washington starting immediately. Those in our Nation’s Capitol can ill afford to do otherwise. If they will put partisan politics aside, and work together, it will be great news for America.

On the other hand, if the leadership of the U.S. House of Representatives continues to refuse to work with the President, it will not only hurt America, it will damage them politically. Those in the House will have to face the voters in the mid-term Congressional elections. If you agree that Democrats and Republicans in Washington should work together for a change, contact the President and members of the U.S. House and Senate and let them know how you feel.

Violent Crimes On The Rise In United States

The report of crime in the U.S. released last month by the Bureau of Justice Statistics is not good news for the American people. According to the report, violent crime rates across the U.S. jumped by about 18 percent, and property crimes rose by 11 percent between 2010 and 2011. This is the first increase for both crime categories since 1993, according to the report entitled “Criminal Victimization 2011.” Assaults, which accounted for 86 percent of all violent victimization in 2011, increased by 22 percent. The report found there was no statistically significant change in the number of serious violent victimizations from 2010 to 2011. Serious violent victimizations in 2011 included an estimated 244,000 rapes or sexual assaults, 557,000 robberies, and 1.1 million aggravated assaults. The following are the other findings and conclusions reached in the report:

• As with the number of violent crimes, the rate of violent victimization increased driven primarily by the increase in assaults. Between 2010 and 2011, the rate of simple assault increased by 21 percent, from 12.7 to 15.3 victimizations per 1,000 persons. The rate of aggravated assault went up slightly, from 3.4 to 4.1 victimizations per 1,000 persons. The report also found that over the ten-year period between 2002 and 2011, the rate of violent crime declined 30 percent and the rate of serious violent crime declined 28 percent. The change in both the number and rate of violent crime victimizations varied by the type of violence.

• Total domestic violent victimizations, or crimes committed by family members and intimates, increased slightly from 1.1 million in 2010 to 1.4 million domestic violent victimizations in 2011. However, the report found no measurable change between 2010 and 2011 was detected for serious domestic violence—domestic violence involving rape, robbery, or aggravated assault. In addition, no measurable change was detected in intimate partner violence or serious intimate partner violence during this period. No measurable change was detected for serious violent crimes involving weapons or crimes involving injury to the victim.

• The total number of property victimizations also increased by 11 percent between 2010 and 2011, from 15.4 million to 17.1 million victimizations. During the same period, the report states that the number of burglary victimizations increased 14 percent, from 3.2 million to 3.6 million victimizations. Theft increased by 1.2 million victimizations, from 11.6 million victimizations in 2010 to 12.8 million in 2011. The number of motor vehicle thefts remained steady over this period with 628,000 victimizations occurring in 2011.

• Similar to the increase in the number of property crimes, the victimization rate for property crime also increased by 11 percent between 2010 and 2011, from 125.4 to 138.7 victimizations per 1,000 households. Household burglary increased 14 percent, from 25.8 to 29.4 victimizations per 1,000 households, and theft increased 10 percent, from 94.6 to 104.2 per 1,000 households. No measurable change occurred in the rate of motor vehicle theft between 2010 and 2011.

• Over the ten-year period between 2002 and 2011, total property crime declined 18
The report found that males had a higher rate of total violent victimization than females in 2011.

From 2010 to 2011, white non-Hispanics and Hispanics experienced an increase in violent victimization rates, while the violent victimization rate for black non-Hispanics was stable.

Generally, the report states that persons age 24 or younger had higher violent victimization rates than older persons.

From 2010 to 2011, persons who were married experienced an increase in violent and serious violent victimization.

From 2010 to 2011, residents in the Midwest and West experienced a slight increase in total violence. No differences were detected for residents in the Northeast or South. In 2011, residents in the Northeast and South experienced lower rates of violence compared to the Midwest and West.

Persons from the suburbs experienced an increase in violent crime from 2010 to 2011. As was the case in 2010, urban residents had higher rates of serious and total violence than suburban and rural residents in 2011.

The American people are entitled to be safe and secure in their homes and in the workplace. But it’s quite apparent that such is not the case today. Neither should parents have to worry about the safety of their children in the schools. We have lots of work to do in the U.S. to both prevent and combat crime. Regardless of what the NRA and the Tea Party zealots say, we need sensible gun control in this country at both the federal and state levels. Also, nobody can say that a concerted effort to combat illegal drug sales and use is not badly needed. Clearly, this is a major problem that affects the level of violent crime in the U.S. We must all work together on these critically important issues. The future of our nation is at stake.

Source: Bureau of Justice Statistics

VI. THE CORPORATE WORLD

U.S. INVESTIGATES BARCLAYS

Barclays, already rocked by an interest rate rigging scandal, unveiled new U.S. regulatory investigations into the bank’s financial probity and said its profit was hit by charges of mis-selling insurance. Its shares fell almost 5 percent, hurt by a weaker performance in investment banking than most of its Wall Street rivals and fears that legal problems would handicap its new chief executive’s efforts to overhaul the company and correct lots of problems that have caused great difficulty. Following investigations in the United Kingdom over its dealings with Qatari investors, Barclays announced that the Department of Justice and Securities and Exchange Commission were probing whether the bank’s relationships with third parties who help it win or retain business are compliant with U.S. laws.

The bank is under investigation by Britain’s financial regulator and fraud prosecutor into payments to Qatari investors after it raised billions of pounds from the Persian Gulf state five years ago to save it from taking a taxpayer bailout. Barclays revealed the Financial Services Authority (FSA) investigation in July and confirmed the Serious Fraud Office had launched a probe the following month. Barclays now says the U.S. Federal Energy Regulatory Commission could be close to fining it over an investigation into the manipulation of power prices in the western United States from late 2006 until 2008.

FERC has notified the bank of the proposed penalties. Barclays says it will “vigorously” defend this matter. The investigation was first announced in April, alleging the bank took substantial electricity market positions to move daily index settlements. In March, the agency fined Constellation Energy $2.45 billion over market manipulation activities as part of a fresh crackdown on power market rigging. The New CEO at Barclays, Antony Jenkins, took over at the end of July when his predecessor Bob Diamond quit after the bank admitted rigging Libor interest rates. Jenkins is in the midst of a review to change the culture at the bank and lift profitability. This is scheduled to be unveiled in February of 2013.

Investors have made it clear they want a return on equity above the cost of equity, higher dividends, and for pay to be cut, according to Jenkins. That is expected to mean the investment bank arm will be significantly cut back. The bank says it has fired staff, slowed down back pay and taken other disciplinary action after a “very rigorous” internal investigation into the Libor manipulation. Barclays was fined $450 million by U.S. and UK regulators for the rate rigging. More than a dozen other banks are expected to be fined.

Source: Reuters

HSBC MAY FACE U.S. MONEY LAUNDERING FINES TOTALING $1.5 BILLION

It was reported recently that a U.S. fine for violating federal anti-money laundering laws could cost HSBC Holdings, Europe’s biggest bank, significantly more than $1.5 billion. It was also said that criminal charges could be involved as well. HSBC told Reuters that the U.S. investigation had damaged the bank’s reputation and forced it to set aside an additional $800 million to cover a potential fine for breaches in anti-money laundering controls in Mexico and other violations. It should be noted this provision was in addition to the $700 million the bank put aside in July. Chief Executive Stuart Gulliver said this amount “could be significantly higher,” adding that the latest provision was based on discussions with the various U.S. authorities involved in the probe.

MINNESOTA SETTLES LAST 35W BRIDGE CASE

Minnesota’s five-year legal battle over the collapsed Interstate 35W bridge has ended with an $8.9 million settlement involving Jacobs Engineering Group, Inc., a California design firm, which paid its final installment on November 13th. The settlement is seen as a final chapter in the 35W legal saga and ends all litigation dealing with the collapse of the 35W bridge.

While the settlement was reached in October, it wasn’t publicized until mid-November. The Associated Press learned of the settlement through a disclosure of pending cases the state makes ahead of bond sales. As you may recall, 13 people died and 145 more were injured when the highway bridge buckled and fell into the Mississippi River during an August rush-hour.

Jacobs’ lawyers contended that state law put a ten-year limit on liability and noted the state had a 1962 contract with the bridge’s designer, a now-defunct company that Jacobs acquired in 1999. But state courts let the lawsuit proceed. The U.S. Supreme Court turned down the company’s final appeal in May. The settlement money will go into the state’s general fund. Like others, the latest settlement helped reimburse Minnesota taxpayers for the 1-35W Survivor Compensation Fund.

Federal investigators determined an original design flaw was a key factor that doomed the bridge. After the collapse, the state also sued URS Corp., an engineering company that was evaluating the bridge before it fell. The parties settled that case for $5 million. Separate from its state payment, URS settled lawsuits brought by survivors and the families of those killed for more than $52 million. The state also had set up the special $36.6 million compensation fund for those impacted by the bridge collapse.

Source: ABC News
A U.S. Senate report in July criticized HSBC for letting clients shift potentially illicit funds from countries such as Mexico, Iran, the Cayman Islands, Saudi Arabia and Syria. HSBC had admitted earlier in the year that it could face criminal or civil charges as part of the investigation. The London-based bank said that the issue was “shameful and embarrassing” after a report by Congress’ Permanent Subcommittee on Investigations criticized a “pervasively polluted” culture. The report said HSBC’s Mexican operations had moved $7 billion into its U.S. operations between 2007 and 2008. Volume that large suggested it included illegal narcotics proceeds, according to the report. Gulliver, the CEO, said:

The report undoubtedly caused considerable reputational damage to HSBC. The extent to which that has resulted in loss of business is hard to measure, but it has undoubtedly damaged our brand.

The U.S. Justice Department usually resolves corporate criminal cases by imposing fines and requiring changes to a compliance program, but dismisses the charges if all requirements are met. The Justice Department has entered into a number of these agreements this year. The size of the fine expected by HSBC also dwarfs every other similar case, including the previous record set by ING Bank N.V., which agreed in June to forfeit $619 million to resolve allegations that it illegally moved money on behalf of sanctioned entities in Cuba and Iran.

HSBC’s problems involve more than just sanctions issues. Major apparent lapses in money laundering controls, as stated in the Senate subcommittee report, are also involved. Jimmy Gurule, a former top Treasury official who is now a law professor at the University of Notre Dame, observed:

What it reflects is the gravity of the wrongdoing that HSBC is at least implicitly admitting. This case has multiple dimensions and layers of wrongdoing. It transcends economic sanctions.

Reuters detailed in a July Special Report how money-laundering lapses continue to persist at HSBC, with managers allegedly focused on clearing paperwork quickly, rather than uncovering risks. This highlighted the extent of the most serious problems at the bank.

It is unclear whether other pending inquiries into money-laundering issues, including the one at JPMorgan Chase & Co, have the potential to be similar in scope, but U.S. banks have generally avoided some of the larger penalties imposed on foreign banks for sanctions or money laundering violations. The issue involving HSBC is another blow for the reputation of British banks after rival Barclays was fined $450 million in June for rigging Libor interest rates. The industry has also had to set aside more than 12 billion pounds to compensate customers in the United Kingdom for mis-selling insurance products. When you consider the magnitude of the problem, and the duration, it’s clear that something had to be done. Professor Gurule said further:

There’s a whole series of things that came from probably a decade in the 2000 to 2008-09 period that have surfaced now that the industry needs to sort out, remediate, and make sure doesn’t happen again. It will take a chunk of time to clean the system and then it will take a little bit longer than that for trust to be restored more fully.

HSBC reported an underlying profit—after stripping out the impact of disposals and changes in the value of its own debt—in the July-September quarter of $5.0 billion, up from a revised $2.2 billion a year earlier. The financial picture was helped by a bigger-than-expected drop in losses from bad debts and a solid performance by its investment bank arm. Underlying operating expenses rose by 16 percent in the quarter from a year ago due to higher compliance and regulatory costs, which it said amounted to $200 million to $300 million.

HSBC took another $357 million charge for mis-selling payment protection insurance in Britain, lifting the total amount set aside to $300 million.

I believe this litigation will be successful. I also am convinced that the American people are sick and tired of all the corruption we have witnessed over the past several years by the big banks in the banking industry. The Justice Department should be commended for its actions in the attempt to clean up the industry.

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WHISTLEBLOWERS DO A TREMENDOUS SERVICE

This issue will again contain a large number of whistleblower-related cases. Choosing to come forward with evidence that an employer or company has been committing fraud against the government is a brave and honorable act. Whistleblowers play a pivotal role in the detection, investigation and prosecution of fraud against the government. According to Taxpayers Against Fraud, more than 80 percent of cases pursued under the False Claims Act are initiated by whistleblowers. The False Claims Act also protects and reimburses whistleblowers for their courage and integrity in coming forward with evidence of corporate wrongdoing and/or fraudulent conduct and for participating in the process of pursuing a False Claims Act case in court.

Qui tam lawsuits can be brought against any organization, even government entities, that violate a law or regulation. Pharmaceutical fraud has become the most common type of fraud pursued under the False Claims Act. A recent Public Citizen study graphically illustrates how pharmaceutical industry
fraud against the government has reached epidemic proportions, "endanger[ing] public safety and rob[bing] the government of increasingly scarce state and federal resources." According to the new study, the worst offenders include some of the biggest companies—GlaxoSmithKline, Pfizer and Eli Lilly, which have paid $14.8 billion in penalties stemming from 121 settlements between 2006 and 2010 alone. The study also found that former drug company employees-turned-whistleblowers who filed *qui tam* actions were an essential component in the largest number of federal settlements over the past ten years.

Other common types of fraud are government healthcare fraud, defense contractor fraud and real property fraud. If you are aware of any corporate wrongdoing, or any possible fraudulent activity, we encourage you to contact a lawyer immediately. If you have seen or are aware of any potentially fraudulent behavior that could be costing the government money, you have the right to expose it. No matter who you are, whether you are a high-ranking official within a company, an employee or even a bystander who becomes aware of corporate misconduct or potential fraud, it is extremely important that you seek knowledgeable representation should you decide to go through the process of a *qui tam* case. Filing a *qui tam* fraud lawsuit, such as against a pharmaceutical manufacturer, is complicated and requires legal professionals with experience in dealing with the companies that perpetrate the fraud.

We have written over the past several months about cases brought by whistleblowers and generally in each case a large corporation was guilty of fraudulent conduct. Oftentimes, the actual whistleblower is hardly mentioned other than to say he or she reported the bad conduct and filed suit under the False Claims Act. In those cases, Defense lawyers like to imply or actually say that the whistleblower is just in it for the money. What is virtually unknown by the public and even by jurors hearing a case is that the whistleblowers themselves often suffer because they reported corporate wrongdoing. That’s why each whistleblower must be protected why each whistleblower must be protected and generally in each case a large corporation was guilty of fraudulent conduct. Oftentimes, the actual whistleblower is just in it for the money. No matter who you are, whether you are a high-ranking official within a company, an employee or even a bystander who becomes aware of corporate misconduct or potential fraud, it is extremely important that you seek knowledgeable representation should you decide to go through the process of a *qui tam* case. Filing a *qui tam* fraud lawsuit, such as against a pharmaceutical manufacturer, is complicated and requires legal professionals with experience in dealing with the companies that perpetrate the fraud.

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Lawsuits brought by whistleblowers under the False Claims Act have been an effective tool in the effort to keep drug companies honest and to protect the public. It’s extremely important to encourage “whistle blowing” when fraud or cheating by corporations has been taking place. Then—one of these days—those corporations will learn their lesson and change their ways.

Source: Corporate Crime Reporter

**Orthofix Unit To Pay $30 Million To Settle False Claims Act Charge**

Orthofix International will pay $30 million to settle allegations that an Orthofix unit—Blackstone Medical—paid illegal kickbacks to physicians in order to induce use of the company’s products. Orthofix, which manufactures spinal implants and other spinal surgery products, is a publicly-traded company headquartered in Curacao. Federal officials alleged that Blackstone paid kickbacks to spinal surgeons.

These alleged kickbacks took a number of forms, including sham consulting agreements, sham royalty arrangements, sham research grants, travel and entertainment. The allegations were initially alleged in a whistleblower lawsuit filed under the False Claims Act. The whistleblower in this case, Susan Hutcheson, will receive $8 million as her share of the settlement amount. Orthofix also agreed to enter into a corporate integrity agreement with the Office of Inspector General of the Department of Health and Human Services.

Source: Corporate Crime Reporter

**Novartis To Pay $19.9 Million To Settle False Claims Charge**

The Swiss-based pharmaceutical giant Novartis will pay Texas $199 million to settle allegations that it violated the False Claims Act. The lawsuit was originally filed by a whistleblower, Donald Galmines, in federal court in Pennsylvania. Galmines is a former Novartis marketing representative.

Galmines’ responsibilities included the marketing of the topical cream Elidel, which had been approved by the Food and Drug Administration for use on patients more than two years of age. Elidel was not shown by Novartis to be safe and effective for such uses. In 2005, the FDA required Novartis to put a “Black Box Warning” on Elidel packaging, warning physicians and consumers that certain cancers in infants were associated with the use of Elidel. In the lawsuit Galmines alleged that Novartis required its sales force to market Elidel for numerous conditions other than eczema, and that it paid physicians kickbacks to encourage them to do so.

The U.S. Department of Justice elected not to intervene in the Pennsylvania complaint filed by Galmines. But Galmines decided to proceed with that case on behalf of the United States and several states, including California, Massachusetts, Virginia, Illinois, and Michigan. His complaint initially included claims on behalf of the State of Texas, but those claims were voluntarily dismissed. Subsequent events led to the Texas settlement. That settlement provides for payment of attorney fees to the State of Texas and legal counsel for Galmines, as well as for a recovery of a share of the settlement to Galmines pursuant to the Texas Medicaid Fraud Prevention Act, which provides that a whistleblower such as Galmines is paid between 15 percent and 25 percent of such a settlement. Galmines is represented by Jennifer Verkamp and Rick Morgan, lawyers with the firm of Morgan Verkamp, located in Cincinnati, Ohio. They did a very good job in this case.

Source: Corporate Crime Reporter

**Justice Department Joins False Claims Act Lawsuit Against Triple Canopy**

The Justice Department has joined a whistleblower lawsuit against defense contractor Triple Canopy. The lawsuit was filed in 2011 by Omar Badr, a former Triple Canopy employee. He claims that the company submitted false claims for unqualified security guards under a contract to provide security in Iraq.

In June 2009, the Joint Contracting Command in Iraq/Afghanistan (JCC-I/A) awarded Triple Canopy a one-year, $10 million contract to perform a variety of security services at Al Asad Airbase—the second largest air base in Iraq. The JCC-I/A was established by U.S. Central Command in November 2004, to provide contracting support related to the government’s relief and reconstruction efforts in Iraq. Federal officials alleged that Triple Canopy knowingly billed the United States for hundreds of foreign nationals it hired as security guards who could not meet firearms proficiency tests established by the Army and which were required under the contract.

The tests ensure that security guards hired to protect U.S. and allied personnel are capable of firing their AK-47 assault rifles and other weapons safely and accurately. The government also alleges that Triple Canopy’s managers in Iraq falsified test scorecards as a cover-up to induce the government to pay for the unqualified guards. It was alleged further that Triple Canopy continued to bill the government even after high-level officials at the company’s headquarters had been alerted to the misconduct. Triple Canopy allegedly used the false qualification records in an attempt to persuade the JCC-I/A to award the company a second year of security work at the Al Asad Airbase. Stuart F. Delery, Acting Assistant Attorney General for the Civil Division of the Department of Justice, stated:

> For a government contractor to knowingly provide deficient security services, as is alleged in this case, is unthinkable, especially in wartime. The department will do everything it can to ensure that contractors comply with critical contract requirements and that contractors who don’t comply aren’t permitted to profit at the expense of our men and women in uniform and the taxpayers at home who support them.

The American people are sick and tired of reading about the fraud and corruption by corporations in connection with federal government contracts. That’s especially the case as these reports relate to defense contractors. Badr is represented in this case by the law firm of Day & Johns, located in Fairfax, Va.

Source: Corporate Crime Reporter

**Westchester Hospital To Pay $7 Million To Settle False Claims Charge**

The Westchester County Hospital, which does business as the Westchester Medical Center, will pay $7 million to settle False Claims Act charges that it made false reimbursement claims to Medicaid. Federal officials alleged that the hospital billed Medicaid for millions of dollars of outpatient services at its mental health center that lacked the core documentation required by Medicaid regulations. Preet Bharara, who is the U.S. Attorney in Manhattan, made his position very clear when he said:

> Medicaid is a vital resource for people who suffer from physical and mental illnesses and related conditions. We have absolutely no tolerance for those who fail to comply with the program, particularly in these lean times when budgets are stretched thin and belts are being tightened. We will continue to work with our federal and state partners to protect the Medicaid program against waste, fraud and abuse.

Source: Corporate Crime Reporter

www.BeasleyAllen.com
It’s very sad to see all the widespread cheating in this country’s medical community. Programs such as Medicaid were designed to benefit folks who need help. Taking money away from programs that have genuine needs is intolerable. It’s most unfortunate to learn that some medical providers believe they can cheat and get away with it in federal programs. Hopefully, those days are nearing their end.

Source: Corporate Crime Reporter

**FORMER SHAW GROUP SAFETY MANAGER CONVICTED OF MAJOR FRAUD**

A jury convicted a Louisiana man last month of eight counts of major fraud against the United States. Walter Cardin faces a sentence of up to ten years in prison and a fine of up to $1 million for each offense. The jury heard evidence that Cardin, as safety manager for the Shaw Group (formerly Stone & Webster Construction), at Tennessee Valley Authority’s Brown’s Ferry Nuclear Site in Athens, Ala., provided false and misleading information about injuries at that facility as well as at TVA’s Sequoyah Nuclear Site in Soddy Daisy, Tenn., and TVA’s Watts Bar Nuclear Site near Spring City, Tenn.

The Shaw Group had a contract with TVA to provide maintenance and modifications to the three facilities and to provide construction for the Brown’s Ferry Unit Number 1 reactor restart. Cardin was convicted of generating false injury rates which were used by the Shaw Group to collect safety bonuses worth over $2.5 million from TVA. He was also convicted of providing the false numbers at the three plants in 2004 and 2005, and at the Brown’s Ferry and Sequoyah plants in 2006.

The jury heard evidence of over 80 injuries, including broken bones, torn ligaments, hernias, lacerations, and shoulder, back, and knee injuries, that were not properly recorded by Cardin. As part of a civil agreement filed with the United States in 2008, the Shaw Group paid back twice the amount of the ill-gotten safety bonuses. U.S. Attorney Bill Killian had this to say:

*These convictions will put all Tennessee Valley Authority contractors on notice that criminal violations to maximize profits with TVA will not be tolerated in the Eastern District of Tennessee.*

The case was investigated by the TVA-Office of Inspector General. This is just another example of corporate greed and the fraud that all too often accompanies that greed. The American people are sick and tired of being victims of corporate fraud relating to government contracts.

Source: oig.tva.gov

**RULING COULD COST GEORGIA FIRM $459 MILLION FOR JUNK FAXES**

The Supreme Court of Georgia ruled against a company accused of partnering with a Texas firm to send more than 300,000 junk faxes to metro Atlanta homes and businesses. This ruling means the company could be liable for a $459 million penalty. The High Court reversed a lower court decision, ruling against home maintenance firm American Home Services Inc. Norcross-based A Fast Sign Co., which said its fax machine became tied up with unsolicited ads for the company, sued American Home Services in 2003 in what became a class-action lawsuit.

A trial court entered a judgment against American Home Services for $459 million—or $1,500 in damages for each of the 306,000 junk faxes—but an appeals court threw it out. In this most recent ruling, the state Supreme Court sent the case back to the appeals court, saying the company could still remain liable for $459 million, depending on how legal matters in the case are resolved. A key issue is how the Telephone Consumer Protection Act of 1991 is interpreted, and whether it’s necessary to show that faxes sent were actually received.

The appellate court ruled that the trial court incorrectly applied the federal act, prompting Fast Sign Co.’s appeal to the state Supreme Court. In the ruling released last month, the Georgia Supreme Court concluded that the federal act “prohibits a person from using a device to send an unsolicited advertisement to a telephone facsimile machine.” The Court’s ruling states that “a sender is liable for the unsolicited advertisements it attempts to send to fax machines, whether or not the transmission is completed or received by the targeted recipient.” This appears to be a most significant decision. It will be interesting to see what happens now that the case is back at the trial court level.

Source: Insurance Journal

**JURY AWARDS HALLMARK $31 MILLION IN TRADE DISPUTE**

A federal jury has awarded Kansas City, Mo. greeting cards giant Hallmark Cards Inc. $31.3 million in damages from a company that misappropriated inside information. The ruling came after a lengthy trial that capped seven years of dispute between Hallmark and Monitor Clipper Partners. Hallmark hired Monitor Company Group of Massachusetts in 2001 to help redesign Hallmark’s business model. Four years later sister company Monitor Clipper Partners said it was acquiring a Hallmark competitor, Recycled Paper Greetings Inc. An arbitrator ruled in 2007 that Monitor Company Group had breached its confidentiality agreement, and the company agreed to pay Hallmark $12.5 million for breach of contract. The award for misappropriation of trade secrets in this case, the final lawsuit, should end the dispute. Of course there will likely be post-trial motions and a possible appeal.

Source: Kansas City Star

**VI. PRODUCT LIABILITY UPDATE**

**FOREIGN INSURANCE COMPANY MUST COVER CLAIMS UNDER ALABAMA’S WRONGFUL DEATH ACT**

Last year Greg Allen, our firm’s lead products liability lawyer, won a $5,250,000 judgment in an Alabama wrongful death case. In that case, our client’s sister was killed when the textile warper she was using at work pulled her into the rotating parts. The Defendants’ insurance company, which is incorporated in Sweden, refused to pay the judgment against the Defendants. The company claimed that its insurance policy did not cover punitive damages. In Alabama, the sole remedy for wrongful death is the awarding of punitive damages. The insurance company in Greg’s case moved to dismiss the case, arguing a lack of personal jurisdiction and said that the insurance policy’s forum selection clause prevented the Plaintiff from bringing the suit anywhere but in Sweden.

U.S. District Court Judge Keith Watkins, who sits in the Middle District of Alabama, issued an order denying the motion to dismiss under both the personal jurisdiction and forum selection clause arguments. Judge Watkins reasoned that since the insurance policy contained a territory of coverage clause that included Alabama, the Swedish insurance company specifically contracted to be brought into court in Alabama. Further, Judge Watkins reasoned that the forum selection clause requiring the Plaintiff to bring the action in Sweden was unenforceable. He said that the forum selection clause would effectively deprive the Plaintiff of any remedy since the sole remedy under Alabama’s Wrongful Death Act is the recovery of punitive damages. Judge said in his ruling that “Alabama has a strong public policy interest in preventing insurance companies from enforcing a policy’s punitive damages exclusion for claims brought under the Alabama Wrongful Death Act.” He concluded that enforcing the forum selection clause would allow an insurance company that contracted to litigate in Alabama to evade Alabama’s Wrongful Death Act by letting a Swedish court apply Swedish law instead of Alabama law.

Source: Kansas City Star

Source: Kansas City Star

Guards attach to truck frame rails behind the cab of operators. Generally, cab guards load securement than on vehicle crashworthiness. No longer require a cab guard for trucks—front end structures for added protection of heavy truck cabs in the event of a load shift. These devices are more commonly known as “headache racks” or “cab guards.” Although no longer required by federal regulations, heavy truck operators still use cab guards to protect the cab and occupants in the event of a load shift and to provide added crashworthiness.

The revised Federal Motor Carrier Safety Regulations (FMCSR) issued in January 2004 no longer require a cab guard for trucks—instead the regulations now focus more on load securement than on vehicle crashworthiness. Use of a cab guard is now left to the discretion of operators. Generally, cab guards attach to truck frame rails behind the cab structure. The header board or cab guard, when placed on the back of a heavy truck, is not part of the cargo securement system. Instead, they offer crashworthiness protection in the event of a load shift. Cargo securement methods, under both old and new regulations, are generally left to the discretion of heavy truck operators, with guidance from the FMCSR.

Unfortunately, there are no government design or performance standards that apply to the manufacturers of cab guards. As a result, operators are often unaware of poor design and manufacturing issues than can be associated with the performance and safety of cab guards. The old FMCSR provided performance criteria, not design criteria, for cab guards that operators had to meet. Old §393.106 governed the performance requirements of cab guards prior to 2004. Performance requirements under §393.106 generally required that a cab guard be able to resist a static load equal to 50% of the weight of the cargo being transported, uniformly distributed over the entire surface of the cab guard.

Cab guard manufacturers have taken the performance requirement of old §393.106 and translated it into a loose design protocol. Our experience has shown that typically cab guard manufacturers statically load a welded aluminum cab guard that has been designed to fail at 20,000-25,000 pounds. According to the language of the old §393.106, such a guard would meet the performance requirement for cargo weighing 40,000-50,000 pounds. However, cab guard manufacturers’ weight limitation warnings can be somewhat misleading.

In most instances, warning stickers indicate that cab guards have been tested to “comply” with FMCSR requirements for suitable loads of 40,000-50,000 pounds. The manufacturers never inform operators that the cab guards will actually fail at static loads of 20,000-25,000 pounds. Thus, the warning labels give the impression that the guard will actually resist a load of 40,000-50,000 pounds. Under the new FMCSR §393.114, there is no performance requirement for cab guards attached to a heavy truck. Now, only front end structures attached to trailers where cargo is in contact with the structure have a performance requirement.

More importantly, our experience with the cab guard industry reveals that manufacturers have never tested their products dynamically to determine how the product will perform under real-world accident conditions. Typically, cab guard manufacturers claim that as long as they comply with the performance criteria of old §393.106, they have done all that is required from a product design standpoint. However, the provisions of the FMCSR are not regulations that apply to the manufacturers, and they are not design standards.

In some instances, cab guard manufacturers cannot show that any product engineering ever occurred for cab guards sold to the public. In some cases, manufacturers have taken the position that their cab guards are not designed to protect the cab during accidents, but rather offer protection during normal braking. However, the products are marketed as safety devices to protect drivers and occupants during the event of load shifts. Cab guard manufacturers generally admit that their product is intended to protect occupants from shifting cargo and admit that they have not restricted use to only non-accident circumstances.

Finally, most cab guards are made of heat-treated aluminum. This material allows for the production of a lightweight product that is relatively easy to maintain. However, welding heat-treated aluminum generally reduces the strength of the aluminum by one third. Welded aluminum is also subject to structural fatigue due to cyclical loading during truck operation. This structure fatigue also erodes the strength of the cab guard. Finally, welded aluminum will not bend or stretch under loads like steel does. Therefore, when welded aluminum reaches its maximum load, it typically fractures and catastrophically fails.

A steel cab guard will not fail in such a fashion and typically provides better protection to occupants, even past its predicted loading capacity. If a manufacturer is going to market a safety device, it should have appropriate engineering and design components. Current aluminum cab guards generally miss their mark for safety. If you need more information on this subject, contact Ben Baker, a lawyer in our firm, at 800-898-2034 or by email at Ben.Baker@beasleyallen.com.

**Motorcycle Helmet Safety**

We know that folks in the U.S. will always ride motorcycles. We also know that, even when exercising the utmost caution, accidents can and will happen. Riders must be ready when their skill, judgment and plain old good luck aren’t enough. There are many ways to prepare for motorcycle accidents. An important way to make sure that riders are ready for an accident, despite all other precautions, is to wear a helmet.

Helmets are the principal line of defense for a rider who receives a head impact. Human heads are adept at avoiding impact. We can duck, dodge and use other body parts to prevent the impact to the head. Unfortunately, it isn’t always possible to avoid head impact when traveling at highway speeds. The best way to avoid injury or even death when the impact cannot be avoided is to protect the head with a good crash helmet.

Unfortunately, all helmets are not made equally. Some helmets fail to protect riders from foreseeable impacts and provide the fundamental function of protecting the head. These helmets can fail by not having sufficient energy-absorbing capabilities or by failing to stay on the rider throughout the accident. Lawyers in our firm are currently investigating an incident where a helmet came off the rider during a motorcycle crash. That person—a husband and father—died of a head injury in a very low speed foreseeable crash. He had no other injuries except to his head. I wonder how many times this man wore his helmet and never needed it at all. But, the one time when he really needed a helmet, his helmet failed.

The government has requirements for helmets sold in the United States. You can tell many times if the helmet passes the minimum U.S. standards by the familiar DOT sticker. DOT helmets are better than riding bareheaded, but these minimum standards leave considerable room for improvement.
One way to determine if your helmet meets a higher safety standard is to look for Snell certification in addition to that provided by the DOT. These higher Snell certification standards provide a much greater level of protection, but they are voluntary for the manufacturers.

Our firm litigates cases involving defects in helmets when they are found to be unreasonably dangerous and fail to perform as the consumer expects. If you have any questions regarding a motorcycle helmet or any helmet, please contact Chris Glover, a lawyer in our firm who handles product liability claims, at 800-898-2034 or by email at Chris.Glover@beasleyallen.com.

**Pattern Of Fraud Brings Down Goodyear**

Beasley Allen lawyers have been dealing with Goodyear’s evasive discovery techniques for years. In 2007, Rick Morrison, a lawyer in our firm, was in the midst of a three-year-long discovery battle with Goodyear in a case titled Woods v. Goodyear. That case involved family members who were injured when the left front tire of their 2001 Monaco Diplomat RV de-treaded, causing their RV to leave the roadway, cross over the median and two lanes of travel before slamming into an embankment at a rest area. That tire was a G159, which was manufactured by Goodyear and sold by Goodyear to be utilized on RVs.

After rounds of discovery requests and disputes, Rick served a Fifth Request for Production of Documents on Goodyear asking that Goodyear produce “all other testing conducted by Goodyear . . . that was undertaken, at least in part, to determine the suitability of [G159] tires to be driven at 65 mph.” Instead of producing the tests, Goodyear responded with general objections and would not agree to produce testing relevant or responsive to the request.

Rick again sought the court’s assistance, and after a hearing, the court ordered Goodyear to produce all tests that were relevant in determining whether the G159 was suitable for recreational vehicles driving 65 mph. The problem for Goodyear is that they didn’t learn from the court’s frustration in Woods. Instead, Goodyear continued to conceal testing that it knew would be relevant in determining whether the G159 was defective.

Because of Goodyear’s continuous fraudulent discovery practices, the United States District Court for the District of Arizona handed down hefty sanctions against the company in a lengthy opinion published early this month. The following article, written by Sean Kane from The Safety Record, Safety Research & Strategies, summarizes Goodyear’s pattern for fraudulent discovery techniques and how this new order will impact future litigation, and in particular, Goodyear. Even though the article is rather long, it’s well worth reading. It says lots about how Goodyear operates.

**Pattern of Fraud Brings Down Goodyear**

Is it time for Goodyear to just give up the ghost on the G159 tire? Sure, they had a good run for a while, selling the tire to the motor home industry—even though the tire was designed for urban delivery vehicles and speed-rated for only 65 mile per hour continuous use. And when those tires failed on motor homes, causing rollovers, catastrophic injuries, deaths and lawsuits, Goodyear had a good run limiting the damage by keeping the damming documents from spreading from one litigant to another—or just keeping them to themselves. But their run seems to be about done, for the tire and the legal strategy.

The Chief Justice of the United States District Court for the District of Arizona, Roslyn O. Silver, has issued a lengthy and devastating sanctions order against Goodyear, and attorneys Graeme Hancock of Fennemore Craig PC and Basil Musnuff formerly of Roetzel & Andress, who represented the tire maker against the product liability claims lodged by the Haeger family. Judge Silver’s order starts like this:

"Litigation is not a game. It is the time-honored method of seeking the truth, finding the truth, and doing justice. When a corporation and its counsel refuse to produce directly relevant information an opposing party is entitled to receive, they have abandoned these basic principles in favor of their own interests. The little voice in every attorney’s conscience that murmurs turn over all material information was ignored."

And Judge Silver’s order doesn’t get any better for Musnuff, Hancock and company. Their misconduct, she wrote, stems the defense’s long history of refusing to turn over a slew of internal testing showing that Goodyear knew just how unsuit the G159 was for motor home use. Hancock, Goodyear’s local counsel, was ordered to pay 20 percent of the total sanctions and Musnuff and Goodyear are jointly responsible for the remaining 80 percent. Saying that it’s likely that the case would have settled much earlier, Judge Silver started the penalty clock at November 2006, “after Goodyear served its supplemental responses to Plaintiffs’ First Request. That was the first definitive proof that Goodyear was not going to cooperate in the litigation process.”

The actions of Judge Silver and her staff reflect an unwavering commitment to the pursuit of truth consistent with the highest standards of American jurisprudence,” said attorney David L. Kurtz, who represented the Haegers. “It is my honor to practice law in her court and she sets an excellent example of thoughtful decision making to guide the conduct of litigants in every court.”

Judge Silver also required Goodyear to file a copy of this order in any subsequent G159 tire case.

Based on Goodyear’s history of engaging in serious discovery misconduct in every G159 case brought to this Court’s attention, filing this Order in future G159 cases will alert plaintiffs and the courts that Goodyear has, in the past, not operated in good faith when litigating such cases. It will also serve as notice of the existence of certain tests Goodyear attempted to conceal in previous cases.

She noted that the Haegers are free to separately renegotiate their settlement agreement and pursue “an independent cause of action for fraud based on Mr. Hancock, Mr. Musnuff, and Goodyear’s behavior.” Finally, Judge Silver alluded darkly to unspecified "unfortunate professional consequences," for Hancock and Musnuff to follow.

**Litigating the G159**

Goodyear had spent nearly a decade in the 1990s and 2000s marketing the G159 to the RV industry—even though the tire design was prone to overheat on RVs that typically travel at greater than 65-mph speeds for extended periods. Goodyear knew it was dangerous for motor homes, but didn’t want lose a market segment. So, in 1998, after speed limits increased nationwide, Goodyear bumped the speed rating of the G159 to 75 miles per hour.

In 1999, Fleetwood was the first motor home manufacturer to launch two recalls covering more than 3,400 Class-A motor homes because of inadequate total front tire weight capacity. It replaced the Goodyear G159s with a larger Michelin model, after four accidents involving two fatalities. In 2002, Goodyear issued a Product Service Bulletin announcing that the Monaco Coach Corporation would be offering replacement tires to owners of 1999, 2000 and 2001 Windsor model Class-A motor homes equipped with G159 tires.

In all three cases, the problems were blamed on inadequate load margin and customer misuse; Goodyear assured the public that the tires are safe for all uses. But by 2006, Goodyear was marketing an entirely different model tire that had been developed for recreational vehicles, the G670 RV. According to Tim Miller, Marketing Communications Manager for Goodyear, the...
G159 was not an appropriate application for RVs and noted “the G159 was a truck tire that was used on RVs.” But, since the tire itself had never been recalled, other RV manufacturers and owners were still using the G159 275/70R22. In June 2003, Leroy and Donna Haeger, owners of a Gulf Stream Coach were among them. Leroy Haeger was driving his Class-A motor home on Interstate 25 in New Mexico, when the right front tire failed. The Gulf Stream veered to the right and then rolled over, seriously injuring the Haegers and their passengers, Barry and Suzanne Haeger.

The Haeger litigation was hardly unique. Goodyear has defended or is defending about 40 other death and injury and an estimated 20 property-damage tread separation cases involving G159s on Class-A motor homes. All but one have been quietly settled, with Goodyear securing non-sharing protective orders—if the Haeger case is any indication—to keep plaintiffs’ lawyers in the dark about what Goodyear knew about the G159’s propensity for overheating and failing under the load of a motor home at highway speeds. Occasionally, evidence of Goodyear’s knowledge popped into view.

In June 2003, Goodyear claims administrator, Kim Cox, reportedly admitted in a deposition that Goodyear knew that its G159 tire did not “perform properly” on Class A motor homes... The admission was apparently so damaging that the tire maker’s counsel immediately terminated the deposition, negotiated a settlement and arranged for every scrap of the deposition’s existence to be destroyed. In 2008, U.S. District Court Judge Magistrate Nita L. Stormes ruled that Cox’s deposition was not subject to a Protective Order filed in the 2002 case of Phillips v. Goodyear, and ruled against a motion to modify the Protective Order to allow five plaintiffs in other pending G159 cases to have access to Cox’s deposition testimony, because Cox’s deposition was never protected to begin with.

At the time, some attorneys predicted that the Cox deposition would drive a stake through the heart of Goodyear’s defense in these cases. But the tire maker apparently continued to successfully spin each case, settling G159 tread separation cases involving serious injuries and deaths, in exchange for confidentiality.

Then, in June 2010, a jury in Schalmo v. Goodyear handed the tire maker its first public loss... Pasco County, Florida jury found that the Goodyear Tire & Rubber Company had sold a defective tire marketed to recreational motor home manufacturers, even though the tire was not suitable for RV use. This was the first G159 tire case to be resolved in a public trial and the Schalmo family initially refused to agree to a confidential settlement.

At trial, Schalmo’s attorneys, Christopher Roberts and Hugh Smith, presented Goodyear documents including internal heat and speed testing and failure rate data showing that Goodyear knew the G159 was improperly approved for 75 mph continuous highway use. At verdict, the victims’ families hoped that Goodyear would recall the tire and petitioned the Florida Circuit Court to unseal the pertinent documents. But more settlement negotiations ensued and the documents remained under seal.

Haeger Brings Pattern of Discovery Fraud into View

The Schalmo case, however, may have, ultimately, undone Goodyear’s strategy to minimize the legal damage. Kurtz, of the Scottsdale Arizona firm bearing his name, had already settled the Haeger case in a brutal five-year litigation that included more than 1,000 pleadings, when he read about the Schalmo verdict in The Safety Record. He suspected that the tire maker had duped him into thinking that the tests it had produced during the discovery were all that were available—and he wasn’t the only one. In the Woods v. Goodyear case, which involved a Monaco Diplomat motor home crash, the Alabama judge lost patience with Goodyear’s discovery stonewalling tactics over three years, ordered the manufacturer in August 2007 to “to produce to the Plaintiff every document requested regarding the [G159] tire,” Silver wrote.

I fought tooth and nail for three years trying to get the relevant documents showing that the G159 was not suitable for over the road use by RVs,” recalled Attorney Rick Morrison, who represented the Woods family and litigated two other G-159 cases. “I remember the bearing like it was yesterday. The judge said: “Gentlemen, I am disgusted with this. You will produce every document that references the G-159.” When you read Judge Silver’s Order it appears that Goodyear’s production may still be in question.”

Bogaert v. Goodyear, an Arizona case, involving a Fleetwood motor home crash, was also marked by the “extreme difficulty in convincing Goodyear to produce documents, according to Judge Silver’s Order. In 2008, the discovery special master ordered Goodyear to produce the “testing conducted by Goodyear of its [G159] tires that was under-taken, at least in part, to determine the suitability of such tires to be driven at 65 mph without an undue risk of tread or belt edge separations.”

Kurtz had initially asked Goodyear for all the G159 testing, including “road tests, wheel tests, high speed testing, and durability tests.” Goodyear objected to the request and submitted a partial response, producing only National Highway Traffic Safety Administration compliance tests showing that the G159 met federal standards—without acknowledging that its response was not complete.

Although Kurtz had settled Haeger in April 2010, after he read about Schalmo, Kurtz wrote to Musnuff, asking if Goodyear had failed to produce everything requested. In all, there were three exchanges between Kurtz and Musnuff about the existence of other tests, particularly internal heat test records. In his last reply, Musnuff finally conceded: “It is true there are testing records regarding the [G159] tire that were not produced in the Haeger litigation. That fact was clear during the course of the litigation, and certainly at the time plaintiffs chose to resolve this case.” Musnuff went on to argue that Kurtz’s initial request for all testing data did not automatically create an obligation to provide it. Goodyear objected to the request, and submitted what it had determined was responsive. Goodyear never said that it had submitted all of its test data, Musnuff wrote.

On May 31, 2011 Kurtz filed a motion alleging discovery fraud. By Judge Silver’s own account, she had been irritated with Kurtz for leveling similar allegations at Goodyear as the case ground on:

Throughout the numerous discovery dispute filings and hearings, the Court was under the impression that Goodyear had produced all test data relevant to Plaintiffs’ claims. In fact, at various points the Court became exasperated with Plaintiffs’ apparently unsubstantiated claims that additional information must exist. Based on personal observation and discussions with Mr. Hancock during in-court hearings, the Court came to believe Mr. Hancock thoroughly understood his discovery obligations and that he was making every effort to comply with them. There simply was no reason for the Court to question Mr. Hancock’s representations and Plaintiffs’ repeated attempts to cast aspersions on Mr. Hancock appeared misguided. Of course, now that Goodyear has been forced to admit additional information does exist, that exasperation was misplaced.

In a painstaking re-creation of the flow of information over a six-year period within Goodyear—among its engineering experts and its legal advocates in four cases—Judge Silver documented the “dizzying array of mistakes and false statements,” that constituted the tire maker’s long-running cover-up and a deliberate strategy from all involved to lie to various plaintiffs about the existence of Heat Rise, extended DOT, crown durability, and the bead durability tests, and, if forced to acknowledge them, lie about what they indicated about the RV application for the G159.
Judge Silver was unsparing in her assessment of Goodyear’s corporate representative and expert, Richard Olsen, who lied in a September 2007 deposition in which he testified that the four tests that Goodyear had turned over to Kurtz represented the totality of the G-159 testing. Olsen, she said, “provided false testimony but the falsity emerged only as a result of Goodyear’s inability to keep its falsehoods straight.”

From the very beginning,” Judge Silver wrote, “Mr. Hancock, Mr. Musnuff, and Goodyear adopted a plan of making discovery as difficult as possible, providing only those documents they wished to provide, timing the production of the small subset of documents they were willing to turn over such that it was inordinately difficult for Plaintiffs to manage their case, and making false statements to the Court in an attempt to hide their behavior.

What Does the Haeger Order Mean?

Judge Silver’s Order may provide future litigants with the shortcut to an appropriate settlement, but how many more G-159 cases are out there yet to be litigated? Attorneys familiar with the landscape of G159 litigation say there are no more than a few active cases right now. But that doesn’t mean there won’t be more if Goodyear doesn’t recall the G159 tires still in service on RVs. RV owners may only take their behemoth home-on-wheels out for a journey a couple of times a year. The low mileage on the tires, combined with the fact that they are re-grooveable, and that the G-159 tires have never been recalled, means that they are still on RVs—despite their age.

I get calls almost every month, asking me if it’s safe to take the G159 spare and put it on the RV,” says Morrison, of the Beasley Allen firm based in Montgomery, Alabama. “You have tires that are more than 9 years old that were never safe to be on the vehicle to begin with now even more dangerous, because of tire age. I received a call from a gentleman whose tires were nine years old, but only bad 20,000 miles on them. Odds are they are going to be rotated into service.

In the wider context of product liability litigation, the lessons of Haeger are even more troubling. Judge Silver opined that litigation is not a game. But two recent orders in unrelated cases—equally acid in their judgment of the defense’s bad faith conduct—show that some defense firms do and Goodyear certainly didn’t invent the game.

In January 2012, a federal judge in Atlanta ordered Michelin North America to pay attorneys’ fees and found that a Uniroyal Laredo tire was “defective and reasonably dangerous,” in sanctioning the tire maker for nearly two years of discovery abuse...

“[u]m, Michelin’s bad faith conduct caused serious prejudice to the integrity of the legal process and to Plaintiffs’ orderly, effective development and proof of their case,” U.S. District Judge Amy Totenberg, of the Northern District of Georgia wrote in her 61-page decision. “The pattern of abuse by Michelin is extremely troubling.”

And in July 2011, William T. Swigert, senior judge of Florida’s Fifth Judicial Circuit, issued a withering 51-page decision, which struck down Ford Motor Company’s defenses in a catastrophic Sudden Unintended Acceleration case (SUA) and ordered a new trial on the issues of compensatory and punitive damages only. Relying upon the 12,000-page record, Judge Swigert laid out in great detail how Ford had destroyed reports from company field engineers identifying the cruise control electronics as the source of the problem, and systematically lied to NHTSA and its own experts, allowing them to discredit plaintiffs’ experts by using government reports known to be ungrounded and unscientific...

Morrison, who is on the Executive Committee for the Products Liability Section of the American Association for Justice and is chairman of AAJ’s Product Liability Section, says that judges start with the presumption that both sides are following the rules of procedure, and it’s hard to persuade them that one side is breaking them with abandon.

“Unfortunately this case demonstrates the situation where the defendant took advantage of that presumption” says Morrison. “But, the discovery system is important to protect the public from corporate wrongdoing. What’s so sad is that this order highlights the extent to which Goodyear placed profits over safety. They clearly knew that the tire wasn’t safe for RVs, and went ahead and sold it anyway. As a result, you have 30 to 40 families who lost loved ones and whose lives were forever changed.”

Morrison says that it’s important for Plaintiffs’ attorneys to fight at the outset for sharing orders in confidentiality agreements, so that attorneys can work together and build on the discoveries in previous cases. “That’s critical,” he says. “You have to be dedicated and stay after the companies during discovery and prosecute the case to the fullest.”

Conclusion

It remains to be seen whether the new sanctions levied against Goodyear will change the game for Plaintiffs’ lawyers. Hopefully, Goodyear has learned a lesson from Judge Silver’s order and will now deal in good faith and follow the discovery rules which are so important to our justice system. At least lawyers representing victims hurt by Goodyear’s product will now know to be wary of Goodyear’s practices. If you would like more information on Goodyear’s discovery practices or the sanctions recently entered against Goodyear, please contact Rick Morrison at Rick.Morrison@beasleyallen.com or at 800-898-2034.

Source: This article was reprinted with permission from The Safety Record, Safety Research & Strategies. Taken from http://www.safetyresearch.net/2012/11/14/pattern-of-fraud-brings-down-goodyear/
A handful of medical device corporations, including Johnson & Johnson’s Ethicon, Boston Scientific, C.R. Bard, American Medical Systems, Coloplast, and Mentor manufacture about 20 transvaginal mesh kits, which are designed to replace “native tissue repairs” and shore up prolapsed organs. Unfortunately, none of these devices were adequately tested before they were approved for market, and only after they were implanted in hundreds of thousands of women did the frequency and severity of their complications come to light. Most of these complications involve erosion (also called mesh exposure, extrusion, or protrusion) brought about by what physicians call “compliance mismatch,” according to Australian urogynecologist Richard Reid, who is treating the lead Plaintiff in Australia’s transvaginal mesh class action.

The fibrous polypropylene mesh acts like a cheese grater on the softer organs and tissues it contacts. This grating effect can rub a hole in the vaginal wall, or it may perforate the bladder or other organs, or shred surrounding tissue, resulting in intense pain, neurovascular problems, inability to walk, dyspareunia (painful sexual intercourse), vaginal scarring and shrinkage, bleeding, infection, and severe emotional distress often to the point of suicidal thoughts. From 2008 to 2011, seven deaths were attributed to transvaginal mesh complications. Mesh complications may also arise when the device shifts out of place or breaks apart.

Tom Margolis, a Bay Area pelvic surgeon who specializes in removing transvaginal mesh, says that all transvaginal mesh kits are fundamentally flawed because they contradict the core principles of surgery. Dr. Margolis recently testified at a U.S. Food and Drug Administration meeting that passing a sterile, porous mesh device through the vagina for implantation violates the Golden Rule of surgery. He stated: “You shall never implant a synthetic object in anyone’s body, anywhere, if it’s contaminated. To do so is to put the patient at serious risk of infection.”

The problems with transvaginal mesh are exacerbated by the difficulty of removing the devices when things go wrong. The thin, fibrous mesh quickly becomes intertwined and incorporated with the surrounding tissue. Complete removal of mesh can be extremely difficult, if not impossible, requiring multiple surgeries over years. Mesh removal is also very dangerous because, as Dr. Margolis explained, it’s like trying to extract rebar from a hardened concrete slab without damaging the surrounding water mains and electrical cables.

The FDA issued its first transvaginal-mesh Public Health Notification in 2008 after detecting a pattern of adverse events in its post-market surveillance of the devices. From 2008 to 2011, the agency received 2,874 adverse event reports involving transvaginal mesh devices—a fivefold increase in just three years. In 2011, the agency issued a stronger warning, saying that mesh failure rates could be as high as 10 percent, citing recent studies that found the devices may have ample risks without any apparent benefit. In 2012, the FDA ordered the manufacturers to test their devices for safety and efficacy. Any transvaginal mesh kits that failed could be removed from the market.

It was most unfortunate that the FDA allowed these potentially dangerous products onto the market in the first place. The growing mesh problem underscores flaws with the 510(k) approval process the FDA relies on to expedite many medical devices to market. This system puts medical devices on a fast track through the approval process if they are substantially similar to already-approved devices. According to Drugwatch, transvaginal mesh devices fast-tracked through FDA approval were based on a device that was recalled from the market years later due to serious structural flaws and other problems. Ultimately, it is the manufacturer’s responsibility, however, to test its products for safety and effectiveness before they seek government approval for them. Litigation to hold manufacturers accountable is critical to the prevention of similar public health disasters in the future. Lawyers in our Mass Torts are very privileged to be a part that process. They represent innocent victims of corporate greed. If you have questions, contact Leigh O’Dell, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Leigh.Odell@beasleyallen.com.

Source: lawyersandsettlements.com

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**GLAXOSMITHKLINE AGREES TO SHARE AVANDIA INFORMATION**

Following concerns that it hid important clinical data on Avandia, drug maker GlaxoSmithKline (GSK) has now agreed to share more clinical data. GSK was recently fined for withholding safety data about the risk of Avandia side effects from the U.S. Food and Drug Administration. The FDA has severely restricted the uses for Avandia, and GSK has faced hundreds of Avandia lawsuits. In July 2012, the drug company agreed to pay $3 billion in criminal and civil fines following allegations the company did not give the FDA important safety information about Avandia, including information concerning the risk of heart problems linked to the drug. The settlement also covered allegations concerning the off-label marketing of Paxil and Wellbutrin.

Of the $3 billion, $1 billion was paid for criminal fines and forfeitures, and $2 billion was to settle state and federal allegations. GlaxoSmithKline had information from its own trials that indicated Avandia was linked to an increased risk of heart attack, but that data was never reported. It was not until Dr. Steven Nissen, a noted cardiologist, published his study in the *New England Journal of Medicine*—based on information from GlaxoSmithKline trials—that the increased risk of heart problems linked to Avandia became public.

In 2010, the FDA voted to restrict the use of Avandia, severely limiting when and how doctors can prescribe the medication. Following that, sales of Avandia dropped significantly as patients switched to a rival drug, Actos. GlaxoSmithKline also faced lawsuits alleging the company failed to adequately warn patients and doctors about the risks associated with Avandia. In 2010, GlaxoSmithKline reportedly agreed to settle lawsuits involving almost 700 Plaintiffs, who alleged the drug maker hid the risks of Avandia from the public and from the medical community. In October 2012, GlaxoSmithKline announced it would make more of its drug research available in an attempt to increase transparency. That move will include releasing information about experimental drugs. The company said it will have a panel of experts review requests for information sent by researchers and, if approved, data will be made available. Drug companies run trials on their drugs and gather a great deal of research, but most of that data is never made public, or is made public in a way that highlights positive results and downplays negative results.

If you need more information on Avandia, contact Frank Woodson, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Frank.Woodson@beasleyallen.com.

Source: www.lawyersandsettlements.com

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**REPORTS OF INJURY FROM FRACUERED BARD IVC AND G2 FILTERS**

In August, 2011, the Food and Drug Administration received a personal injury report of a patient requiring hospitalization due to the breakage of an implanted Bard inferior vena cava (IVC) Filter. Specifically, it was a G2 IVC Filter. According to the report, the fracture of the IVC arm was found on a CT scan. This incident, which is not isolated, came after an FDA-issued warning in August 2010, citing problems with retrievable IVC filters including hematomas. In a study published in 2010 in the *Annals of Vascular Surgery*, migration/tilt was higher in Bard filters compared to other filters.

IVC filters are small, spider-like devices which are surgically inserted into the inferior vena cava to prevent blood clots from reaching the lungs. But these devices can suffer from fatigue, causing them to fail and fracture, ultimately migrating through the body causing damage which could be life-threatening. The reported problems with the Bard IVC filters include a high rate of perforation of the vena cava resulting in perforation...
of the surrounding tissue, intestines, spine, vertebrae and arteries.

Complications due to a failure of an IVC filter can include pulmonary embolus, severe and constant pain in the chest, heart or other parts of the body, respiratory distress, tissue perforation, organ perforation, vessel perforation, and hemorrhage. This is, quite obviously, a most serious matter.

Source: lawyersandssettlements.com

**Medtronic Slammed During Senate Hearing**

Blockbuster revelations made to a U.S. Senate investigation committee paints a bleak picture of the integrity of the medical devices industry. This is an industry that appears to be motivated by greed and success at the ultimate expense of patient safety. Specifically, it was said that Medtronic helped control the content of published papers trumpeting the company’s Infuse product, and paid doctors millions of dollars in fees in exchange for their co-authorship of papers. It was also alleged that serious risks were downplayed and benefits overstated by Medtronic. The company has disputed several findings in the report.

Infuse is a breakthrough product that was touted as revolutionizing spinal surgery. Rather than grafting bone from elsewhere in the human body, Infuse is a natural enzyme that fosters natural bone growth at the site. Infuse was granted approval by the U.S. Food and Drug Administration for certain procedures, but was not approved for others due to various concerns. But even the very approval of Infuse is clouded in controversy, if the testimony heard by U.S. Senate investigators can be believed.

It was revealed at hearings conducted by the Senate Committee on Finance that even before Infuse was approved, a medical doctor appeared before an FDA advisory panel in January 2002 and spoke glowingly about Infuse. Dr. Hal Matthews, according to the report, spoke in the present tense that he had no financial interest in Infuse and was not being paid to attend the meeting. But it was revealed that Dr. Matthews had been paid by Medtronic a year prior, under a consulting arrangement. It was also alleged the speech Dr. Matthews made to the advisory panel was crafted with the help of a New York public relations firm paid by Medtronic for the work. Dr. Matthews was eventually hired in 2007 by Medtronic as the manufacturer’s president of medical and clinical affairs.

There were other allegations that, if true, are most serious and damaging to Medtronic. Senate investigators heard that no fewer than 15 doctors were paid a total of $210 million over a span of 15 years to help craft papers in support of Infuse—papers that have since been repudiated. One professional journal devoted an entire issue to the repudiation of papers that appeared to contain bias and marketing slants. One reviewer noted: “This manuscript is full of biased statements that are a reflection of the data evaluators—the company that markets the product.”

In another case, the co-author of a paper that appeared in the *Spine Journal* in 2004 also served as a deputy editor and received $3.1 million in payments from Medtronic from 1998 through to 2010. It was revealed those payments were evenly split with the university that employed the doctor as chairman of the neurosurgery department. While Infuse was approved for lumbar spine fusions “from the front” in 2002, various alleged attempts to promote and use Infuse for unapproved uses has gotten the company in deep trouble. Several patients have suffered as a result.

While doctors have always had the legal, moral, professional and ethical authority to supersede FDA recommendations and employ drugs and medical devices for unapproved uses, it is clearly illegal for manufacturers to promote such uses. It may be an understatement to say that Medtronic didn’t fare well at the Senate hearing. Dr. Harlan Krumholz, a professor of medicine at Yale University, had this to say:

> It’s no wonder the public has lost confidence in the drug and device industries. It paints a picture of a company very heavily involved in the science; marketing [and] contaminating the science; and the medical profession and researchers being complicit.

Hopefully, Congress will take action on this issue. Based on our experience in litigation with the drug and medical device industries, I believe Dr. Krumholz is absolutely correct. The public should be outraged to learn how these industries operate. Clearly folks are losing confidence in the FDA when it comes to its regulation of the drug and medical device industries. There must be some changes at the FDA, and Congress must make sure the agency does its job. But that will require breaking loose from the powerful lobbyists who represent these industries.

Source: lawyersandssettlements.com

**Anti-Depressants Can Cause Birth Defects**

Selective serotonin reuptake inhibitors (SSRI) and serotonin-norepinephrine reuptake inhibitors (SNRI) are popular classes of antidepressants prescribed to a variety of patients suffering from emotional and cognitive disorders. Various studies have suggested that, while their benefits outweigh the risks for most patients, a point of concern remains when women who become pregnant—or are thinking of becoming pregnant—continue on the medication through the course of their pregnancy. Also, there is concern even when the drugs are taken only during a part of the pregnancy.

SSRI antidepressants have been known, in rare cases, to foster birth defects in babies. Both SSRIs and SNRIs increase levels of serotonin in the brain. But SNRI medications also affect the levels of norepinephrine in the patient’s brain. Various studies have also suggested SSRI antidepressants can trigger PPHN, or persistent pulmonary hypertension of the newborn, a rare condition involving the lungs. If you need more information please contact Roger Smith, a lawyer in our Mass Tort Section, at 800-898-2034 or by email at Roger.Smith@beasleyallen.com.

Source: lawyersandssettlements.com

**Flawed Drug Due To Bleeding**

When the U.S. Food and Drug Administration released the result of a Mini-Sentinel assessment of Pradaxa, the new-age anti-clotting agent that serves as an alternative to the 60-year-old standby drug warfarin, the regulator noted that Pradaxa bleeding rates do not appear to be any higher than those of warfarin. The assessment, on the surface, may have served as an attempt to vindicate the FDA in the face of criticism over the approval of Pradaxa (dabigatran etexilate mesylate), which is far easier to monitor than the older warfarin. However, as noted recently in the *New York Times*, the report did not reference the serious attribute of dabigatran Pradaxa that once bleeding starts, it’s almost impossible to stop. The problem with Pradaxa is not shared by warfarin and that’s because doctors have means available to stop uncontrolled bleeding in warfarin patients. Such an antidote does not exist with Pradaxa—at least not yet. It was reported that Pradaxa has contributed to the bleeding deaths of at least eight patients at Memorial Hermann-Texas Medical Center in Houston.

*The New York Times* reported that no fewer than 542 deaths have been linked to Pradaxa—either due to bleeding or Pradaxa heart attack—in 2011 alone. The Institute for Safe Medication Practices notes that Pradaxa was also linked to more reports of injury or death than any of the more than 800 drugs the not-for-profit agency regularly monitors. Pradaxa has only been on the market since October 2010 and was quickly embraced by doctors for the ease of monitoring, with fewer dietary restrictions than Coumadin (warfarin).

In reference to Pradaxa side effects, manufacturer Boehringer Ingelheim stands behind Pradaxa as safe. The FDA is correct in that bleeding is also possible with warfarin. However, with the latter, bleeding can be stopped by administering vitamin K or other substances. There is no such antidote for dabigatran Pradaxa, but the FDA approved it...
IX. AN UPDATE ON SECURITIES LITIGATION

JPMORGAN AND CREDIT SUISSE SETTLE WITH SEC FOR $417 MILLION

JPMorgan Chase & Co and Credit Suisse Group AG will pay a combined $416.9 million to settle U.S. civil charges that they misled investors in the sale of risky mortgage bonds prior to the 2008 financial crisis. JPMorgan will pay $296.9 million, while Credit Suisse will pay $120 million in a separate case, with the money going to harmed investors, according to the U.S. Securities and Exchange Commission.

Both settlements addressed alleged wrongdoing in the packaging and sale of risky residential mortgage-backed securities (RMBS), including at the former Bear Stearns which JPMorgan bought in 2008. SEC enforcement chief Robert Khuzami had this to say in a statement:

Missrepresentations in connection with the creation and sale of mortgage securities contributed greatly to the tremendous losses suffered by investors once the U.S. housing market collapsed.

The SEC accused JPMorgan of materially overstating in a prospectus the quality of home loans that backed a $1.8 billion RMBS offering it underwrote in December 2006. According to the SEC, the largest U.S. bank represented that just four loans were delinquent by 30 to 59 days, when in fact there were more than 620, which was about 7 percent of the total. Investors lost at least $37 million as a result, according to the SEC. The regulator also faulted Bear's failure to disclose its having arranged discounted cash settlements with originators that left investors stuck owning many problem loans, rather than forcing the originators to buy the loans back. It said Bear made at least $137.8 million from the practice.

The SEC said that Credit Suisse failed to disclose similar settlements, which netted $55.7 million. The Swiss bank also misled investors by falsely claiming when it would buy back mortgage loans in two offerings in which borrowers had defaulted on their initial payments, and that “all first payment default risk” had been removed, according to the SEC. About $84 million of JPMorgan's payout and $39 million of Credit Suisse's represented fines. The JPMorgan settlement requires approval by a federal judge in Washington, D.C., while Credit Suisse's case was resolved in an SEC administrative proceeding. The cases are SEC v. JPMorgan Securities LLC et al, U.S. District Court, District of Columbia, No. 12-01862; and In re: Credit Suisse Securities (USA) LLC et al, U.S. Securities and Exchange Commission, No. 3-15098.

Source: Reuters

PFIZER SETTLES $67.5 MILLION SHAREHOLDER SUIT OVER PRISTIQ

Pfizer Inc. agreed to pay $67.5 million to settle a class-action lawsuit by former shareholders of Wyeth Inc. who said they were misled about risks associated with the antidepressant Pristiq. The settlement was disclosed on November 9th, one month after Pfizer agreed to pay $164 million to settle a separate lawsuit accusing it of misleading investors about clinical trial results for the arthritis drug Celebrex. Wyeth shares lost more than $7.6 billion of market value on July 24, 2007, after the company said the U.S. Food and Drug Administration would not approve Pristiq to treat ‘hot flashes’ in post-menopausal women until it learned more about potential heart and liver problems associated with the drug.

Shareholders, led by the Pipefitters Union Local 537 Pension Fund in Boston, contended that Wyeth’s failure to reveal adverse effects sooner caused its stock price to be inflated during the class period (June 26, 2006, to July 24, 2007). Pfizer bought Wyeth in 2009. Several former Wyeth officials, including onetime Chief Executive Robert Essner, were also Defendants in the case.

Pristiq generated $461 million of sales from January to September for Pfizer. Analysts once believed annual sales would top $2 billion for the drug, whose chemical name is desvenlafaxine. The settlement came after nearly six months of mediation. It requires approval by U.S. District Judge Richard Sullivan in Manhattan, who certified the class action in September.

The case, which has a Michigan retirement system as the named Plaintiff, is City of Livonia Employees’ Retirement System v. Wyeth et al, U.S. District Court, Southern District of New York, No. 07-10329. Laurie Largent, with Robbins Geller Rudman & Dowd, located in San Diego, and David M. Rosenfeld, with Herrick Feinstein, a New York City firm, represented the Plaintiffs in this case. They did a very good job.

Source: Reuters

X. INSURANCE AND FINANCE UPDATE

AGENT OBTAINS $42.8 MILLION VERDICT AGAINST NATIONWIDE INSURANCE

A jury has awarded $42.8 million in damages to Christine Lucarell in her lawsuit against her former employer Nationwide Mutual Insurance Company of Columbus, Ohio. Ms. Lucarell enrolled in an agency executive program with Nationwide. She was one of about 400 Nationwide agents who participated in the program. Nationwide told her she could earn more than $200,000 in annual commissions by participating in the program and that agents successfully completing the program could become independent insurance agents, according to Lucarell's testimony.

Even though her agency was profitable, Nationwide stopped financing Lucarell's agency and she claimed that the company essentially forced her to resign. Nationwide terminated about 90 percent of its agency executive agencies, including Ms. Lucarell's, "using unsustainable monthly production quotas to withhold financing from the agencies and then terminating them once the agents had generated a profitable book of business," the suit alleged. The breakdown for the damages was $5.7 million in lost profits, $1 million in emotional distress, and $100,000 for retaliation. The jury also awarded $36 million in punitive damages.

Caryn M. Groedel, a lawyer in Cleveland, Ohio, who represented Ms. Lucarell in her case, told the jury that Nationwide's actions "were not an accident" and asked jurors to "award one-twelfth of Nationwide’s $386 million in annual net profits as punitive damages." The jury spent two weeks listening to evidence in the case before returning the verdict for Ms. Lucarell. Lawyers in our firm have handled a number of cases where insurance agents were manipulated in an effort to get their book of business, so we understand full well how this woman was mistreated. Ms. Groedel, whose specialty is employment law, did a very good job representing her client in this case, getting a great result for her.

Source: Youngstown Vindicator Newspaper
XI. WORKPLACE HAZARDS

OCCUPATIONAL INJURIES AND ILLNESSES RATE UNCHANGED IN 2011

Nearly 3.0 million non-fatal workplace injuries and illnesses were reported by private industry employers in 2011, resulting in an incidence rate of 3.5 cases per 100 equivalent full-time workers, according to estimates from the Survey of Occupational Injuries and Illnesses (SOII) conducted by the U.S. Bureau of Labor Statistics. The rate reported for 2011 was unchanged for the first time in a decade during which the total recordable cases (TRC) injury and illness incidence rate among private industry employers declined significantly each year since 2002, when estimates from the SOII were first published using the current OSHA requirements for recording occupational injuries and illnesses. The following is an overview of what was reported by the government:

Private Industry Sector

The incidence rate of injury and illness cases involving job transfer or restriction only among private industry establishments declined in 2011. Rates remained unchanged from 2010 for all other case types—cases with days away from work, job transfer, or restriction together; cases with days away from work; and other recordable cases not requiring time away from work. Agriculture, forestry, fishing and hunting was one of only two private industry sectors to experience an increase in the rate of injuries and illnesses in 2011 compared to 2010, driven by increases in cases in both the crop production and animal production (primarily dairy cattle and milk production) industries. The rate of injuries and illnesses for the accommodation and food service sector also rose in 2011, driven largely by an increase in other recordable cases in both limited-service restaurants and full-service restaurants.

Two private industry sectors experienced declines in the rate of injuries and illnesses in 2011 compared to 2010—health care and social assistance (driven by declines both in hospitals and in nursing and residential care facilities) and retail trade (with large declines in cases among supermarkets and other grocery stores and several other industries). Manufacturing was the only private industry sector in 2011 in which the rate of job transfer or restriction only cases exceeded the rate of cases with days away from work. This continued a 14-year trend during which this was true. However, the rates for these two case types have been converging in recent years and differed by only 0.2 cases in 2011.

The incidence rate of injuries only among private industry workers declined to 3.3 cases per 100 full-time workers in 2011—down from 3.4 cases in 2010. In comparison, the incidence rate of illness cases was statistically unchanged in 2011. The TRC rate among state and local government workers of 5.7 cases per 100 full-time workers in 2011 was unchanged from 2010, but was still significantly higher than the private industry rate. The incidence rates for state government and local government individually also remained unchanged in 2011—4.6 cases and 6.1 cases per 100 full-time workers, respectively.

Private Industry Injuries and Illnesses

More than one-half of the nearly 3.0 million private industry injury and illness cases reported nationally in 2011 were of a more serious nature that involved days away from work, job transfer, or restriction—commonly referred to as DART cases. These cases occurred at a rate of 1.8 cases per 100 full-time workers, unchanged from 2010. Among the two components of DART cases, the rate for cases requiring job transfer or restriction declined from 0.8 to 0.7 cases per 100 workers, while the rate for cases involving days away from work remained unchanged in 2011 (1.1 cases).

Other recordable cases—those not involving days away from work, job transfer, or restriction—accounted for the remaining more than 1.4 million injury and illness cases nationally in 2011 and occurred at a rate that was unchanged from 2010 at 1.7 cases per 100 full-time workers. The TRC injury and illness incidence rate remained highest in 2011 among mid-size private industry establishments (those employing between 50 and 249 workers) and lowest among small establishments (those employing fewer than 11 workers) compared to establishments of other sizes.

More than 2.8 million (94.8 percent) of the nearly 3.0 million nonfatal occupational injuries and illnesses in 2011 were injuries. Among injuries, 2.1 million (75.2 percent) occurred in service-providing industries, which employed 82.5 percent of the private industry workforce covered by this survey. The remaining 0.7 million injuries (24.8 percent) occurred in goods-producing industries, which accounted for 17.5 percent of private industry employment covered by this survey in 2011. Workplace illnesses accounted for 5.2 percent of the nearly 3.0 million injury and illness cases in 2011. The rate of workplace illnesses in 2011 (18.0 cases per 10,000 full-time workers) was not statistically different from the 2010 incidence rate (18.1 cases). Rates among individual illness categories also remained unchanged with the exception of poisonings, for which the rate declined to 0.2 cases per 10,000 full-time workers in 2011 compared to 0.3 cases in 2010.

Goods-producing industries accounted for 36.0 percent of all occupational illness cases in 2011, resulting in an incidence rate of 31.0 cases per 10,000 full-time workers—statistically unchanged from 31.8 cases in 2010. The manufacturing industry sector accounted for 30.3 percent of all private industry occupational illness cases, resulting in one of the highest incidence rates among all industry sectors of 40.8 cases per 10,000 full-time workers in 2011—statistically unchanged from 41.9 cases in 2010. Service-providing industries accounted for the remaining 64.0 percent of private industry illness cases and experienced a rate of 14.6 cases per 10,000 full-time workers in 2011—statistically unchanged from the prior year. Among service-providing industry sectors, health care and social assistance contributed 24.8 percent of all private industry illness cases and experienced an incidence rate of 30.5 cases per 10,000 full-time workers in 2011—statistically unchanged from 30.2 cases in 2010.

National Public Sector Estimates

National public sector estimates covering approximately 18.5 million state and local government workers—for example, in police protection (NAICS 922120) and fire protection (NAICS 922160)—are available from the 2011 SOII for the fourth consecutive year. Approximately 820,900 injury and illness cases were reported among state and local government workers in 2011, resulting in a rate of 5.7 cases per 100 full-time workers—significantly higher than the rate among private industry workers (3.5 cases per 100 workers), and unchanged from the rate reported among these public sector workers in 2010. Nearly four in five injuries and illnesses reported in the public sector occurred among local government workers in 2011, resulting in an injury and illness rate of 6.1 cases per 100 full-time workers—significantly higher than the 4.6 cases per 100 full-time workers in state government.

State Estimates

Private industry and public sector estimates are available for 41 participating states and for the District of Columbia for 2011. Data for establishments in the nine states for which individual estimates are unavailable are collected by BLS regional offices and used solely for the tabulation of national estimates. As compared to a year earlier, private industry TRC incidence rates among the 41 states and the District of Columbia for which estimates are available in 2011 declined in seven states, rose in one state, and remained statistically unchanged in 32 states and in the District of Columbia (estimates for Pennsyl
vania for 2010 were not available for comparison). The private industry TRC incidence rates were higher in 19 states than the national rate of 3.5 cases per 100 full-time workers in 2011, lower than the national rate in 12 states and in the District of Columbia, and not statistically different from the national rate in ten states. Differences in industry mix account for at least some of the differences in rates across states.

Source: Claims Journal

XII.
TRANSPORTATION

SAFETY AND THE SOFTWARE GLITCH

Automotive electronics systems are becoming increasingly complex and essential to the proper and safe operation of cars and trucks. Vehicle controls for basic operation and safety functions are increasingly being implemented by electronic modules. Very few folks driving motor vehicles have even a basic understanding of that vehicle’s electronics system.

The primary functions of operating a motor vehicle, acceleration, steering and braking, are now controlled by electronics. Gone are the days where a steering shaft mechanically connects to a tie rod end, or a steel cable runs from the accelerator pedal to the carburetor. Now a sensor attached to a steering wheel sends an electronic signal to the steering pump telling it how much to turn the wheels on the car. A sensor on the gas pedal sends an electronic signal to a servo on the throttle body telling it how much to open the flap that controls the fuel and air mixture to the engine.

As vehicular electronic content continues to climb into and beyond the range of 70 to 80 modules per vehicle, the importance of thorough reliability/durability design and testing is becoming a major responsibility for the industry. Recently, The Detroit News reported that GM told 4,000 owners of the 2013 Chevy Volt to go to the dealership to fix a glitch that could shut down the electric motor. According to the newspaper the affected vehicles could have a software glitch that causes the Volt to stall. GM spokeswoman Michelle Malcho told The Detroit News recently:

We have received a few reports from owners that their electric motor has temporarily stopped working, resulting from a software anomaly when their vehicle is in the delayed time and rate charge mode. We’re asking owners to bring their vehicles into their local Chevy dealer for a re-flash of the vehicle's control system.

The ability of these electronic systems to function reliably is becoming a greater aspect of vehicle safety that was dramatically demonstrated by the 2009—2011 recalls of over 9 million Toyota vehicles for unintended acceleration issues. The Toyota crisis revealed the challenges of evaluating, validating and investigating the reliability and safety assurance aspect of modern interactive vehicle controls systems by OEMs, electronic system suppliers and regulators.

As an aftermath of the incident, the U.S. National Academy of Science in January of 2012 issued "Special Report #038 (record #13342): The Safety Challenge and Promise of Automotive Electronics—Insights from Unintended Acceleration.” The report stated that federal safety regulators in the National Highway Traffic Safety Administration lack the expertise to monitor vehicles with increasingly sophisticated electronics as was demonstrated by the need for NHTSA to call in NASA electronic personnel to assist in the investigation.

The Toyota issue has implications for all rulemaking and defect investigations involving automotive electronics going forward. The era of solely mechanical and safety-critical primary vehicle functions—opening the throttle, applying the brakes, steering—is swiftly passing into history. The federal agency tasked with regulating this transition and reducing hazards as automakers innovate away from cables to computers must not be compromised by a lack of knowledge.

As lawyers in our firm have discovered from Toyota unintended acceleration investigations stretching from 2003 to the present, automakers can exploit this technical ignorance at the expense of consumers and public safety.

In the meantime, electronics remain a largely unregulated area of vehicle safety, even though they dominate vehicle systems fleetwide. Seven years ago, NHTSA abandoned its effort to upgrade the 1972 Federal Motor Vehicle Safety Standard 124 Accelerator Controls. That was because the automobile industry protested. In 2003, NHTSA said that it would resume rulemaking after more study, but shockingly no further action has been taken by the agency.

Most safety experts believe that advances in vehicle technology, if implemented and regulated properly, should lead to safer vehicles. The Toyota debacle should serve as a lesson to the automobile industry and to regulators on what not to do from a safety perspective. It has been almost ten years since Toyota was put on notice of its vehicles suddenly and uncontrollably accelerating. The issue remains unresolved. That can’t be justified. If you want more information on any of the above contact Graham Esdale, a lawyer in our firm, at 800-898-2034 or by email at Graham.Esdale@BeasleyAllen.com.

Source: Safety Research and Strategies

NEARLY 1,300 DRIVERS CONVICTED OF TEXTING IN GEORGIA

Fewer than 50 drivers a month have been convicted of texting and driving in the two years since a law in Georgia to ban texting went into effect. As of mid-September, 1,281 motorists had been convicted of the offense since the state law took effect on July 1, 2010. The number represents a small fraction of the 22,500 people convicted of driving under the influence of alcohol or drugs during the same time frame.

It should be noted that the Georgia Department of Driver Services only tracks convictions, not the number of citations issued. Reportedly, some law enforcement officers say the law is difficult to enforce. State troopers have to prove beyond a reasonable doubt that someone was texting at the wheel, and not merely dialing a number or talking. It’s very easy for drivers to hide their phones when an officer is in sight.

A violation under the Georgia law results in a $150 fine. Enforcement varies greatly depending on the county, according to state records. For example, in Gwinnett County, 665 texting drivers were convicted—more than in all other Georgia counties combined. By comparison, 64 drivers were convicted in Cobb County. Fulton County had 43 convictions; Clayton County had 20 convictions; and DeKalb County had 16. Last year, there were 3,840 crashes attributed to cell phone use/distracted driving in Georgia, according to the Governor’s Office of Highway Safety. Nine were fatal and 955 resulted in serious injuries.

Source: Montgomery Advertiser

XIII.
ENVIRONMENTAL CONCERNS

PRESIDENT OBAMA VOWS TO ADDRESS CLIMATE CHANGE

Our elected officials in Washington have ignored climate change for a very long time and unfortunately lots of people in the U.S. are now paying for this neglect. I was pleased to learn that President Barack Obama plans to work with Congress in his second term in an effort to curb human-aggravated climate change. The President said this can be done without damaging the U.S. economy. President Obama said at a news conference:

I am a firm believer that climate change is real, that it is impacted by human behavior, and carbon emissions. And as a consequence, I think
we've got an obligation to future generations to do something about it.

Without specifying what actions he would take, President Obama said he would speak in the coming months and years to get bipartisan support for tackling the problem of rising global temperatures. The President pointed to his Administration’s tightened fuel efficiency standards on cars and trucks and the increased use of renewable energy in the United States as moves that will limit the amount of carbon dioxide emitted into the atmosphere. President Obama plans “a wide amount of carbon dioxide emitted into the atmosphere. President Obama plans “a wide

As we have reported, 872 Plaintiffs are suing the federal utility for damages. Our firm and other lawyers for the Plaintiffs asked the court to order mediation. TVA proposed that an initial round of Plaintiffs be allowed to go to trial and through the appeals process, if necessary, before mediation. But Judge Varlan said mediation should at least be tried, saying he did not believe mediation would complicate the process. I agree with that assessment. Our firm is among the law firms representing the Plaintiffs. If you need more information on this matter contact Brantley Fry, a lawyer in our Toxic Torts Section, at 800-898-2034 or by email at Brantley.Fry@beasleyallen.com.

XIV.
THE CONSUMER CORNER

MERCK SETTLES MULTIMILLION DOLLAR VIOXX CLAIM

Merck & Co. Inc. has agreed to settle a class action lawsuit filed on behalf of Missouri consumers over the prescription pain reliever Vioxx. The settlement is expected to cost the drugmaker up to $220 million. The agreement would settle claims that Merck violated the Missouri Merchandising Practices Act by promoting and selling Vioxx, which Merck pulled from the shelves eight years ago because it was causing heart attacks and strokes. The agreement must still be approved by the Jackson County Circuit Court in Kansas City.

It was unclear how many consumers might seek reimbursement, which will ultimately determine the value of the settlement. Interestingly, Merck took a $39 million third-quarter write-off to help pay for the settlement. As part of the agreement, the company agreed to pay attorneys’ fees and other costs such as advertising to alert consumers.

The Food and Drug Administration approved Vioxx as a painkiller in May 1999 but the Justice Department said Merck began marketing it almost immediately as a treatment for rheumatoid arthritis. Companies are prohibited from marketing drugs for conditions that have not been approved by the FDA. Vioxx wasn’t approved for treatment of rheumatoid arthritis until 2002.

Merck removed Vioxx from the market in September 2004. The Justice Department charged Merck with violating marketing laws and said the company made false statements about its cardiovascular safety to increase sales. In April, a federal court in Massachusetts accepted Merck’s guilty plea to one misdemeanor count of violating marketing laws, and Merck agreed to pay $950 million. That settlement resolved complaints brought by 43 states and Washington, D.C. Missouri was among the 43 states in that case, receiving $13.8 million from Merck. While the nationwide suit was over marketing, the newly-resolved Missouri case alleged consumer fraud. It was in litigation for eight years. The settlement provides for payment to Vioxx consumers under two options:

• A one-time cash payment of $180 for those who submit a claim form and declare their use of the drug under oath. They do not need to prove that they purchased Vioxx.

• $90 for each month of Vioxx purchases. Those consumers must show proof of payment, such as a letter from the prescribing physician.

As you will recall, Merck settled around 50,000 individual patient lawsuits in November 2007 for $4.85 billion. Our firm was heavily involved in that litigation. Andy Birchfield, who heads up our firm’s Mass Torts Section, played a key role in negotiating the record-breaking settlement. Don Downing, a lawyer with Gray Ritter & Graham, and Patrick Steve, with Stueve Siegel Hanson, served as co-counsel for the Plaintiffs in the Missouri case. They did a very good job for members of the class.

Source: Associated Press

TOYOTA AGREES TO $25.5 MILLION U.S. INVESTOR LAWSUIT SETTLEMENT

Toyota Motor Corp. has agreed to pay $25.5 million to settle a U.S. shareholder class action lawsuit accusing the company of not disclosing safety and quality issues related to recalls and reports of unintended vehicle acceleration in 2010. The settlement must be approved by U.S. District Judge Dale Fischer in Los Angeles.

Toyota investors began suing Toyota for securities fraud in February 2010 after numerous reports of accidents related to unintended acceleration by Toyota vehicles surfaced. Toyota subsequently recalled up to 10 million Toyota or Lexus vehicles at a cost of $5 billion. Investors, led by the Maryland State Retirement and Pension System, claimed Toyota concealed problems in its vehicles. The misconduct resulted in a $50 billion drop in the company’s stock market value. In July 2011, Judge Fischer ruled that investors, who had bought Toyota common stock, couldn’t sue under Japan’s Financial Instruments and Exchange Act.
That ruling limited the case to covering claims just of investors in Toyota's American Depository Shares. A motion to certify the class had been fully briefed at the time of the settlement. The Maryland pension fund estimates the maximum amount of net damages investors could obtain at trial would be $124 million. The law firm Bernstein Litowitz Berger & Grossman acted as lead counsel for the Plaintiffs. The case is In re Toyota Motor Corporation Securities Litigation, U.S. District Court, Central District of California, No. 10-cv-00922.

Source: Chicago Tribune

Regulators Probe Taurus And Sable For Throttle Issue

U.S. safety regulators are investigating 310,000 Ford Taurus and Mercury Sable cars built by Ford Motor Company over a problem that could cause the throttle to be stuck open. The cars were built for the model years 2000 to 2003 and equipped with 3.0-liter V6 Duratec engines, according to the National Highway Traffic Safety Administration. The agency received 50 complaints of possible stuck throttles that could have been caused by fractured speed control cable collars. The problem may lead to an engine component getting stuck when the throttle is closing, leaving the throttle 26 percent open. In a statement, Ford said it was cooperating with NHTSA.

The Taurus probe was prompted by 50 complaints from owners about unintended acceleration involving the 3-liter, 4-valve Duratec V-6 engine, but not the 2-valve version, which uses a different design. There were no reports of accidents. NHTSA said it suspected a fractured speed-control cable collar could result “in throttles stuck at approximately 26 percent open.” One owner noted that the car continued to accelerate after he took his foot off of the gas pedal. He wrote that “On topping the hill we were traveling over 70 miles per hour.” The speed was alleviated by shifting into neutral and stopping on level ground. “On restart the engine immediately revved to over 6,000 rpm and a transaxle warning icon appeared,” the owner added. He said a mechanic knew “what the problem was immediately. Broken plastic tabs had allowed the cruise control cable sheath to slip out of the throttle connector,” and the mechanic concluded the throttle was held open.

Source: MSN.com

NTSB Recommends Advanced Auto Safety Features Be Standard In The U.S.

The National Transportation Safety Board says the federal government should require automakers to offer advanced safety features like lane departure warning in all passenger vehicles and commercial trucks to prevent accidents. These new technologies, which include adaptive cruise control, are offered by automakers as options at additional cost, but they are not required to meet federal safety standards. The NTSB said in a press release:

Their full life-saving and crash-avoidance potential will not be realized until supported by federal rulemaking and related standards.

Rear-end collisions account for 28 percent of all highway accidents, while accidents in which a vehicle veers off the road, overturns or crashes into an object account for 23 percent, National Highway Traffic Safety Administration data show. Nine percent are caused by a car veering out of its lane. Forward collision warning, automatic braking and electronic stability control were also cited as technologies that should be made standard. Such features are offered mostly in luxury models, although they are now appearing in more mainstream cars.

On certain models of its 2013 Cadillac ATS, which costs $44,000, General Motors Co. offers a safety package costing more than $3,200 that includes a lane departure warning system and adaptive cruise control, in which the car automatically adjusts its speed to keep a safe distance from the car ahead. Toyota Motor Corp includes similar safety features and more in a $6,500 package on the 2013 Lexus LS460, which costs nearly $72,000. Ford Motor Co. offers adaptive cruise control on certain versions of the 2013 Fusion sedan for $995.

The forward collision warning system, which uses radar or lasers to sense objects ahead, could prevent 879 fatal passenger car crashes a year, the Insurance Institute for Highway Safety said. It could prevent 115 fatal crashes in large trucks. The Institute, a nonprofit supported by auto insurers, said lane departure warnings and electronic stability control systems can prevent 247 and 439 fatal accidents a year, respectively.

Source: Claims Journal

American Suzuki Motor Corp. Will Stop Selling Cars In The U.S.

On November 5th, American Suzuki Motor Corp. filed for Chapter 11 bankruptcy protection and said it will cease selling automobiles in the U.S. as part of a plan to restructure its business. The company, based in Brea, Calif., is the sole distributor of Suzuki Motor Co. vehicles in the continental U.S. The petition was filed with the U.S. Bankruptcy Court in the Central District of California. The company estimated that its debts and liabilities range from at least $100 million to as much as $500 million. It also said it has between 1,000 and 5,000 creditors.

American Suzuki Motor said it has enough cash to operate during the restructuring and intends to honor all car warranties and buyback agreements. It will work with its car dealerships to help them transition into a parts-and-service operation. Some dealerships will close.

Once it exits bankruptcy protection, American Suzuki Motor said it will focus on selling Suzuki motorcycles, all-terrain vehicles and marine outboard engines. It said that it is exiting the car business because of slow sales, unfavorable foreign exchange rates and high costs due to U.S. regulatory requirements. It sold 2,025 vehicles in October, which was up 5 percent from the same month last year. Its Grand Vitara sport utility vehicle posted a 64 percent jump in sales last month, although American Suzuki did not say how many of them were sold. In May, the last month it provided a breakdown of its sales, it moved 474 Grand Vitaras, while its biggest seller was its SX4 small crossover, of which 1,101 were sold.

It was reported that the bankruptcy and reorganization are unrelated to its parent Japan-based Suzuki Motor Corp., which intends to buy the American subsidiary’s remaining businesses and automotive service operation. The reorganized company will retain the American Suzuki Motor name. The Japanese auto maker imports all vehicles. According to Suzuki, it will continue to market and sell cars in Canada, where it once operated an assembly plant jointly with General Motors.

Source: L.S. Sherman Consulting

For-Profit Colleges Deserve The Recent Scrutiny

I suspect most of our readers have seen television ads touting colleges whose names were not too familiar when the ads first started running. Many of these schools are for-profit schools and are of the online-study variety. These are quite different from public and private universities such as Auburn (public) and Samford (private). For-profit colleges have come under recent scrutiny concerning whether they are a worthy investment of federal monies. Most of these for-profit colleges employ high-pressure sales tactics to enroll students and then commence to saddle them with substantial debt and an unmarketable degree. U.S. Senator Tom Harkin, Chairman of the Health, Education, Labor and Pensions Committee, stated recently that “enrollment quotas” are often the highest priority for recruiters. While recruitment is typically not an issue, the for-profit colleges are having continued difficulty placing their students in gainful
employment upon graduation—if, that is, they make it to graduation.

The report by Senator Harkin found that students of the for-profit colleges are burdened with unreasonable amounts of student loan debt. The tuition for a bachelor’s program at a for-profit college, on average, is 20 percent greater than a similar program at a flagship public college. Associate degrees have a similar problem averaging 450 percent, or four-and-a-half times, more than the comparable community college. Consequently, some students from for-profit colleges find themselves $60,000 in debt for a two-year associate’s degree.

Compounding the problem, graduates from for-profit colleges frequently encounter obstacles in obtaining gainful employment after graduation. The Department of Education found that graduates from for-profit colleges have a harder time finding job placement than graduates from other types of higher education.

According to the U.S. Department of Education, the vast majority of students at for-profit colleges, 92 percent of students, borrowed money to finance their education. This number is extraordinarily high compared to 59 percent of students at private, non-profit schools and 46 percent of students at public schools. The Senate and Government Accountability Office found that for-profit colleges collect over $32 billion through programs such as Pell Grants. Marketing, recruiting, and profits accounted for 41.8 percent of the revenues while a mere 17.7 percent of revenue was spent on actual instruction.

Furthermore, the Department noted that students from the for-profit colleges are twice as likely to default on their student loans, than graduates from more traditional schools. As a result, the students from for-profit colleges account for 46 percent of all student loans in default, but these same students only account for 12 percent of all college students in the U.S.

The for-profit colleges have lobbied extensively to keep rules that are favorable to their flawed business model. The Department of Education issued new rules requiring that 35% of graduates must be repaying student loans, or the federal funding for student aid would be cut. However, the for-profit college successfully challenged this rule in federal court in Association of Private Sector Colleges and Universities, v. Duncan, No. 11-cv-00138 (D.C. Cir. Feb. 21, 2012).

The D.C. Circuit held that the rules exceeded the Department’s authority because it did not provide statutorily required procedural protections and defined misrepresentation too broadly. The Association of Private Sector Colleges has spent over $4.7 million since 2007 in lobbying efforts. Additionally, the University of Phoenix and Kaplan spent $1 million and $1.4 million respectively in 2011 lobbying efforts alone.

According to the Chronicle of Higher Education, 372 of the 2,042 for-profit colleges receive 85 percent to 90 percent of their total revenue from federal student aid programs. The average amount for all for-profit colleges was 70 percent of revenue between 2010 and 2011. The federal government capped the amount of revenue a for-profit college may receive under these programs to 90 percent of their total revenue. If you haven’t figured out the economic motive for these schools by now, the availability of federal financial aid programs and loans might just be a clue.

There is an increase in whistle-blower lawsuits exposing fraud and misrepresentation relating to for-profit colleges. Often these for-profit colleges manipulate data in order to secure continued funding through the federal government. These claims vary, including misrepresenting the accepting of the program’s credentials by employers, falsifying job placement data and student loan figures to prospective students, falsifying data to maintain accreditation/licensure in order to maintain federal student loan eligibility and paying recruiters based on how many students they enroll.

The False Claims Act protects whistleblowers from discrimination, harassment, threatening acts, demotion, and termination. In the event an employer retaliates against a whistleblower for standing up for the truth, the False Claims Act requires that a whistleblower be reinstated to his or her previous job grade and receive double back pay. Additionally, if whistleblowers file a suit on behalf of the federal government, they are entitled to receive at least 15 percent and potentially 30 percent of the government 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.

Lawyers in our firm have been battling this type of corporate fraud for over 30 years. We would welcome the opportunity to assist any person who has been victimized by fraudulent conduct of a for-profit school. If you are aware of any such fraud, we will be glad to help and look at any potential cases. If you need more information on this subject, you can contact either Chad Stewart or Andrew Brashier, lawyers in our Consumer Fraud Section, at 800-898-2034 or email by Chad.Stewart@beasleyallen.com or Andrew.Brashier@beasleyallen.com.

Sources: NBC News and Huffington Post

FDA Approves Dangerous Weight-Loss Drugs

Earlier this year, the Food and Drug Administration approved in rapid succession two prescription drugs for weight loss in spite of opposition from health experts with Public Citizen. On June 27, the FDA approved lorcaserin, manufactured by Arena Pharmaceuticals, which was to be sold under the brand name Belviq. Fewer than three weeks later, the FDA signed off on the combination drug phentermine/topiramate, made by Vivus, which was originally named Qnexa. Upon approval of the drug, Vivus announced it would market the pill under a new brand name, Qsymia. This was most likely because the drug’s dangerous side effects became well-known when the FDA rejected Qnexa in 2010, which was the first time Vivus submitted the drug to the agency for review.

Belviq and Qsymia are the first diet drugs the FDA has approved in 13 years. For years, Public Citizen has been warning the FDA about approving bad drugs where the risks greatly outweigh any benefits. Dr. Sidney Wolfe, director of Public Citizen’s Health Research Group, observed:

It is magical and delusional thinking for anyone to believe that a drug will turn off hunger without hitting other internal targets where it will do harm, usually to the cardiovascular system. Has the FDA already forgotten why it pulled previous diet pills off the market?

Neither new diet pill is available on the market yet, but when they are, Public Citizen will immediately classify Belviq and Qsymia as “Do Not Use” drugs on its WorstPills.org website. As clinical trials have demonstrated, there’s good reason for extensive public debate about this class of drugs. The side effects of diet medications are serious, and the benefits are quite limited, typically amounting to just a few more pounds lost by patients taking drugs than by those taking a placebo. Dr. Wolfe had this to say:

There’s no need for the FDA to be reckless just because there is a desperate demand to solve the obesity crisis—a multilayered health, culture and food industry issue that has developed over decades.

Research shows that Belviq increases heart rate and can create heart valve problems. During clinical trials, four patients on the diet pill had nonfatal heart attacks, while no patients on the placebo experienced heart trouble. In a last-ditch effort to keep Belviq off the market, Public Citizen appealed to FDA Commissioner Margaret Hamburg on June 26, reminding her of the drug’s negative consequences and warning that approval would be “a mistake that will benefit only the company that makes it.”

That very same day, the Annals of Internal Medicine published an online recommendation against the use of any diet drugs due to safety issues, underscoring the reality that
dieters cannot keep off the weight they lost by taking diet medications. But the FDA approved the drug anyway.

Qnexa also can cause a host of dangerous side effects, including kidney stones, pancreatitis, birth defects (such as cleft lip or palate), cognitive impairment and metabolic acidosis, a known risk factor for heart arrhythmia. In February, Dr. Wolfe testified before a meeting of the FDA Endocrinologic and Metabolic Drugs Advisory Committee urging the agency to reject Qnexa for a second time.

Over the past 15 years, the FDA has been forced to ban several weight-loss drugs it had previously approved because of clear-cut evidence that they increased cardiovascular risk. The drugs that were banned include:

- sibutramine (Meridia) because it increased the risk of heart attacks and strokes;
- the combination drug fenfluramine/dexfenfluramine (Redux) because of heart valve problems;
- ephedra because of heart attacks and strokes; and
- PPA (phenylpropanolamine) because of bleeding strokes.

The only currently available diet drug approved by the FDA in the past 20 years came out in 1999. Orlistat, sold as Xenical and made by GlaxoSmithKline (GSK), was hailed as a breakthrough drug. After it was in wide circulation, evidence that it caused liver damage began to surface. When the market eventually became saturated and sales dwindled, GSK sought and received approval in 2007 to sell an over-the-counter version of Xenical, called Alli.

On two separate occasions in the past few years, Public Citizen petitioned the FDA to ban Orlistat, but it’s still on the market today. The drug’s common side effects, which occur almost immediately, include diarrhea, frequent or loose stools, gas with discharge, oily spotting and uncontrollable bowel movements. Even so, GSK estimates that it has sold its diet drugs to 40 million people worldwide. Finally, Dr. Wolfe had this to say on the subject:

"Obesity is unquestionably a serious public health concern, but that doesn't give the FDA license to ignore the scientific evidence when it outweighs and contradicts any reason to approve a drug for human consumption. Besides, it’s common knowledge that the true path to weight loss consists of a long-term program of healthy eating combined with regular exercise."

The American people must wake up and demand that the FDA stop putting dangerous drugs on the market. Public Citizen is leading a charge on this front, but it needs troops to follow along. Hopefully, once folks realize how many dangerous drugs have been approved by the FDA, they will get involved and demand action by both the FDA and Congress. It’s quite obvious that the drug industry is taking advantage of folks who want to lose weight the easy way. The marketing arms of the companies see the potential for making huge profits. It’s up to the FDA to control their activities.

Source: Public Citizen News

A FURTHER UPDATE ON COMPOUNDING PHARMACIES

I have been asked by several of our readers to explain exactly what a compounding pharmacy is. Traditionally, compounding has been a pharmacy practice in which a pharmacist alters, mixes or recombines ingredients to make a drug that meets the special needs of a patient with a physician's prescription. But in recent decades, a number of compounding operations have grown to resemble full-scale manufacturing firms without meeting FDA standards. That was never the intended purpose of compounding by pharmacists.

I have also been asked why the government hasn’t done a better job of regulation of this industry. The U.S. Food and Drug Administration’s power to regulate compounded drugs is legally nonbinding and lacks the authority of stringent standards imposed on drug manufacturers. That was the conclusion of a Congressional report compiled by the staff of Rep. Edward Markey (D-Mass.). It’s now quite obvious that very little control has been in place of this growing industry.

The release of the report drew an immediate response from FDA Commissioner Margaret Hamburg, who said the agency is committed to working with Congress and others to garner “the authority we need to help prevent tragedies like this from happening again.” The Commissioner said in a statement:

"Over the years, there has been substantial debate within Congress about the appropriate amount of FDA oversight and regulation of compounding pharmacies. But unfortunately, there has been a lack of consensus and many challenges from industry. As pointed out in the report from Congressman Markey, FDA’s authority over compounding pharmacies is more limited by statute than with drug manufacturers.

Congress should give the FDA new powers to oversee compounding pharmacies. Public Citizen has called on the Department of Health and Human Services to investigate the FDA on grounds that the agency failed to exercise its existing authority to prevent the very serious meningitis outbreak involving the New England Compounding Center. The FDA has issued a warning letter to NECC in 2006 describing potential health risks including microbial contamination. But there has been little evidence of a follow-up. Congressional investigators also say there is evidence that the FDA and state regulators knew of potential problems at NECC in 2002.

State governments, which are now the chief regulators of pharmacy compounding, cannot perform the kind of safety oversight necessary to prevent more drug-related outbreaks from occurring. The FDA has issued dozens of warning letters against compounding pharmacies since 2001. But the report said the agency has based its enforcement actions on relatively weak, nonbinding guidance documents since a 1997 law granting it oversight of “new drugs” was struck down in U.S. courts more than a decade ago in cases brought by drugmakers."

Source: Reuters

TENNESSEE COMPANY RECEIVES FDA WARNING

Federal officials have warned a Tennessee-based company about claims its light therapy product cures or treats various health problems, including meningitis. The U.S. Food and Drug Administration sent a warning letter on November 5th to The Avalon Effect Inc., located in Franklin, telling the company to stop marketing an unapproved medical device called the “Quantum Series Personal Wellness Pack.” The letter contends the company's website claims the product can cure and/or treat symptoms of fungal meningitis, concussions and Lyme disease, among other conditions. That violates federal law because Avalon does not have approval to market the device or an exemption to investigate it for safety and effectiveness, according to a statement by the FDA.

The device, known as a “Quantum Series Personal Wellness Pack,” also is misbranded because the company did not notify the FDA of plans to introduce it to the marketplace, the letter said. It is the second time that the FDA said it has warned Avalon. The agency notified the company of possible marketing violations in August. Avalon said then that it did not intend for any of its products to be used to treat, cure, mitigate, prevent or diagnose any medical condition.

But the FDA said a follow-up review of the company's website and related links showed Avalon was still making those claims, prompting the second warning. Avalon founder Tinka Smith and Chief Executive Officer Michael Haarlander disputed that in a statement issued on November 6th, in which they said:

...
We simply have no intention to market a device in that manner. We are working with the FDA with full cooperation to clarify this matter. The FDA is essential to our success. We are committed to the long-term health of our company, our product and our clients.

It would certainly seem that two warnings from the FDA would be enough to bring about the needed changes. But if Avalon continues to ignore the FDA’s warnings, the agency must take whatever step necessary to protect the public.

DIETARY SUPPLEMENTS OFFER LITTLE TO NO BENEFIT AND MAY BE HARMFUL

A recent Journal of Parenteral and Enteral Nutrition (JPEN) systematic review revealed that, with a few possible exceptions, dietary supplements offer no benefits to well-nourished adults eating a Western diet and, in many cases, may be harmful. The results of this study reinforce Worst Pills, Best Pills Neurs’ longstanding view that there is little evidence that dietary supplements are either safe or effective. Used regularly by at least half of all Americans, dietary supplements are defined by law as any products intended to supplement the diet by increasing the intake of a mineral, an herb or other botanical; an animal or plant tissue, group of tissues or cells; a vitamin (alone or in combination); a mineral, an enzyme or tissues from animal and drug administration, dietary substances include enzymes or tissues from animal organs or glands. The following is reprinted from Worstpills.org.

The use of dietary supplements has grown steadily since 1994, when Congress passed the Dietary Supplement Health and Education Act (DSHEA), and is now widespread in America. DSHEA clarified that supplements were to be regulated as foods, not drugs, and thus were exempt from the tougher regulations accorded to drugs, such as the requirement to prove that they are both safe and effective. No supplement has been demonstrated to be safe and effective under the rigorous standards the FDA applies to drugs. Furthermore, while drug companies have to report any serious or unexpected adverse event they learn about to the FDA, there is no such reporting requirement for manufacturers of dietary supplements.

Still, manufacturers are permitted to aggressively promote dietary supplements. While a supplement manufacturer, without any supporting evidence whatsoever, can assert that its product “promotes prostate health” (a structure or function claim) but is precluded from claiming that it “treats the symptoms of an enlarged prostate” (a health claim). Researchers have conducted numerous studies to assess the safety and effectiveness of some commonly used dietary supplements. The quality and validity of these studies is highly variable.

In the JPEN article, Dr. Paul Marik and his co-author conducted a systematic review of published randomized controlled trials (RCTs)—the gold standard for clinical trial design—that evaluated the benefits and safety of dietary supplements. The researchers limited their analysis to studies involving adults and evaluating objective, clinically relevant outcomes, including heart attack, stroke, death from cardiovascular disease, cancer (new or recurrent), death from cancer, death from any cause, type 2 diabetes, fractures, change in cognitive function, falls and visual acuity.

The authors excluded from their review studies involving undernourished patients, patients with specific nutritional disorders, pediatric patients and pregnant women. They also excluded RCTs enrolling fewer than 200 subjects (because such studies are more prone to statistical error) as well as RCTs lasting less than one year. That’s because there is likely to be a time delay between starting a dietary supplement and any detectable clinical outcome.

The authors searched multiple medical literature databases for studies published between 1966 and 2010 that met the above criteria. Their search found 63 RCTs that had enrolled a total of 428,357 subjects, with an average of 6,693 subjects per trial. The average study duration was 4.7. The 63 RCTs in the review included evaluations of the following dietary supplements, either alone or in combination: beta-carotene; vitamins A, B6, B12, C, D and E; folic acid; calcium; selenium; zinc; omega-3 fatty acids; ginkgo biloba; glucosamine; saw palmetto; and milk thistle.

Dr. Marik and his co-author reported that 43 RCTs (68 percent) showed no statistically significant benefit for the dietary supplements being evaluated. Of these studies, ten actually showed a trend toward harm in one or more adverse outcomes, and one showed a trend toward a benefit. But these trends were not statistically significant, so these trials are not counted as showing a definitive benefit or harm.

Five of the RCTs (8 percent) showed statistically significant evidence of harm: One clinical trial testing vitamin A and beta-carotene—and another evaluating folic acid, vitamin B6 and vitamin B12—demonstrated an increased risk of cancer and cancer mortality. Two studies evaluating vitamin D supplementation in elderly adults revealed an increased risk of fractures, although, as discussed below, several other studies found the opposite outcome. One study in elderly people found that vitamin E supplementation was associated with more severe upper tract respiratory infections (colds).

One trial (2 percent) demonstrated both benefits and harms with supplements. The trial evaluated the effect of selenium in preventing cancer in 1,312 patients who previously had skin cancer. Treatment with selenium increased the risk of type 2 diabetes but decreased the risk of developing cancer. Of note, a much larger study included in the JPEN review, involving more than 35,000 subjects, showed no reduction in cancer risk in subjects treated with selenium alone or in combination with vitamin E.

Only 14 RCTs (22 percent) reported a beneficial outcome with dietary supplements. Six trials showing benefit involved vitamin D or vitamin D plus calcium, with four showing a reduction in the risk of fractures, two a reduction in the risk of falls and one a reduction in the risk of cancer. One trial showed a reduced risk of fractures and colonic polyps in subjects treated with calcium supplements. Three trials demonstrating benefit involved omega-3 fatty acid supplements, with each finding a reduction in the risk of adverse cardiovascular events, such as angina, heart attack, stroke and death from cardiovascular causes. (However, intake of this nutrient can be significantly increased simply by eating more fish, especially salmon, herring, mackerel, anchovies, sardines and, to a lesser extent, tuna.)

One trial testing vitamin E found a reduced risk of adverse cardiovascular events. However, three other much larger trials of vitamin E demonstrated no cardiovascular benefit. One
study found that vitamin E slowed the progression of cataracts but showed no effect on visual acuity. One study of ginkgo biloba in 309 subjects with Alzheimer’s disease showed slightly better cognitive function outcomes. On the other hand, a much larger study of this supplement in elderly adults found no beneficial effects on cognitive function.

Finally, one study of folic acid supplementation demonstrated improvements in cognitive function outcomes in adults older than age 50. Three other trials of folic acid detected no benefit, although these studies measured outcomes other than cognitive function. The study authors concluded that with the possible exception of vitamin D in elderly patients and omega-3 fatty acids in patients with a history of cardiovascular disease, no data support the widespread use of dietary supplements in the U.S. and other Western countries. Indeed, the data suggest that certain commonly used dietary supplements, including beta-carotene, vitamin A and vitamin E, may be harmful. We agree.

If you haven’t subscribed to Worst Pills, Best Pills, I encourage you to do so. This monthly publication put out by Public Citizen is well worth its cost. Go to citizen.org or worstpill.org for more information.

Source: Worstpill.org

CPSC APPROVES NEW FEDERAL SAFETY STANDARD FOR INFANT SWINGS

The U.S. Consumer Product Safety Commission has approved a new federal mandatory safety standard to improve the safety of infant swings to prevent injuries and deaths to children. Infant swings are stationary juvenile products with a frame and powered mechanism that enables an infant to swing in a seated position. An infant swing is intended for use with infants from birth until a child is able to sit up unassisted. Cradle and travel swings are also included in the standard. The following information comes from the CPSC:

The new federal standard, which incorporates provisions in the voluntary standard ASTM F2088—12a, requires the following: a stronger, more explicit warning label to prevent slippage-related deaths. The warning advises consumers to use a swing in the most reclined position until an infant is 4 months old and can hold up its head without help; a stability test that prevents the swing from tipping over; a test that prevents unintentional folding; tests on restraint systems, which are intended to prevent slippage and breakage of the restraints during use; the cradle swing surface to remain relatively flat, while in motion, and while at rest; electrically-powered swings to be designed to prevent battery leakage and overheating; toy mobiles to be designed to ensure that toys do not detach when pulled; swings with seat angles greater than 50 degrees to have shoulder strap restraints; and dynamic and static load requirements to ensure that the infant swing can handle specified loads without breaking.

Between May 2011 and May 2012, CPSC received reports of 351 infant swing-related incidents that occurred between 2009 and 2012. Two of the 351 incidents resulted in fatalities, and 349 incidents were nonfatal; 24 of the nonfatal incidents resulted in injuries. The effective date for the mandatory infant swing standard is May 7, 2013. The Danny Keysar Child Product Safety Notification Act, Section 104 of the Consumer Product Safety Improvement Act of 2008, requires CPSC to issue safety standards for durable infant or toddler products, including infant swings. In addition to infant swings, CPSC has issued mandatory safety standards for full-size and non-full-size cribs, play yards, children’s bed rails, baby bath seats, baby walkers, and toddler beds.

Hopefully, the new standards will result in infant swings that are much safer. We have seen safety becoming more of an issue when it comes to products designed, manufactured and sold for use by children. The public expects these products to be as safe as possible when sold.

Source: CPSC

IDENTITY THEFT AND FRAUD IS BIG BUSINESS IN THE SOUTH

An identity protection company, ID Analytics, says a “belt of fraud” exists through the rural Southeast from Texas to Georgia. The other metro areas listed in a report as having the most identity fraud activity were in the areas around Washington, Tampa, Fla., Greenville, Miss., Macon, Ga. and Detroit. Identity fraud “is when you pretend to be someone else and apply for a service,” said Stephen Coggeshell, the author of the study. There is identity theft as well as what Coggeshell calls “identity manipulation,” in which folks alter their actual personal information to apply for services without their real identities being detected.

There are more than 10,000 identity fraud rings in the U.S. according to the study. Identity fraud rings sometimes consist of professional criminals, but often are simply groups of family members or friends. For instance, while the city of Montgomery, Ala. has a high instance of fraud rings, the problem is even more concentrated in some of the more rural areas surrounding the city.

The study focused on fraud in the public sector, examining more than a billion applications for bank cards, wireless services and credit cards. Federal prosecutors also have witnessed a similar phenomenon in the Montgomery area involving people filing false tax returns. The U.S. Attorney’s Office for the Middle District of Alabama has prosecuted a number of cases recently involving identity theft and tax fraud. The owner of a Montgomery tax preparer business pleaded guilty on November 1st to several charges. Bruce King, owner of Premier Tax, is one of nine people associated with that business to plead guilty to tax fraud and identity theft charges. It appears King coached employees on how to falsify tax returns, with identity theft being one of the tactics they used.

Source: Montgomery Advertiser

www.BeasleyAllen.com
some of the ads for mortgage products contained official-looking seals or logos, or have other characteristics that may be interpreted by consumers as indicating a government affiliation.

- Potentially inaccurate information about interest rates: For example, some ads promoted low rates that may have misled consumers about the terms of the product actually offered.

- Potentially misleading statements concerning the costs of reverse mortgages: For example, some ads for reverse mortgage products claimed that a consumer will have no payments in connection with the product, even though consumers with a reverse mortgage are commonly required to continue to make monthly or other periodic tax or insurance payments, and may risk default if the payments aren't made.

- Potential misrepresentations about the amount of cash or credit available to a consumer: For example, some ads contained a mock check and/or suggested that a consumer has been pre-approved to receive a certain amount of money in connection with refinancing their mortgage or taking out a reverse mortgage, when a number of additional steps would customarily need to be completed before the consumer would qualify for the loan.

Thomas Pahl, assistant director of the FTC's Division of Financial Practices, had this to say:

*Our hope is through this joint effort that we will make the point that mortgage advertisers need to be very careful about the claims that they're making in their ads. Both the FTC and the CFPB will be making sure claims are not being made that are deceptive which would cause harm to consumers.*

It’s good to see the FTC and CFPB cracking down on misleading advertising in Corporate America. The public is clearly entitled to receive accurate product information from companies marketing their products to consumers.

Source: NBC News

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**CONSUMER GROUP WARNS OF DANGERS ON STORE SHELVES**

We should all be careful when buying toys for small children, especially during this time of year. The U.S. Public Interest Research Group is again working hard to protect children. The group examined more than 200 toys on store shelves and found about a dozen that could be dangerous for children. For example, a Dora the Explorer guitar, dragster cars with small wheels and finger-fidget desktop magnets, are among the toys consumer advocates are warning about as the holiday buying season begins.

The Dora guitar was too loud, according to PIRG, and tested slightly above the limit that hearing experts recommend. The dragster car had small traction bands on the wheels that could be a choking hazard. Another big worry for the consumer group this year is small magnet toys. The magnets, such as the ones in the popular Buckyball desktop toys, can cling together if accidentally swallowed, pinch internal tissue and lead to serious injuries.

It’s very important to avoid buying dangerous toys for children. You can get more information about what toys should be avoided by going to the PIRG website, which is www.uspirg.org.

Source: Alabama13.com

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**7UP MAKER SUED OVER ANTI-OXIDANT CLAIMS**

7Up Antioxidant sodas are under fire from the Center for Science in the Public Interest (CSPI). The consumer advocacy group has sued Dr Pepper Snapple Group, the drinks' maker, contending its antioxidant claims are not only misleading but illegal. The lawsuit, which was filed last month in U.S. District Court in California, calls the claims misleading because they give the impression the antioxidants come from fruits featured on the label rather than added Vitamin E. The group also notes that the Food and Drug Administration prohibits companies from fortifying candies and soft drinks with nutrients.

The suit was filed on behalf of a California man who bought the drinks but says he didn’t know the antioxidants didn’t come from juices. 7Up Cherry Antioxidant, Mixed Berry Antioxidant and Pomegranate Antioxidant were launched in 2009. Despite the pictures of cherries, blackberries, cranberries, raspberries and pomegranates on various 7UP labels, the drinks contain no fruit or juice of any kind. CSPI executive director Michael F. Jacobson said in a written statement:

*Non-diet varieties of 7UP, like other sugary drinks, promote obesity, diabetes, tooth decay, and other serious health problems, and no amount of antioxidants could begin to reduce those risks. Adding an antioxidant to a soda is like adding menthol to a cigarette—neither does anything to make an unhealthy product healthy.*

This isn’t the first setback for Nestlé Waters, which was sued nine years ago over allegations of false labeling. That class action lawsuit, filed in Connecticut, took issue with the fact that Nestlé purported the water in bottles of Poland Spring came from an underground spring source deep in the woods in Maine, when in fact the water came from a well encircled not by nature, but by paved parking lots. In 2003, Nestlé settled the suit for $10 million in charitable contributions and discounts. The most recent suit is filed on behalf of consumers in Illinois, Michigan, Minnesota, and Missouri who purchased Ice Mountain brand water in the five gallon jugs.

Source: Forbes
described the drink as “Diet Coke with Vitamins and Minerals.” Subsequently, the company took the drink off the market. The FDA said at the time that it is inappropriate to add extra nutrients to “snack foods such as carbonated beverages.” In 2010, the FDA warned the makers of Canada Dry ginger ale and Lipton tea (Dr. Pepper Snapple Group and Unilever respectively) over unsubstantiated nutrition claims.

Source: CBS News

XV. 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 November issue. There continue to be a number of recalls by automakers. If more information is needed on any of the recalls mentioned below, readers are encouraged to contact Shanna Malone, the Executive Editor of the Report. We would also like to know if we have missed any safety recalls that should have been included in this issue.

TOYOTA ISSUES RECALLS OF 2.5 MILLION VEHICLES

Toyota Motor Co., still in recovery mode after a series of problems that plagued its global operations over the last three years, is recalling 2.5 million vehicles sold in the United States due to a potential risk of fire. The recall involves 7.43 million vehicles worldwide sold under the Toyota and Scion brands. This is the largest safety-related service action the maker has announced since it began a series of recalls related to the risk of unintended acceleration in late 2009. That and other safety issues led Toyota to recall 14 million vehicles in 2009 and 2010. It’s the biggest single recall since Ford Motor Co. pulled back 7.9 million vehicles in 1996.

Many of the vehicles involved in the new Toyota recall also were called back one or more times due to unintended acceleration issues. The latest recall is the result of a problem with a potentially defective power window switch on the driver’s side of the affected vehicles which, the maker says, “may experience a ‘notchy’ or sticky feel during operation. If commercially available lubricants are applied to the switch in an attempt to address the ‘notchy’ or sticky feel, melting of the switch assembly or smoke could occur and lead to a fire under some circumstances.” In February, the National Highway Traffic Safety Administration announced it would open an investigation into the issue. But at the time it focused on just 830,000 Camry and RAV-4 models sold during the 2007 model year.

The massive size of the new recall underscores the risks manufacturers like Toyota face when they share basic components on a wide range of vehicles hoping to improve manufacturing economies of scale. In the U.S., the 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.

To check whether your vehicle is involved, you can 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, where 460,000 Toyota vehicles were recalled.

Another 1.39 million vehicles are subject to the new recall in Europe, while the massive safety campaign also covers Australia, China and other parts of Asia and the Mideast. In the U.S. market, the Toyota announcement is the largest recall of the year and could revive concerns about quality control at Toyota. Such concerns plagued the maker during much of 2009 and 2010 and officials including President Akio Toyoda were brought before Congress to explain the massive recalls related to the unintended acceleration issue.

Toyota has repeatedly promised, since that scandal began, to ramp up the maker’s quality control process, and it is important to note that all the vehicles impacted by the latest recall were produced during or before the 2009 model year. Nonetheless, the new service action will again put an unwanted spotlight on Toyota.

TOYOTA RECALLS 11,153 SCION IQS

Toyota Motor Co. has also recalled 11,153 Scion IQ hatchbacks because the front passenger air bags might not deploy in a crash. A sensor cable may become damaged when sliding the passenger seat forward or backward on 2012 and 2013 IQs, the National Highway Traffic Safety Administration said its official recall notice. The defect could cause the passenger-side air bags to become deactivated or improperly activated, which could “increase the risk of injury to an occupant” in a crash, Toyota said in a letter to NHTSA. There have been no reports of injuries due to the defect. Toyota dealers will install a protective cover on the sensor cable, beginning in December.

TOYOTA RECALLS 160,000 TACOMA PICKUPS IN U.S. AND CANADA

**November 26, 2012—Claims Journal

Toyota Motor Corp has also recalled about 160,000 Tacoma mid-size pickup trucks from the model years 2001 to 2004 in cold-weather U.S. states and in Canada because the spare tire could fall off. The spare tire in these Tacoma models is stored beneath the trucks’ bed. When the trucks were made, the metal plate that keeps the spare tire in place was not coated with sufficient amounts of phosphate to retard rust, Toyota said. Two accidents have been reported to Toyota involving vehicles following a Tacoma truck, but they did not result in injuries, according to a Toyota spokesman. Over time and in limited cases, corrosion of the plate could cause it to break, causing the detachment of the spare tire, Toyota Motor Sales, U.S.A. said in a statement.
The recall covers 150,000 trucks originally sold in 20 cold-weather U.S. states and 10,000 trucks in Canada. This month letters will go to the owners of the recalled vehicles. Toyota dealers will replace the spare tire assembly, if necessary, without charge to Tacoma owners.

**BMW Recalls Older 7 Series Sedans For Faulty Door Latches**

Bayerische Motoren Werke AG’s BMW of North America affiliate has recalled 7,485 of its 7 Series luxury sedans from model years 2002 and 2003, according to documents filed with NHTSA. Customers have reported fuel odor, the check engine light going on and fuel on the ground, and dealer technicians have found cracks in the affected pieces, according to documents filed with NHTSA. Dealers will replace the affected part. The recall is expected to begin on or before Dec. 7.

**Chrysler To Recall 919,000 SUVs To Fix Air Bags**

Chrysler has recalled more than 919,000 older-model Jeep Grand Cherokee and Liberty SUVs worldwide because the air bags can inflate while people are driving them. The recall affects Grand Cherokees from the 2002 through 2004 model years and Libertys from model years 2002 and 2003, according to documents posted on the U.S. National Highway Traffic Safety Administration website. NHTSA said that a part can fail in the air bag control computer, and the front and side air bags can inflate while the SUVs are being driven. An agency investigation started last year found that the air bags went off 215 times, causing 81 minor injuries. No crashes were reported, but NHTSA said the problem could cause a wreck.

Chrysler, which makes Jeeps, will install an electrical filter free of charge to fix the problem. The company will begin notifying owners of the recall in January. The recall includes nearly 745,000 SUVs in the U.S., 49,000 in Canada and 22,000 in Mexico. The rest are outside North America. Dashboard warning lights normally come on before the air bags are inflated, Chrysler spokesman Eric Mayne said. If that happens, the driver should contact a Jeep dealer.

The problem happens in less than three-hundredths of a percent of the vehicles on the road, according to Mayne. NHTSA began investigating the air bags in October of last year after getting complaints about air bags inflating for no reason in Jeep Libertys. Investigators traced the cause to electrical stress on one of two circuits in the control computer. The problem also causes the seat belts to tighten as if a collision were about to happen. The Grand Cherokees covered by the recall were built from Aug. 1, 2001 to May 16, 2003, while the Libertys were built from June 6, 2001 to March 19, 2003.

**General Motors Recalls Cadillac, Buick And Chevrolet Cars For Safety Flaws**

General Motors Co. has recalled a number of its newer Buick, Cadillac and Chevrolet models for problems that could compromise passenger safety in a collision. The car maker’s Cadillac luxury division is recalling certain XTS large sedans from the 2013 model year because their rear-seat head restraints may not lock onto the upright position after being folded forward. This could result in the head rests being positioned too low, based on federal safety standards, which could increase the risk of neck injury in a crash. Cadillac said the recall affects 12,626 cars that it built from Oct. 12, 2011, through Aug. 30, 2012. Under the recall, dealers will replace the head restraints free of charge. The recall is scheduled to begin this month. Owners may contact Cadillac at 800-458-8006.

In a separate filing with the National Highway Traffic Safety Administration, GM is recalling certain 2012 Buick Verano, Chevrolet Cruze, and Chevrolet Sonic cars because their driver-side frontal air bags may not work properly. The airbags have a part called a shorting bar that may intermittently touch the air bag terminals. If the bar and terminals are in contact during a crash, the bag might not deploy when needed, which increases the risk of injury. GM said the recall affects 2,949 vehicles. The company said its dealers will replace the steering wheel airbag coil to correct the problem. Owners may contact GM at 800-521-7300.

**Jaguar Recalls 4,195 XF Cars For Potential Fuel Leak**

Jaguar has recalled 4,195 XF cars in the United States to fix a potential fuel leak problem. Jaguar Land Rover, a unit of India’s Tata Motors Ltd., is recalling XF cars equipped with 5-liter gasoline engines from model years 2010 through 2012. The affected vehicles may have a fuel tank fuel outlet flange that could crack, resulting in a leak and possible vehicle fire.

Jaguar has received three field reports and 17 warranty claims worldwide, but no reports of accidents, fires or injuries related to the issue, according to documents filed with NHTSA. Customers have reported fuel odor, the check engine light going on and fuel on the ground, and dealer technicians have found cracks in the affected pieces, according to documents filed with NHTSA. Dealers will replace the affected part. The recall is expected to begin on or before Dec. 7.

**Britax Car Seats Recalled**

55,455 Britax convertible car seats have been recalled because some children have tried to eat portions of them. The seats have a soft material in the chest pad restraint that children have chewed and, in some cases, bitten off. The material bitten off can pose a choking hazard. Models recalled, all manufactured between June 2012 and August 2012, are Boulevard 70 G3, Advocate 70 G3, and Pavilion 70 G3. Britax, of Charlotte, N.C., has received reports of children biting and gagging on pieces of the HUGS pads connected to the seat’s harness straps.


To address the issue, Britax is providing consumers with a kit containing more durable replacement pads that can be installed on the harness straps. Owners of affected car seats are encouraged to remove the HUGS pads until replacement pads are received. For more infor-
mation contact Britax Child Safety, Inc., at (888) 427-4829 or at www.britaxusa.com/support/safety-notices.

BIKE FRIDAY RECALLS TIKIT FOLDING BICYCLES DUE TO FALL HAZARD

Tikit Folding Bicycles have been recalled by Green Gear Cycling Inc., dba Bike Friday, of Eugene, Ore. The Tikit bike’s handlebar stem can break and cause the rider to lose control, posing a fall hazard to the consumer. This recall involves all models of tikit brand folding bicycles. The 16-inch wheel custom bicycles were sold in various colors. The Bike Friday tikit brand decal is affixed to the bike frame. The company has received six reports of breaking handlebar stems, resulting in two reports of injuries including scrapes, bruises and a head laceration that required stitches.

Consumers should immediately stop riding the bicycle and contact Bike Friday to schedule a free repair. The bikes were sold by Bike Friday direct and dealers nationwide from January 2007 through September 2012 for between $900 and $5,000. For more information contact Bike Friday at (800) 777-0258, from 8 a.m. to 5:30 p.m. PT Monday through Friday, or visit www.BikeFriday.com and click on “tikit stem recall” for more information.

RIVERS EDGE RECALLS HUNTERS TREE STANDS DUE TO FALL HAZARD

Tree Stands for Hunters have been recalled by Rivers Edge. The snap-hook assemblies can fail, causing the tree stand and the user to fall to the ground. The recalled products are Rivers Edge® Big Foot, Lite Foot and Baby Big Foot tree stands. The tree stands are used for bow and rifle hunting. They are made of metal with a dark gray finish and have black nylon straps with white stitching. The seats are camouflage and black and feature a yellow Rivers Edge logo on the top.

The snap-hook assembly is used to attach the stand to trees or poles. Recalled models have the date “2012” on the round ID tag located on the crossbar beneath the seat and do not have an orange dot and an “X” stamped on the snap-hook. Model numbers are located on a black sticker on the seat post just below the seat and on the product packaging.

Rivers Edge has received three reports of incidents of snap-hook assemblies failing; one included minor injuries of bumps, bruises and soreness and one included a broken toe and lacerated hand. Consumers should immediately stop using recalled tree stands and contact Rivers Edge Tree Stands Inc. to receive a free replacement snap-hook assembly. The tree stands were sold at Blain’s Farm and Fleet, Gander Mountain, Mills Fleet Farm, Orscheln—Farm & Home, Rogers Sporting Goods, Scheels All Sports and other sporting goods stores nationwide from May 1, 2012 to September 1, 2012 for between $39 and $120. For more information contact Rivers Edge toll-free at (866) 527-9690 8 a.m. to 5 p.m. CT Monday through Friday, or at www.riversedge-safetyrecall.com.

SUFFOCATION, ENTRAPMENT RISKS PROMPT RECALL OF PEAPOD TRAVEL TENTS BY KIDCO

KidCo Inc., of Libertyville, IL, has recalled about 220,000 PeaPod and PeaPod Plus Travel Beds. Infants and young children can roll off the edge of the inflatable air mattress, become entrapped between the mattress and the fabric sides of the tent, and suffocate. CPSC is aware of the death of a five-month-old boy in December 2011 in New York, New York, who was found with his face pressed against the side wall of the tent. The cause of death was not determined.

In addition, CPSC is aware of six reports and Health Canada is aware of three reports of children who became entrapped or experienced physical distress in the product. Two of the six reports included infants who were found crying underneath a mattress that had not been inserted into the zippered pocket on the bottom of the tent. The KidCo PeaPod Travel Beds and PeaPod Plus Travel Beds are small, portable sleep tents marketed for use by infants from birth to three-plus years, depending on the model. The tents have a zipper side for putting in and taking out the child and have an inflatable air mattress that fits into a zippered pocket underneath the floor of the tent. The tents fold into a compact round shape and come with a fabric bag for storage and transport. The model number can be found on a small tag on the underside of the product.

The travel tents were made in China and sold to authorized retailer and garden equipment retailers nationwide. Recalled units were sold between October 2011 and August 2012 for between $2,000 and $10,000. Consumers should immediately stop using the tents and contact KidCo to get a free repair kit. The kits will vary depending on the model and will be shipped to consumers starting in December 2012. Contact KidCo toll-free at (855) 847-8600 between 8:30 a.m. and 5:00 p.m. CT Monday through Friday or visit the company’s website at www.kidco.com to receive the kit.

KAWASAKI MOTORS RECALLS LAWN MOWER ENGINES DUE TO FIRE HAZARD

About 210,000 Lawn Mower Engines have been recalled by Kawasaki Motors. The fuel filter can leak, posing a fire hazard. This recall includes Kawasaki FH, FR, FS and FX series engines used in riding and wide area, walk-behind lawn mowers made and sold under the following brand names: Ariens, Bad Boy Mowers, Big Dog, Bob-Cat, Bush Hog, Country Clipper, Gravely, Hustler, Husqvarna, Land Pride, SCAG, Simplicity, Snapper Pro, Tiger Corp, Toro, Worldlawn and Woods. Engines may have also been bought separately and used in other lawn mowers. Recalled engines are 13 to 36 horsepower, air-cooled, v-twin engines. “Kawasaki” and the model number are printed on the top of all of the engines. In addition, the spec and serial numbers are printed on a label on one side of the engine. Kawasaki Motors has received 110 reports of fuel leaks. No injuries have been reported, according to the company.

The lawn mowers were sold at authorized Kawasaki small engine dealers and lawn and garden equipment retailers nationwide. Recalled units were sold between October 2011 and August 2012 for between $2,000 and $10,000. Consumers should immediately stop using mowers with the recalled engines and fuel filters and contact Kawasaki or a Kawasaki dealer for a free repair. Contact Kawasaki Motors toll-free at (866) 836-4463, from 8 a.m. to 5 p.m. ET, Monday through Friday, or online at www.kawpower.com or by e-mail at ffrecall@kmc-usa.com.

CHAMPION GENERATORS SOLD AT COSTCO RECALLED FOR FIRE RISK

Two models of Champion Power Equipment portable generators have been recalled due to fire hazards. The recall came as many on the East Coast were relying on portable generators in the wake of the destruction caused by the superstorm Sandy. The models have been recalled because fuel can leak from the generators’ carburetors, posing a potential fire risk. Both models
affected by the recall have a black frame with black and yellow control panels, a bar handle and two wheels. About 8,600 units in total are affected.

Model number 41332 has an open frame and contains the words “Champion Power Equipment” on the control panel and “8250 starting watts” and “6500 running watts” on the side of the fuel tank. Serial numbers of the model included in the recall range from 11NOV2600701 to 11NOV2601500.

Model number 41532 has side panels that cover the long sides of the fuel tank, the CPSC notes. The words “Champion Power Equipment” are on the side panel above the control panel, and “9000 starting watts” and “7000 running watts” are on the control panel. Serial number ranges for this particular model include 11NOV1400151 to 11NOV1400360, 11DEC0700001 to 11DEC0700720, 11DEC1301077 to 11DEC1402602, 11DEC2201801 to 11DEC2203600, 11DEC2501531 to 11DEC2503330 and 11DEC2801075 to 11DEC2801325.

The generators were sold exclusively at Costco from December 2011 through July 2012 for about $699. The CPSC urges people to stop using the recalled products immediately, and to contact Champion Power Equipment for a free repair kit that authorized dealers can install. Consumers can also choose to return the unit to Costco for a full refund. Health officials warn that those using generators and other alternate power and heating sources in the wake of Sandy could face risk for potentially deadly carbon monoxide poisoning. Tips to reduce risk include never running a generator where exhaust can vent into an enclosed area, never running a generator inside a basement, garage or enclosed structure inside the home—even if the windows are open—and keeping vents and flues free of debris.

**American Honda Recalls Portable Generators Due To Fire And Burn Hazards**

About 150,600 Portable Generators have been recalled by American Honda Motor Co., Inc., of Torrance, Calif. The generator’s fuel hose can leak, posing fire and burn hazards. Honda is aware of four incidents of fuel leaks. No fires or injuries have been reported. This recall involves Honda gasoline-powered portable generators with model number EU2000i and serial numbers EAAJ-2260273 through EAAJ-2485025. The generators are black and red in color or have a camouflage design. They measure about 20 inches long by 11 ½ inches wide by 16 ½ inches tall. “Honda,” “EU converter” and the model number 2000i are printed on the side of the generator. “Companion” is printed on the side of some EU2000i models. The serial number is located on the lower right side, rear corner of the generator.

The generators were sold at Honda Power Equipment dealers, Camping World, Gander Mountain, Grainger, Hertz Rental, John Deere, National Pump & Compressor, Northern Tool, Scheels Sporting, Sportsman’s Warehouse, Sunbelt Rentals, True Value, United Rentals, White Cap and Wholesale Sports store nationwide and online from October 2011 through September 2012 for between $1,150 and $1,400. Consumers should immediately stop using the recalled generators and contact the nearest Honda Power Equipment dealer to schedule a free inspection and repair. Contact American Honda at (888) 888-3139, 8:30 a.m. to 5 p.m. ET Monday through Friday, or online at http://powerequipment.honda.com and click on ‘Recalls and Updates’ under ‘Service and Support’ for more information.

**Portable Generators Recalled by Champion Power Equipment Due To Fire Hazard**

About 8,600 Portable generators have been recalled by Champion Power Equipment, of Santa Fe Springs, Calif. Fuel can leak from the generator’s carburetor, posing a fire hazard. There have been 11 reports of fuel leaking from the generators, including eight reports of the generators catching fire and two of property damage. This recall involves two models of Champion Power Equipment portable generators. Both models have a black frame with black and yellow control panels, a bar handle and two wheels. Model number 41332 has an open frame. The words “Champion Power Equipment” are on the control panel and “8250 starting watts” and “6500 running watts” are on the side of the fuel tank. Model number 41532 has side panels that cover the long sides of the fuel tank. The words “Champion Power Equipment” are on the side panel above the control panel, and “9000 starting watts” and “7000 running watts” are on the control panel. The model number and serial number are located on the side of the generator with the handle, on a tag on the crossbar above the yellow generator end cap.

The generators were sold exclusively at Costco Wholesale stores nationwide from December 2011 through July 2012 for about $699. Consumers should stop using the recalled generators immediately and contact Champion Power Equipment for a free repair kit to be installed by an authorized dealer. The consumer may also return the unit to Costco for a full refund. Contact Champion Power Equipment; toll-free at (855) 236-9424, from 8:30 a.m. to 5 p.m. PT Monday through Friday, or by e-mail support@cpauto.com, or have at www.championpowerequipment.com, then click on the red “Important Product Recall Notice” link for more information.

**Powermate Generators Recalled By Pramac America Due To Fire Hazard**

Pramac America LLC, of Kearney, Neb., has recalled its Powermate Sx 5500 portable generators. The generators were manufactured by Am Pride Chongqing Senci IMP & EXP Trade Co., of China. The fuel filter on this generator allows gasoline to leak, posing a fire hazard. Pramac America has received 51 reports of fuel filter leakage. No fires or injuries have been reported. The recalled portable generators have “Powermate 5500” printed on the side of the black generator with wheels. These generators were sold under the model name Sx5500 and model number PM0125500. Both are printed on a plate on the rear of the generators with serial numbers of the recalled units ranging from K003xxxxxQ through K090xxxxxQ.

The generators were sold exclusively at Home Depot stores in the northeast, mid-west and southeast United States from February 2012 through August 2012 for about $550. Consumers should stop using these recalled portable generators and contact Pramac America to receive a free repair kit including a replacement filter, hose and hose clamps for fuel line. Contact Pramac America LLC at (800) 445-1805 from 7 a.m. to 5 p.m. CT Monday through Friday or www.powermate.com and click on the Generator tab and then the Expert Advice followed by the Service Notification link for more information.

**Master Forge Gas Grills Recalled Due To Fire And Burn Hazards**

About 37,000 Master Forge Gas Grills have been recalled by the manufacturer...
Guangdong Vanward Electric Co., Ltd., of China and importer L G Sourcing, Inc., of North Wilkesboro, N.C. If improperly installed, the hose connecting the gas tank and regulator to the burner control can touch the burner box and cause the hose to melt and rupture when the grill is lit. This poses a fire and burn hazard. Guangdong Vanward is aware of two reports of hoses melting and rupturing. No injuries have been reported. This recall involves Master Forge four-burner gas grills with a single-door base. “Master Forge” is written on the grill’s hood. The model number GD4825 is located on a label inside the door of the grill’s base. “Item 94227” is written on the cover of the instruction manual.

The grills were sold exclusively at Lowe’s stores nationwide from November 2011 through May 2012 for about $270. Consumers should immediately stop using the grill and inspect the grill to make sure that the gas hose runs along the outside of the grill cabinet and passes through the round hole in the side panel. Consumers should contact Guangdong Vanward Electric for revised instructions and a warning label to apply to the grill that shows how to properly install the hose and the regulator. For additional information, contact Guangdong Vanward Electric toll-free at (888) 584-3648 between 8 a.m. through 6 p.m. ET Monday through Friday, or visit the company’s recall website at www.94227info.com.

**Ceiling-Mounted Light Fixtures Recalled By Dolan Northwest**

Dongguan Young Long Electric Co. Ltd., has recalled about 8,000 Ceiling-Mounted Light Fixtures. The fixture’s socket wire insulation can degrade, leading to charged wires becoming exposed, causing electricity to pass to the metal canopy of the fixture. This poses a fire and electric shock hazard to consumers. This recall involves round ceiling-mounted light fixtures, satin nickel or bronze in color with a domed alabaster glass shade. The light fixture is 14 inches in diameter and 5.5 inches high and has two sockets marked “BO AN” that take 75 watt bulbs. The light fixtures were sold as Design Classics Model 562-09 and 562-30. The brand name and model number are on the inside of the fixture pan. The firm has received two reports of defective fixtures which resulted in the home’s Arc Fault Circuit Interrupter (AFCI) tripping. No injuries have been reported. Consumers should immediately stop using the recalled light fixtures and return them to the place of purchase to obtain a free replacement fixture and a $50 voucher, or contact the company to schedule a free home repair.

The fixtures were sold at Builders Lighting, Globe Lighting, Seattle Lighting and online at DestinationLighting.com from September 2008 through September 2009 for about $52. Contact Dolan Northwest LLC; toll-free at (888) 213-5758, from 9 a.m. to 5 p.m. PT Monday through Friday; or e-mail flush mountrecall@seattlelighting.com, flush mountrecall@globelighting.com, flush mountrecall@builderslighting.com, flush montrecr@globelighting.com, or flushmontrec_r@destinationlighting.com; or online at www.seattlelighting.com, www.globelighting.com, www.builderslighting.com or www.destinationlighting.com.

** Bose Recalls Dual-Voltage CineMate II Home Theater Speaker Systems**

Bose Corporation, of Framingham, Mass., has recalled about 20,500 Dual-Voltage CineMate II Home Theater Speaker Systems. A component in the bass module can fail when used outside of the U.S. in electrical outlets rated at 220 volts or higher, presenting a fire hazard to consumers. Bose has received two reports of the bass modules igniting when used in 220 volt electrical outlets in Europe. No injuries were reported. This recall involves dual-voltage CineMate Series II and CineMate GS Series II digital home theater speaker systems designed to operate with U.S. 120-volt electrical outlets and European outlets of 220 volts or higher. Each speaker system includes two speakers, one bass module, a remote control device, an interface module and accessories. The components are black. Dual-voltage systems included in the recall have a product code of 051365, 051470 or 057971, which are the first six digits of the serial number on the product label located on the back of the bass module.

The speakers were sold at U.S. Military Exchanges and select U.S. retailers from September 2009 through September 2012 for between $600 and $800. Contact Bose to arrange for a free repair or replacement of the bass module. Contact Bose Corporation toll-free (877) 354-1004, 8:30 a.m. to 9 p.m. Monday through Friday ET in the U.S. or 001 (508) 614-1842, 8:30 a.m. to 5 p.m. ET Monday through Friday outside the U.S., or visit www.bose.com/safety for more information.

**LG Electronics Recalls Electric Ranges Due To Burn And Fire Hazards**

About 161,000 LG Electric Ranges have been recalled by LG Electronics Inc., of South Korea. Burners on the electric ranges can fail to turn off after being switched off and the temperature setting can increase unexpectedly during use, posing burn and fire hazards to consumers. LG has received 80 reports of incidents involving burners failing to turn off or the temperature setting increasing unexpectedly during use. No fires or injuries have been reported.

The recalled ranges involve models LRE30451, LRE30453, LRE30755, LRE30757, and LRE30955ST. They were sold in black, white and stainless steel and with a smooth black ceramic glass top cooking surface. The recalled ranges have serial numbers starting with 512, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 901, 902, 903, 904, 905, and 906. The model and serial numbers can be found on a label that can be seen by opening the storage drawer at the base of the unit. The electric ranges are about 47 1/2 inches tall to the top of the backguard, 29 inches wide and 28 inches deep.

The ranges were sold at Best Buy, Home Depot, Sears, and regional appliance retailers nationwide from January 2006 to June 2010 for between $800 and $1999. Consumers should immediately contact LG to schedule a free in-home repair. Consumers whose burner heat setting cannot be regulated by using the controls or who experience problems with a cooktop burner remaining on, should immediately stop using the recalled electric range until it is repaired. Contact LG toll-free at (855) 400-4658, from 8 a.m. to 7 p.m. CT Monday through Friday, and from 8 a.m. to 2 p.m. Saturday, or www.LG.com/us and click on Public Notices in the Customer Services section for more information.

**Fireplaces And Inserts Recalled By Monessen Hearth Systems Due To Risk Of Fire**

About 15,000 Signature Command™ (electronically Controlled Direct and B-Vent Gas Fireplaces and Inserts have
been recalled by Monessen Hearth Systems Co., of Paris, Ky. A control component in the fireplaces and inserts can prevent the unit from lighting though gas continues to flow, posing a fire hazard. This recall involves electronically controlled Majestic, Monessen and Vermont Castings direct-vent and B-vent gas fireplaces and inserts. Models included in the recall have serial numbers ranging from 11-X-027322 to 11-X-031501; 12-X-000275 to 12-X-015206, 11-P-032597 to 11-P-059389; and 12-P-000202 to 12-P-037583. The first two digits represent the year of manufacture, the letter represents the facility and the last six digits are sequential numbers, randomly selected. The serial number is printed on a rating plate, affixed to a cable inside the lower or side control door.

The inserts were sold at Hearth dealers and distributors nationwide between October 2011 and October 2012 for between $1,030 and $8,160. Consumers should immediately stop using and turn off the fireplace using the master control switch on the command center which is located inside the control door. Consumers should contact Monessen Hearth Systems Company to arrange a free repair. Contact Monessen Hearth Systems toll-free at (877) 406-9180, from 8 a.m. to 5 p.m. ET Monday through Friday, or visit the website www.mhsc.com and on the website. Consumers should contact Innovative Scuba Concepts, Trident Diving Equipment or A-Plus Marine to receive a free replacement hose. Contact Innovative Scuba Concepts Inc. at (800) 472-2740 from 8 a.m. to 5 p.m. MT Monday through Friday or online at www.innovativescuba.com and click on the recall notice: Signature Command Defect for more information.

**SAUDER WOODWORKING COMPANY RECALLS GRUGA OFFICE CHAIRS**

Sauder Woodworking Company, of Archbold, Ohio, has recalled Gruga Office Chairs. The seat plate can break, posing a fall hazard to consumers. Sauder Woodworking Company has received 17 reports of seat plates breaking, two of which involved consumers falling and receiving bumps and bruises. The recalled chairs are entertainment, executive, manager's and task chairs with the brand name “GRUGA—Seating from Sauder.” The chairs are sold in a variety of fabrics and colors. The model number and Universal Product Code (UPC) are on a tag attached to the bottom of the seat. A blue data code is stamped on the legal disclaimer label on the underside of the chair seat. Recalled chairs are dated August 2009 and later. For photos of all 31 chairs, go to www.Sauder.com and click on Safety Notices, then click on the link for model numbers, descriptions and UPCs.

The chairs were sold at Meijer, Menards, Shopko and Target and a variety of retail outlets nationwide, and online retailers including BestBuy.com and Kohls.com from August 2009 to September 2012 for between $79 and $399. Consumers should immediately stop using the recalled chairs and contact Sauder for a free replacement seat plate and attachment tool. Contact Sauder Woodworking Company; toll-free (888) 800-4590, from 8 a.m. to 5 p.m. ET Monday through Friday, or visit www.Sauder.com and click on Safety Notices for more information.

**LAJOBi RECALLS GLIDER ROCKERS DUE TO FALL HAZARD**

LaJobi recalls Glider Rockers due to fall hazard. Both products were sold in classic cherry, classic white and espresso wood finishes with sandstone colored fabric covered seats. The Avalon model comes with an ottoman. Only the rockers are affected by the recall. The Graco logo, products’ item numbers, name and the place of manufacture are printed on the label located underneath the front part of the seat.

The Avalon model was sold at Burlington and other mass retail stores nationwide and online at Amazon.com, Target.com and Walmart.com from December 2009 to October 2012 for about $170. The CNS Box 2 / Katelyn Nursery Solution Glider Rockers were recalled by LaJobi, Inc., of Cranbury, N.J. The base of the glider rocker can crack or break, posing a fall hazard. CPSC and LaJobi, Inc. have received 26 reports of the Avalon glider rockers breaking. In one incident, the occupant fell to the ground and sustained a minor injury. CPSC and LaJobi, Inc. have received two reports of the CNS Box 2 glider rocker breaking with no injuries. This recall involves two models of wooden glider rockers: Graco-branded Avalon and CNS Box 2 / Katelyn Nursery Solution Glider. Both products were sold between $79 and $399. Consumers should immediately stop using the glider rockers and contact LaJobi to receive a free replacement base for the glider rocker. Contact LaJobi toll free at (888) 266-2848 from 9 a.m. to 5 p.m. ET Monday through Friday or online at www.lajobi.com and click on Safety Notices for more information.

**CHILDREN’S PAJAMAS RECALLED**

J.P. Boden & Co. has recalled about 1,130 children's pajamas because the pajamas fail to meet federal flammability standards for children's sleepwear,
posing a risk of burn injuries to children. The recalled products are 100 percent cotton pajamas for children 1.5 (18 months) to 14 years old. The brand name “Mini Boden” appears on a label attached to the back of the neck of the tops and the center of the back of the waist on the bottoms and on the packaging.

Each pack contains two long-sleeved tops and two bottoms in one of the following color schemes: black, white and blue with motorcycles print; white, blue and pink with rocket and stars print; or a light blue, blue and green with cars print. The garments were sold as pajamas. The pajamas were sold online from July 21, 2012 to September 17, 2012 for about $48. Consumers should immediately stop using the pajamas and contact Boden for a full refund, exchange or merchandise credit. Contact J.P. Boden Services Inc. toll-free at (866) 206-9508 from 8 a.m. to 11 p.m. ET daily or go the company’s website.

**Boehringer Ingelheim Pharmaceuticals, Inc. Recalls a Single Manufacturing Lot of Pradaxa®**

Boehringer Ingelheim Pharmaceuticals, Inc. has recalled a single manufacturing lot of Pradaxa® (dabigatran etexilate mesylate), 75mg 60 US, NDC 0597-0149-54, lot 201900, Exp January 2015. Pradaxa is indicated to reduce the risk of stroke and systemic embolism in patients with non-valvular atrial fibrillation (NVAF). The recall is limited to this one lot number. This recall is being conducted due to a potential packaging defect on this lot that may compromise the bottle integrity. A damaged bottle could allow moisture to get into the bottle and, thus, may impair the quality of Pradaxa. As a consequence a patient may not receive a fully effective dose of Pradaxa 75mg, which would increase his or her risk of experiencing an ischemic stroke. This risk is said by the company to be small. Pradaxa is being recalled at the patient level.

Patients with bottles of Pradaxa 75mg from lot 201900 should continue to take the product as directed until they obtain replacement to assure there is no interruption of therapy. We believe most of the potentially affected bottles have been returned, but if a person has or receives a bottle of Pradaxa 75mg from the potentially affected lot he/she should return the potentially affected bottle to their pharmacist as soon as possible for replacement at no charge.

Information has been sent to pharmacists alerting them of the details pertaining to this recall. As described in these recall communications, pharmacists who may have dispensed Pradaxa capsules to patients from manufacturing lot 201900 are instructed to contact those patients to return the product lot back to the pharmacy.

Distributors/retailers that have not received a recall packet should contact GENCO Pharmaceutical Services, 6101 North 64th Street, Milwaukee, Wis. 53218. For information regarding this recall, please reference the following telephone numbers: For technical product information or to report a technical product complaint, call 1-800-542-6257, option #3. For information regarding the recall process, call GENCO Pharmaceutical Services at 1-877-319-8963.

**Kennedy’s Farmhouse Cheese Issues Recall**

Kennedy’s Farmhouse Cheese in Barren County in Kentucky has recalled certain cheeses after testing found the presence of bacteria in a few samples. The company said that the recall was issued out of an abundance of caution. There have been no illnesses reported. The affected products include blocks of colby, chipotle colby, Monterey jack and mild cheddar cheeses with lot numbers of 120724, 120711, 120719 and 120625. The cheeses went to distributors, restaurants and farmer’s markets in Alabama, Indiana, Kentucky, North Carolina, Tennessee and Virginia. Additional information can be obtained by calling 888-571-4029 or 270-434-4124 or emailing udderway@yahoo.com.

**Nesquik Chocolate Powder Recalled For Salmonella**

Nesquik chocolate powders sold in the United States have been recalled due to possible presence of salmonella. The recall is limited only to 10.9, 21.8 and 40.7-ounce containers of Nesquik Chocolate Powder, and no other varieties or sizes are affected. The company pulled the products after a supplier for the Nesquik ingredient calcium carbonate, Omya Inc., notified Nestle of potential salmonella contamination. No illnesses had been reported at press time.

The affected powders were produced during Oct. 2012, the company said. Consumers should look for the production code on the bottom of the canister by the expiration date to see if the product is part of the recall. For 40.7 ounce chocolate powder (72 servings), the affected production codes are: 2282574810 and 2282574820. For 21.8 ounce chocolate powder (38 servings), affected codes are: 2278574810, 2278574820, 2279574810, 2279574820, 2284574820, 2284574830, 2285574810, 2285574820, 2287574820, 2289574810 and 2289574820.

For 10.9 ounce chocolate powder (19 servings), the affected production code is 2278574810. All affected products have an expiration date of Oct. 2014. Salmonella is a bacteria that causes the illness, salmonellosis, which can cause diarrhea, fever, and abdominal cramps 12 to 72 hours after infection. Illness typically lasts four to seven days and most people will recover without treatment; however, some may need to be hospitalized for severe diarrhea. The elderly, infants, and those with weakened immune systems are more likely to have a severe illness. Consumers who may have purchased the recalled products should not drink it and return it to the place of purchase for a full refund. Customers can also call Nestle Consumer Services at (800) 628-7679.

**Sausage Products Part Of Nationwide Recall**

Pinnacle Foods Group LLC a Fort Madison, Iowa establishment, has recalled approximately 90,975 pounds of bourbon barbecue sausage products because they may have been underprocessed. The products subject to recall include: 5-oz. cans of “Armour Vienna Sausage Bourbon BBQ Flavored” (24 per case). Each can bears the establishment number “P-4247” inside the USDA mark of inspection, a UPC Code of “5410093824” and a Use By date of Sept. 7, 2015.

The products subject to recall were produced on September 7, 2012, and sold to retail establishments nationwide. The problem was discovered by the company and it believes the problem occurred as a result of processing time miscalculations that caused the product to be undercooked during the production process.

The company has received no reports of illnesses due to consumption of these products. Anyone concerned about an illness should contact a healthcare provider. Consumers with questions about the recall should contact the company at 1 (888) 299-7646 from 9 a.m. to 8 p.m. (Eastern Time) Monday through Friday.

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.

XVI.
FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

BOBBY MOZINGO

As we have previously reported, our firm employs six full-time investigators. One of the investigators, Bobby Mozingo, has been employed with the firm for 20 years. Before coming with us, Bobby was employed by the Montgomery Police Department for ten years, including five years in the Detective Division. He has been married to his wife, Vicki, a registered nurse who works in a local pediatrician’s office, for 27 years. Bobby and Vicki have two daughters, Amy and Paige. Amy is a Registered Nurse at Children’s Hospital in Birmingham and Paige is now a senior at Troy University.

Bobby grew up in Chattanooga, Tenn., where he graduated from Lakeview High School. Bobby attended the University of Tennessee at Chattanooga. His hobbies include camping, NASCAR racing, golf, and watching Alabama Football. As members of Eastmont Baptist Church, Bobby and his family are involved in several church ministries. Bobby is doing an outstanding job for the firm and we are most fortunate to have him with us. He works hard for our clients and is very popular with them.

MICHELLE FULMER

Michelle Fulmer came to work for the firm in May 1994. She serves as Section Head Administrator for the Consumer Fraud Department, which is headed up by Dee Miles. Michelle has worked with Dee for the entire 18 years that she has been employed with the firm. As Section Head Administrator, Michelle manages the staff and assists with the day-to-day operations of the Department.

Michelle is married to Eric Fulmer and they have two children, Brandey and Logan. Brandey is finishing her first semester at Troy University and Logan is in the 7th grade at Wetumpka Middle School. Michelle enjoys reading, spending time with her family, and watching Alabama Football. She is a most valuable employee and does a very good job in her role as Section Head Administrator. We are fortunate to have Michelle with us.

THE FIRM’S CHRISTMAS PROJECTS

This is a joyful time for so many, but for others in our community it can be a time of pain and hardship. There are so many less fortunate among us, who struggle just to meet the basic needs of their family from day to day. For these folks, a special celebration, gifts, or even a nice dinner seems way out of reach. Every holiday season, the employees at Beasley Allen demonstrate a remarkable spirit of giving as they work on so many different projects to help those in need. This year projects included:

• Collecting food and toys for several families being served by the Family Sunshine Center. This project was led by Angela Talley.

• Willa Carpenter volunteered to head up the clothing and blanket drive for the homeless in Montgomery through the Friendship Missions.

• For many years Sherry McHenry has organized the Hands of Christ toy drive for the firm, providing new toys for a “store” that allows parents to purchase gifts for their children at a discounted price.

• Theresa Perkins gave her time and energy to support the Faith Rescue Mission’s food, coat and blanket drive for the homeless in Montgomery, Autauga and Elmore Counties.

Many thanks to Angela, Willa, Sherry and Theresa for volunteering to manage these projects this year. These projects would also not be possible without the generous support of the firm’s staff and lawyers who donate food, clothing and money to these organizations.

Jennifer Aughtman, who is in charge of the youth department at St. James United Methodist Church, sent in one of her favorite verses.

Thorns and snares are in the way of the perverse; He who guards his soul will be far from them. Train up a child in the way he should go, And when he is old he will not depart from it.

Proverbs 22:5-7

Ann Easley, who works in our firm’s Mass Torts Section, provided two verses for this issue. Ann says these truths from God’s words have helped her get through some difficult times in her life. Even when there seemed to be so many questions, Ann says she was reminded that God’s promises are true, regardless of circumstances.

But those who hope in the LORD will renew their strength. They will soar on wings like eagles; they will run and not grow weary, they will walk and not be faint.

Isaiah 40:31 (NIV)

XIX.

CLOSING OBSERVATIONS

THE LESSONS OF “TO KILL A MOCKINGBIRD” ENDURE AFTER 50 YEARS

Fifty years after its debut on Christmas Day in 1962, the film version of Harper Lee’s award-winning novel “To Kill a Mockingbird” still holds a leading spot among timeless classic movies. More than that, it holds a place of prominence in the hearts and minds of generations of people. This movie remains one of my favorites. I have also read the book on more than one occasion and will do so again. The story and lessons learned from it will never get old.

The book, published in 1960, and the movie, tell the story of a black man accused of raping a white woman in a small Alabama town in the 1930s. The story is told mostly through the eyes of two children, sister and brother, Scout and Jem, who are being raised by their widower father, Atticus Finch. Atticus is a lawyer, and takes on the unpopular job of defending the falsely-accused man. In the day and age in which the story takes place, the man’s fate is all but certain simply because he is black and his accuser is white.

It is amazing that the movie was so popular, coming out as it did during a time before the Civil Rights Act, and before the Voting Rights Act. Jim Crow laws were still in place, segregating schools and public places. Yet the story shines a light on the immorality of racism, during a time when its tenets were still very firmly in place.

I’m inspired by the lead character of Atticus Finch, a lawyer in a small Southern town who crusades for justice. This character, portrayed to near-perfection in the movie by Gregory Peck, has no doubt influenced many young men and women in their career choice. Through his actions, Atticus illustrates how the practice of law provides an opportunity, like practically no other profession, to stand up for the little guy against what seem to be insurmountable odds. In the words of the law, every man is equal.

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But there is one way in this country in which all men are created equal—there is one human institution that makes a pauper the equal of a Rockefeller, the stupid man the equal of an Einstein, and the ignorant man the equal of any college president. That institution, gentlemen, is a court. […] Our courts have their faults, as does any human institution, but in this country our courts are the great level-

ers, and in our courts all men are created equal.

When it comes to equality in our nation, we can look around today and say, “See how far we’ve come.” People of all races and genders are believed to have opportunities to succeed and hopefully they do. The President of the United States is a black man, something unimaginable in the world occupied by Scout, Jem and Atticus. It was certainly unimaginable in the world in which the book and the movie were introduced—1960s America. Unfortunately, there are still some in this country who have difficulty accepting a black man as President. Hopefully that sort of mindset will change, and very soon.

But there’s a difference between justice in the courtroom and judgment in real life. Even in the movie, there is no perfect ending for the accused, and justice does not prevail. Despite proving his client could not have possibly committed the crime, the all-white jury convicts the man, and he is later killed while trying to escape from jail.

Sadly, we still live in a world where prejudice exists. Race, religion, orientation, even politics, as our last election shows, are catalysts for anger and a very personal kind of vitriol. It’s fitting, perhaps, that the anniversary of “To Kill a Mockingbird” falls on Christmas. It’s at this time of year, more than any other, when folks seem to make more of an effort to put aside petty differences and embrace other people. Christmas, more than any other time, is a chance to truly emulate Christ, and to put into action His greatest command, that we “love one another.”

It was this love that Atticus tried to teach his children in “To Kill a Mockingbird,” through his actions and through his gentle instruction, even in the face of injustice. His lessons included choosing to do what’s right, even when that is difficult; holding your family close, protecting and guiding them; and the importance of working to make your community better. Ultimately, his lesson was love for one’s fellow man. And maybe that’s why the story sticks with us, from generation to generation. I would encourage each of us to see the movie again and to re-read the book. If you have done neither, it’s your loss.

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

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And we know that in all things God works for the good of those who love him, who have been called according to his purpose.

Romans 8:28 (NIV)

Navan Ward, a lawyer in our Mass Torts Section, also provided verses this month. He says Philippians 4:13 scripture helps him when he feels overwhelmed by his responsibilities. Navan says this verse is a good reminder for him not to worry about anything, but instead to pray about everything that comes his way.

For I can do everything with the help of Christ who gives me the strength I need.

Philippians 4:13

Navan also says that Romans 13:1 reminds each of us to respect and pray for our government leaders, at every level, regardless of whether we voted for them or not. That’s something we must do.

Everyone must submit to governing authorities. For all authority comes from God, and those in positions of authority have been placed there by God.

Romans 13:1

Finally, Navan says Romans 8:31 reminds him daily that no matter what obstacles come his way, he can’t lose because God is always on his side.

If God is with us, then who can be against us.

Romans 8:31

Katy Barker, a Clerical Assistant in the Personal Injury Department, also furnished a verse for this issue. She says this verse is a favorite of hers and is one she says to herself over and over again. Katy, who leads the singing at her church, says it is awesome to know that God never leaves her side. Even when He feels distant and far away, Katy says she knows God is always right beside her. He is also with all of us and that’s a fact.

Have I not commanded you? Be strong and of good courage, do not be afraid nor dismayed. For the Lord Your God is with you wherever you go.

Joshua 1:9
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

XX.
PARTING WORDS

There is an old saying in Texas—"Big hat, no cattle"—and it applies to lots of folks in this country whose words and appearance don't always tell the real story about the person. It's easy for a man to put on a good show, but have very little of substance in his daily walk that backs up the rhetoric. We can visualize a man wearing a huge Stetson hat, but having no real connection with a cattle ranch and doing very little to benefit his fellow man.

I heard a tremendous talk last month by Gene Stallings at a local charity event in Montgomery that I wish I could share in its entirety with our readers. Coach Stallings, who had a legendary career both as a player and coach, gave one of the most inspiring and touching talks that I have ever heard. The man, who played and coached under the legendary Paul "Bear" Bryant, spoke to "women of influence," a group whose sole mission is to help children. Coach Stallings' life story is one that can be summarized by saying the man wears a Big Hat and also has lots of cattle. In fact, he actually lives on a ranch in Texas. Gene Stallings, without a doubt, is the real deal!

Even though Coach Stallings was an outstanding coach, winning the National Championship at Alabama in 1992, being selected as Coach of the Year and being elected to the National Football Hall of Fame, his talk centered largely on his relationship with his son, John Mark, who was born with Down Syndrome. Johnny, as he was called by family and friends, was an example of a person who greatly exceeded all expectations for him. The relationship between Coach Stallings and his son was more than just a special one, it was truly a gift from God. There is no telling what effect this relationship has had on thousands of folks around the country who heard stories of how a famous football coach, one of the "Junction Boys," put his relationship with his son, Johnny, who was never able to count to ten, but could remember all of the names of folks he met without any difficulty, at the top of his list of priorities. Coach Stallings said every night he would sit on Johnny's bed and would hear his son ask: "Pop, what are me and you going to do tomorrow?" Johnny, who died at the age of 46 in 2008, left a rich legacy which is still inspiring and motivating folks all across the country.

I could have listened to Coach Stallings for hours that night and never gotten tired or distracted. His message was one that all parents, and especially fathers, need to hear. Coach Stallings talked about such important things as respecting folks regardless of who they are or what their status is in life, the need for developing a work ethic in your children, and the need for a real and strong relationship with God. In fact, the legendary coach said on more than one occasion that knowing where you will spend eternity is the most important thing of all to any person.

As we approach the Christmas season, my prayer for each of us is that we will make our family's well-being a top priority for the holidays. Hopefully, the true meaning of Christmas will be the underlying and central theme as you and your family celebrate the holidays this year. May God bless you all.

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Jere Locke Beasley, founding shareholder of the law firm Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. is one of the most successful litigators of all time, with the best track record of verdicts of any lawyer in America. Beasley’s law firm, established in 1979 with the mission of “helping those who need it most,” now employs over 50 lawyers and more than 200 support staff. Jere Beasley has always been an advocate for victims of wrongdoing and has been helping those who need it most for over 30 years.