I. CAPITOL OBSERVATIONS

OUR POLITICAL LEADERS HAD BETTER WAKE UP ON GUNS

Just when the reaction to two innocent lives being taken in Oregon by a man with an assault rifle was starting to lose traction in the media, an even worse tragedy occurred at an elementary school in Connecticut. There as we know—all too well—26 innocent people, including 20 small children, were gunned down by a shooter. While it's impossible to conceive of such a thing happening in the United States, the reality is that such senseless shootings have almost become commonplace. We may soon reach the point where the public considers a mass murder by a person with an assault rifle a "routine" occurrence. I hope that will never happen, but we may be getting pretty close to that point.

I have to wonder how many more such incidents must take place before our elected leaders wake up and realize that we badly need reasonable gun control in this country. I am sick and tired of listening to politicians who have been so afraid of the NRA—the powerful gun lobby—that they haven't lifted a finger to even address the issue. Sadly, it took seeing the faces of the very young victims in the latest school slaughter to make most Americans realize that we have a grave problem facing our nation that must be solved. We must bring some sanity to the gun control issue, an issue that even escaped serious debate in the recent Presidential election, and we must do it now.

We need men and women in elected office who will take action on gun control both on the national and state levels. There is no logical reason to allow individuals to purchase assault rifles with magazines that hold 30 bullets. In fact, anybody can go online and purchase magazines or clips that will hold 50 and even 100 rounds. The ban on assault weapons must be reinstated by Congress at the earliest opportunity. Laws relating to gun registration must also be strengthened, and we must also make changes in how we regulate gun show sales. We have a monumental crisis in this country and we must take all necessary actions required to bring things under control. President Obama has appointed a task force, headed by Vice President Biden, to come up with specific proposals to reduce gun violence. That is good news.

But controlling guns isn't the only problem. We have allowed ultra-violent video games, television shows and movies to become readily available to people on a daily basis. There is virtually no control over any of them, either as to content or availability, and that must change. We have also seen state governments sharply reduce spending in the area of mental health counseling. It makes sense to refocus our attention on preventative mental health care and that will require adequate funding. I also believe that bullying in schools could be a factor when a youngster who has been bullied takes bizarre and violent actions. All of these potential contributing factors must be addressed in a long-range look at the problem. But the gun aspect must be dealt with now. We can't afford to react to the Connecticut school massacre like we have to other similar gun-related incidents in the past. We must do more than just talk. We must take action and do it without delay. The future of our nation depends on it!

DON'T BITE THE HAND THAT FEEDS YOU

I have found it rather interesting over the years to hear Alabama politicians "cuss" the "bad ole federal government" and then take money from that very same government. Realizing that our state depends heavily on Washington for revenues, acting in that manner has always seemed to me to be hypocritical. It was reported recently that more than 58 percent of Alabama's revenues in 2011 came from federal transfers, known more formally as "intergovernmental revenue." A new graphic created by the Tax Foundation shows that our state was near the middle of the pack in terms of reliance on federal dollars for revenue in that year.

Most states get between 30 percent and 40 percent of their revenues from intergovernmental transfers, including Texas, which receives the 11th largest share of federal revenue relative to other dollars (39.98 percent), and Washington State, which receives the 41st largest share (31.27 percent). Alabama's share ranks it 20th among the states.

Overall, Alabama collected $26.3 billion in revenues in 2011, according to the United Health Foundation. That's according to the latest rankings published by the United Health Foundation. The state ranked 48th a year ago, so I guess we are making some progress, but we still rank poorly. The improved ranking is the result of substantial progress in three key areas, according to UHF's data:

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Source: AL.com

ALABAMA'S HEALTH RATING REMAINS NEAR THE BOTTOM

It's hard to be proud of the fact that Alabama is the 45th healthiest state in the nation. That's according to the latest rankings published by the United Health Foundation. The state ranked 48th a year ago, so I guess we are making some progress, but we still rank poorly. The improved ranking is the result of substantial progress in three key areas, according to UHF's data:
• incidence of child poverty (improved from 39th to 28th);

• occupational fatalities (32nd to 28th); and

• the percent of the population with some form of health insurance (32nd to 27th), although that ratio actually decreased from 87 percent to 84 percent.

We can’t be satisfied to be near the bottom when it comes to the health and well-being of Alabamians, because our state remains near the bottom of all state ranks in several key measures. We must do much better. For example our state is:

• 46th in terms of diabetes incidence;

• 47th in obesity;

• 48th in both infant mortality and premature death rate; and

• 49th in cardiovascular health.

More than 1.2 million people in Alabama are obese, the report says, and the prevalence of diabetes within the state has doubled over the past ten years. These issues are having a larger effect on the state’s non-Hispanic black residents. Consider that a very large percent of non-Hispanic blacks are obese and many have diabetes.

Perhaps our state leaders, both in the Executive and Legislative branches, will make improving healthcare in our state a top priority for this year. It appears we have lots to do in that area.

Source: AL.com

**ALABAMA WOULD BENEFIT $1 BILLION UNDER MEDICAID EXPANSION**

If Alabama would choose to expand Medicaid under the federal Affordable Care Act, the state could gain about $1 billion in new tax revenue, according to two well-respected University of Alabama at Birmingham health care economists. That was the finding reported in a study released last month. In the most likely scenario, some 300,000 more state residents would be covered under an expansion, according to David Becker and Michael Morrisey at the UAB School of Public Health. UAB, which has the largest hospital in the state and one of the largest public hospitals in the country, released the report saying the research was a “win-win” for the state and Medicaid-eligible patients. Dr. Becker said in a UAB press release:

*Across the first seven years of Medicaid expansion, the net budgetary effect is positive throughout. In a very real sense, the state makes money while expanding coverage to nearly 300,000 Alabamians.*

Gov. Robert Bentley has said he wants to see cost-saving measures and more flexibility for the state before deciding on any expansion. Under the federal law, the federal government will cover 100 percent of health care expenditures from 2014 through 2016. So for three years it would cost almost nothing. As I understand it, during these first years of the program, Alabama would only be responsible for a share of the administrative costs of the expansion. The federal matching rate declines after 2016, falling gradually to 90 percent in 2020. As a result, the annual costs to the state increase from $39 million in 2014 to $222 million in 2020 for a total over the years of $771 million. It's rather hard to understand how Alabama can afford to say no on this issue.

The federal expenditure during that time would be an additional $11.7 billion more on Medicaid in the State of Alabama. This would be new income coming into Alabama. It was pointed out recently that when doctors, hospital employees, pharmacists and other employees in the health care sector receive these new dollars, they likely will spend the money on things like groceries, gasoline, and clothes. But the real benefit—if the program is run right—will be a healthier Alabama.

I have great respect for Gov. Bentley and believe that he has done a very good job as governor during some tough times. But I hope he will reconsider his position on Medicaid. If the Medicaid program in Alabama is broken in any respect, I suggest we fix it. But turning down the extension of Medicaid, which would make Alabama better, isn’t the route to take. I believe we can improve the overall health of Alabamians by taking advantage of the needed funding and by making sure the Medicaid program works properly and efficiently.

Source: AL.com

**THE FISCAL CLIFF CRISIS MAY HAVE BEEN AVOIDED**

There can be no doubt that much of the time spent in Congress recently has been dominated by the very real “Fiscal Cliff” crisis. December 31st was the deadline for Congress to take action to avert a fiscal disaster in this country. Of course, the Fiscal Cliff is a term we have all become very familiar with over the last few months. The term is used to refer to the economic effects that could result from tax increases, spending cuts, and a corresponding reduction in the U.S. budget deficit beginning in 2013 if existing laws are not changed by the end of 2012.

If the Fiscal Cliff scenario becomes reality, the deficit is expected to be reduced by roughly half beginning in the first days of 2013. Yet while a reduction in our nation’s deficit would seem to be very positive, this sharp decrease in the deficit in such a short period of time would be catastrophic. In fact, the Congressional Budget Office estimates the sudden reduction will probably lead to a severe recession in early 2013.

If the Fiscal Cliff is not averted, the result will also include the expiration of the Bush tax cuts and planned spending cuts under the Budget Control Act of 2011. The Budget Control Act was a result of a compromise intended to resolve a dispute in the public debt ceiling. Spending for defense, federal agencies and cabinet departments would be reduced through broad cuts referred to as budget sequestration. While we need reductions in spending, this approach is not the way to do it.

I believe that most Americans want the two parties to find a reasonable compromise to move this country forward. Most polls show that the overwhelming majority of citizens expect the parties to reach a compromise. At press time, President Obama and Speaker John Boehner, the chief negotiators for their respective parties, appeared to be making some headway towards a resolution of the problem.

I may be overly optimistic, but I am hopeful that this is a moment in our country’s history when partisan politics can be placed aside with the two parties coming together to move our country forward. I also believe that if one party blocks an agreement or seems unreasonable in its negotiations, the American public will take notice and will voice its displeasure during the next election cycle. Hopefully, by the time this issue is received, the Fiscal Cliff crisis will have been resolved.

II.

**A REPORT ON THE GULF COAST DISASTER**

**OIL SPILL CLAIMS PROCESS CONTINUES TO MAKE STRIDES**

While Gulf residents await Judge Barbier’s decision on the final approval of the Economic and Medical settlements, the Deepwater Horizon Claims Facility continues to make strides in both claims paid and claims received. Including over $405 million in transition payments made immediately before the claims facility went online, claim-
ants have either accepted or received payments totaling $1.6 billion as a direct result of the settlement reached between BP and the Plaintiffs’ Steering Committee.

Initially, the claims facility paid more seafood compensation and VoO charter payment claims than it did business claims. Recently, however, the facility is showing an ability to pay more complex business claims from all over the Gulf region, as business claims represent nearly $630 million of the $1.5 billion in claim offers made by the facility. Further analysis reveals that businesses have confidence in the claim facility, as 80% of the offers made were accepted, totaling $504 million. This is very good news for business owners who may have feared that the claims process was too good to be true.

Another very important measure of confidence can be found in the continued growth of claims filed. As of December 17, 2012, the claims facility had received a total of 105,376 claims. Florida currently leads the way with the largest share of claims at 33%, followed by Louisiana (27%); Alabama (16%); Mississippi (12%); and Texas (4%). Breaking down the numbers further, the largest portion of filings are individual economic loss claims (28%), followed by business economic loss (25%), Coastal Real Property (14%), Seafood Compensation (10%), Subsistence and VoO Charter Payment (7%, respectively), Wetlands (5%), Startup-Up and Failed Businesses (2%), and Vessel Physical Damage and Real Property Sales (1%).

Lawyers in our firm continue to evaluate and file business claims each day. As awareness continues to spread, we expect that business claim filings will grow significantly in the coming months. Considering the claims facility has only made payment offers on 20,000 of the 105,000 claims filed, we believe the current claims paid value is the “tip of the iceberg” of what this claims facility will ultimately pay. If you have any questions about the claims process, or if you need assistance in preparing your business’s claim, please contact Sandra Walters at Sandra.Walters@beasleyallen.com or 800.898.2034. She will make sure you are put in touch with a lawyer in our firm.

**Court Will Rule On BP’s $4.5 Billion Plea Deal Over Oil Spill**

A federal judge will decide this month whether to accept a plea deal that calls for BP PLC to pay a record $4.5 billion in penalties for its role in a deadly 2010 rig explosion and the massive oil spill it triggered in the Gulf of Mexico. As was widely reported, to resolve a Justice Department probe, the London-based oil giant agreed to plead guilty to criminal charges involving the deaths of 11 workers and to lying to Congress about how much oil spilled from its blown-out well. U.S. District Judge Sarah Vance scheduled a hearing for the 29th of this month where she will either accept or reject BP’s plea agreement with the government.

BP can withdraw its agreement if Judge Vance rejects the deal. If she accepts it, Judge Vance must impose a sentence that adheres to the agreed-upon terms. The penalties that BP agreed to pay include the biggest criminal fine in U.S. history. The proposed settlement doesn’t resolve separate criminal charges against four current or former BP employees.

Judge Vance ordered federal probation officials to conduct a presentence investigation and submit a report to her by January 14th. She also ordered BP and the Justice Department to submit a joint memo by the 16th that explains why the plea deal “adequately reflects the seriousness of the offenses and accepting the agreement satisfies the statutory purposes of sentencing.” The settlement includes payments of nearly $2.4 billion to the National Fish and Wildlife Foundation, $350 million to the National Academy of Sciences and about $500 million to the Securities and Exchange Commission, which accused BP of misleading investors by low-balling the amount of crude that was spilling from its blown-out well. It also includes nearly $1.3 billion in fines. The largest previous corporate criminal penalty assessed by the Justice Department was a $1.2 billion fine against drug maker Pfizer in 2009.

Source: Associated Press

**Oil Spill Flow Rate Vastly Understated by BP**

Emails that lawyers plan to introduce in February in the representation of a Defendant in the BP oil spill case show for the first time that the oil company knew the massive scale of the 2010 blowout in the Gulf of Mexico weeks earlier than previously disclosed. BP has long maintained that it provided full disclosure to the public and the federal government about its knowledge of the spill’s extent and did so promptly. The emails suggest otherwise. BP has said in the past that it only learned of the spill’s full extent months after the April 2010 blowout. But the emails indicate that the company knew almost immediately after the drilling rig exploded, killing 11 workers and injuring 17, that the spill would be extraordinarily large.

BP pleaded guilty in mid-November to more than a dozen felony charges related to the spill, including lying to Congress about the size of the leak, as part of a wide-ranging deal settling the company’s corporate criminal liability. According to the Justice Department, a probe of individual criminal activity related to the spill is ongoing and may result in more indictments. Lawyers for one of those charged, Kurt Mix, a former BP engineer named, are defending charges that Mix destroyed evidence showing that BP covered up the true extent of the 2010 spill.

The lawyers asked a federal judge in New Orleans last month for permission to introduce at trial thousands of previously undisclosed emails and internal documents tied to the company’s efforts to measure the undersea leak. They say these documents will exonerate Mix, who faces two felony counts of obstruction of justice for allegedly destroying hundreds of text messages sent to a supervisor during the three-month oil spill, including messages indicating that the flow of oil was far higher than BP publicly estimated at the time. The Mix trial is scheduled for February.

Defense briefs filed by Mix’s lawyers contain new details about BP’s extensive internal efforts to measure the size of the leak, which federal prosecutors contend were deliberately hidden from federal officials, Congress and the public. His lawyers contended that Mix actually shared information with federal officials about the true size of the oil leak during and after the spill—and that he wasn’t part of any cover-up.

Just two days after the rig explosion, Mix emailed a projection to a supervisor estimating the runaway well could be leaking from 62,000 barrels per day to 146,000 barrels per day. Two days later, BP executives told the Coast Guard that its best estimate for the leak was 1,000 barrels per day. After the well was capped, a federal scientific group concluded that the flow was 62,000 barrels per day at the beginning of the disaster. In another email, dated May 10, 2010, an executive at a Norwegian energy consulting firm said he had analyzed video of the undersea leak sent to him by Mix and that the flow at seabed could be on the order of 40,000 barrels per day. The executive’s name is redacted in Mix’s brief.

Four days later, Bob Dudley, BP’s current chief executive, appeared on MSNBC with Andrea Mitchell and defended the company’s flow rate estimate of 5,000 barrels per day, which it had provided to Congress and federal officials for weeks as the best estimate of the size of the leak. Dudley said the independent experts saying the oil flow was much higher were “screamongers.” He emphasized that “five thousand barrels a day, while inexact, is the best estimate of the industry experts.”

In its guilty plea in November, BP acknowledged that it misled Congress about the size of the spill. But the only company executive indicted for lying about the flow
estimates is David Rainey, a senior vice president who was BP’s second in command in the oil spill response. Rainey was charged in November with two felony counts of obstruction of justice for lying to Congress and federal officials about internal BP attempts to measure the size of the leak. Rainey’s trial is scheduled for January 28th, but his lawyers have requested a postponement. The sad part of this story as it applies to Rainey is that I seriously doubt that he was the only senior executive at BP who lied.

The legal brief filed by Mix’s lawyers said the deletion of text messages by the client was inadvertent and had nothing to do with BP’s guilty plea to obstruction of justice. The government has only accused Mix of deleting text messages—not deleting emails or any other document. In a sworn statement released in April after Mix’s indictment, Barbara O’Donnell, an FBI special agent, said Mix deleted numerous electronic messages related to the spill, after being “repeatedly informed of his obligation to maintain such records.”

Critics of BP praised the ongoing criminal prosecutions over the flow rate, saying they may shed important new light on the energy giant’s corporate culture. “This is a central issue. It shows just how morally and ethically bankrupt institutions within BP were,” said Tyson Slocum, director of the energy program for Public Citizen, a nonprofit advocacy group that has been harshly critical of BP’s safety and environmental record.

**Judge Dismisses Claims Against Dispersant Maker**

Judge Barbier has dismissed all claims against the manufacturer of the chemical dispersant that was used to break up crude oil gushing from BP’s blown-out well. Judge Barbier ruled that federal laws shield Illinois-based Nalco Co. from liability over the government’s use of Corexit after the 2010 spill. He noted that Nalco didn’t decide whether, when, where, how or in what quantities Corexit would be used in response to the spill. And Judge Barbier said it would not be proper for the court to second guess the federal on-scene coordinator’s decision to use the dispersant.

Lawyers for cleanup workers and coastal residents exposed to the dispersant argued that Nalco isn’t immune from claims it supplied a defective product that wasn’t safe for use in the Gulf. But Judge Barbier said the claims would create an “obstacle to federal law” if he allowed them to proceed. More than 1.8 million gallons of dispersant were used in responding to the spill. It was last used four days after BP capped the well in June 2010.

A 2010 study by the Environmental Protection Agency found that Corexit, when mixed with oil, is no more toxic to aquatic life than oil alone. But Congressional investigators have claimed the U.S. Coast Guard defied a federal directive to use the chemical sparingly and routinely approved BP requests to use thousands of gallons of Corexit per day.

**Mixing Oil With Dispersant Made The BP Oil Spill Worse**

In another development related to the use of the chemical dispersant, a new study by researchers at the Georgia Institute of Technology and the Universidad Autonoma de Aguascalientes in Mexico has found that mixing oil with dispersant made the BP oil spill worse. Georgia Tech reports that the two million gallons of dispersant used to clean up the 4.9 million barrels of oil that spilled into the Gulf of Mexico during the spill made the oil 52 times more toxic. The researchers discovered that mixing the dispersant with oil raised the toxicity of the mixture up to 52-fold over the oil alone. They found that the mixture’s impacts increased the death rate of rotifers, a microscopic grazing animal at the base of the Gulf’s food web.

Combining oil from the BP oil spill with Corexit, which is the dispersant mandated by the Environmental Protection Agency for clean up, the researchers measured the toxicity of oil, dispersant, and mixtures on five strains of rotifers. Rotifers are often used by ecotoxicologists to calculate toxicity in marine waters because of their fast response time, ease of use in tests and sensitivity to toxicants. Not only did the oil-dispersant mixture increase mortality in adult rotifers, as little as 2.6 percent of the mixture decreased rotifer egg hatching by 50 percent. These eggs hatch into rotifers each spring, reproduce in the water column and provide food for baby fish, shrimp and crabs.

Dr. Roberto-Rico Martinez of the UAA, who was the study leader, said in a statement:

> Dispersants are preapproved to help clean up oil spills and are widely used during disasters. But we have a poor understanding of their toxicity. Our study indicates the increase in toxicity may have been greatly underestimated following the Macondo well explosion.

Dr. Martinez conducted the research while he was a Fulbright Fellow at Georgia Tech. The researchers hope that the study will encourage more scientists to look into how oil and dispersant impact marine life. They believe that more knowledge of this topic will result in better management of future oil spills. Dr. Terry Snell, the chair of the School of Biology at Georgia Tech, had this to say in a statement:

> What remains to be determined is whether the benefits of dispersing the oil by using Corexit are outweighed by the substantial increase in toxicity of the mixture. Perhaps we should allow the oil to naturally disperse. It might take longer, but it would have less toxic impact on marine ecosystems.

The study’s findings were recently published online by the journal Environmental Pollution. I don’t believe we have even scratched the surface relating to the adverse effects of the massive use of Corexit in the Gulf. I am greatly concerned about what will happen when a major hurricane hits the Gulf.

Source: sciencerecorder.com

### III. DRUG MANUFACTURERS FRAUD LITIGATION

**Healthpoint To Pay Up To $48 Million To Settle False Claims Charge**

Healthpoint Ltd. and DFB Pharmaceuticals will pay up to $48 million to resolve allegations that Healthpoint caused false claims to be submitted to Medicare and Medicaid for an unapproved drug, Xenaderm, which was ineligible for reimbursement by those programs. Healthpoint and DFB will pay $28 million, plus another $20 million if there is a change in ownership of Healthpoint or DFB over the next three years. The whistleblower—Constance Conrad—has not reached agreement on a share of the proceeds of this settlement. Conrad worked for many years at the Center for Medicare and Medicaid Services, retired, and then brought the lawsuit.

Under the Federal Food Drug and Cosmetic Act, manufacturers must obtain Food and Drug Administration approval before introducing any new drug into the market. In January 2011, the United States intervened in, and later filed, a civil False Claims Act case against Healthpoint, alleging that it launched Xenaderm, a prescription skin ointment for the treatment of nursing home patients’ bed sores, without any FDA approval. The complaint alleged that Healthpoint marketing materials made false representations that the drug was effective for treating bed sores.

point’s business strategy was to market new prescription drug products modeled after drug products that were on the market before October 1962, in order to avoid the time, effort, and expense of obtaining FDA approval.

The complaint alleged that at no time prior to its introduction of Xenaderm into the market did Healthpoint complete any double-blind placebo-controlled clinical studies that established the safety and effectiveness of Xenaderm. In fact, one of Healthpoint’s own clinical researchers expressly conceded in an internal e-mail that the safety and efficacy data for Xenaderm was “crudely insufficient” to meet FDA standards. Notwithstanding the lack of FDA approval, Healthpoint actively promoted Xenaderm as a prescription drug that, unlike non-prescription skin ointments such as Vaseline, was “Medicaid reimbursed” and thus cost nursing homes nothing to administer to Medicaid patients.

While products containing Xenaderm’s principal active ingredient, trypsin, were on the market prior to 1962, the FDA had determined in the 1970s that trypsin was less-effective for its intended use. The government contends that those determinations rendered Xenaderm ineligible for Medicaid and Medicare reimbursement. Nonetheless, the government alleges, Healthpoint misrepresented the regulatory status of Xenaderm when it submitted quarterly reports to the government. As a result, the government contends, Healthpoint knowingly caused false claims to be submitted for Xenaderm. Conrad was represented by John Roddy, a partner at the Boston firm Bailey & Glasser. He did a very good job in this case.

Source: Corporate Crime Reporter

**Pfizer To Pay $55 Million For Illegally Promoting Protonix**

Pfizer Inc. will pay $55 million plus interest to resolve allegations that Wyeth illegally introduced and caused the introduction into interstate commerce of Protonix, a misbranded drug. Protonix is a proton pump inhibitor (PPI) that was used by physicians to treat various forms of gastro-esophageal reflux disease (GERD). This is just another example of a drug company violating the law, paying a settlement and then continuing to do business as usual.

Wyeth sought and obtained approval from the Food and Drug Administration to promote Protonix for short-term treatment of erosive esophagitis—a condition associated with GERD that can only be diagnosed with an invasive endoscope. But federal officials alleged that Wyeth fully intended to, and did, promote Protonix for all forms of GERD, including symptomatic GERD, which is far more common and could be diagnosed without an endoscopy. As all of our readers should now know, under federal law, manufacturers must obtain FDA approval for any indication for use for which a manufacturer intends to market a drug.

A drug is misbranded if its labeling does not contain adequate directions for use by a layperson safely and for the purposes for which it is intended. A prescription drug must be prescribed by a physician and is only exempt from the adequate directions for use requirement if a number of conditions are met, including that the manufacturer only intended to sell that drug for an FDA-approved use. A prescription drug marketed for unapproved off-label uses does not qualify for the exemption and is misbranded.

The FDA warned Wyeth before the company even began promoting Protonix that its proposed promotional materials were misleading. Wyeth had “overstated” its “erosive esophagitis indication” by “suggesting that Protonix is safe and effective in the treatment of patients with…GERD, according to the FDA.” Wyeth was also warned that “Protonix is not indicated for treatment of GERD symptoms that occur in the absence of esophageal erosions.” Despite the FDA’s admonishment, the government alleges that Wyeth trained its sales force to promote Protonix for all forms of GERD, beyond its limited erosive esophagitis indication. It’s also alleged that Wyeth sales representatives frequently promoted Protonix to physicians for unapproved uses, such as symptomatic GERD.

Wyeth promoted Protonix as the “best PPI for nighttime heartburn,” even though there was never any clinical evidence that Protonix was more effective than any other PPI for nighttime heartburn. It’s alleged in the complaint that this superiority slogan was formulated at the highest levels of the company. Wyeth allegedly retained an outside market research firm, at the cost of tens of thousands of dollars, to ensure that sales representatives delivered that misleading superiority message.

Wyeth used continuing medical education (CME) programs to promote Protonix for unapproved uses. CME programs are sponsored by accredited independent providers, such as universities, nonprofit organizations, or specialty societies. Pharmaceutical companies are permitted to provide financial support for CME programs, but they are not permitted to use CME programs as promotional vehicles for off-label indications. It was alleged in the complaint that Wyeth spent millions of dollars providing “unrestricted educational grants” to CME providers, and these grants invariably included promises that Wyeth would not attempt to influence the content of the program in any way.

The government alleges further that one of Wyeth’s “core marketing tactics” for Protonix was to use CME programs “to drive off-label use of the drug.” According to the complaint, the Protonix “brand team” influenced virtually every aspect of these CME programs: program topics, speaker selection, organization, and content. In addition, Wyeth even insisted that the CME program materials use the same color and appearance as Protonix promotional materials—a tactic that Wyeth and the vendor called “branducation.”

It’s high time for the government to clamp down on the politically powerful drug industry. That will require action by both the Executive and Legislative branches of government, including the FDA. The Judicial branch—when allowed to do so—has been doing its part. Big Pharma must be made to realize that laws, rules and regulations that apply to and govern them must be adhered to. When a company fails to do so, it must pay the consequences.

**Davita Dialysis Accused Of Massive Medicare Fraud**

Healthcare company Davita, Inc. was accused last month of defrauding the federal government and in the process costing taxpayers approximately $800 million. Davita, one of the largest dialysis companies in the nation, operates dialysis service centers around the country. Most of its revenue is derived from Medicaid and Medicare reimbursements.

The fraud case against DaVita originated from two whistleblowers, a doctor and a nurse, who filed a whistleblower lawsuit against the company under the U.S. False Claims Act on behalf of the U.S. government. According to the whistleblowers, the company’s policy has been to throw away enormous amounts of medicine in order to over-charge the Medicaid and Medicare programs. CNN reported that Davita has a practice of using only a small portion of a vial of medication in dispensing doses and that it then throws away the remainder of the vial without administering the entire dose to the patient. The patient’s remaining dose would then be taken from additional vials.

Essentially, this practice allegedly allows Davita to charge for multiple vials of medication when far fewer vials are actually needed to meet a particular patient’s dosage level. The whistleblowers reported that the more vials Davita used, the more the company was able to bill the government. If the whistleblowers’ allegations are true, the company threw away hundreds of millions

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of dollars of medicine and the taxpayers paid for it.

More and more companies are defrauding the government by overbilling Medicare and Medicaid in order to make big bucks. Massive fraud cases involving these programs have implications for all Americans, especially since the programs are funded by U.S. Taxpayers. The False Claims Act is the single most important tool taxpayers have to recover the billions of dollars stolen through corporate fraud each year. The Act allows private citizens to sue those that commit fraud against government programs. The Act provides for treble damages and also provides awards of 15% to 30% of recoveries for those bringing the cases. Additionally, many states even have their own versions of the False Claims Act. A great deal of fraud against the government occurs on a daily basis in our country. The companies that are committing the fraud must be held responsible for their wrongdoing and the resulting damages to the government and ultimately to taxpayers.

Our firm has been actively involved in the AWP fraud litigation for several years. Lawyers in our firm continue to fight on behalf of states whose Medicaid programs were defrauded. Our firm currently represents the citizens of Alaska, Alabama, Hawaii, Kansas, Louisiana, Mississippi, South Carolina, and Utah. We are seeking to recover billions of dollars in overpayments as a result of various drug manufacturers’ fraudulent practices involving Medicaid. These cases have made a significant social change in the way our Medicaid program operates. The federal government has actually revamped its pricing formula as a direct result of the litigation. If you need additional information about any of the above, contact Alison Hawthorne, a lawyer in our Consumer Fraud Section, at 800-898-2034 or by email at Alison.Hawthorne@beasleyallen.com.

Source: CNN and Taxpayers Against Fraud

IV. PURELY POLITICAL NEWS & VIEWS

MYSTERY COMPANY WAS THE LARGEST CORPORATE DONOR OF 2012

It has been reported that a company created less than two months before Election Day was the largest corporate donor of the 2012 elections. Does that seem a bit weird? Interestingly, the company, Specialty Group Inc., still remains shrouded in mystery. The company operated by William Rose, a Knoxville lawyer, donated nearly $10.6 million to a Tea Party-affiliated super PAC in the campaign’s final weeks. During that short time the group blasted Democratic candidates across the country with attack ads. In late October, Kingston Pike Development, another company affiliated with Rose, donated $1.5 million to the same super PAC, FreedomWorks for America.

In a statement issued before Election Day, Rose described the Specialty Group as a real estate investment company and said he was under no duty to disclose more information about his business. According to USA Today, the company was first incorporated on September 26th—just days before its first donation to FreedomWorks for America. On November 28th, its name was changed to Specialty Investments Group Inc. This is a prime example of what has happened to American politics since the U.S. Supreme Court decided the infamous Citizens United case. It’s the sort of thing that will only get worse if Congress doesn’t put a stop to it.

Source: USA Today

V. COURT WATCH

THE CIGARETTE MAKERS REACH SETTLEMENT WITH SEVERAL STATES

Three U.S. cigarette makers have reached a settlement with 17 states to resolve a dispute over payments required under a 1998 anti-smoking agreement. The states include Alabama, as well as Washington D.C. and Puerto Rico. Philip Morris USA, R.J. Reynolds Tobacco Co. and Lorillard Inc. will pay to the states their portion of more than $4 billion in disputed payments. In exchange, the manufacturers will receive credits against future payments. The payments stem from the 1998 Master Settlement Agreement (MSA) that ultimately prevented companies from being sued by state governments for the costs of health care for smokers. The settlement, which I thought at the time was much too low, required a combination of yearly payments to states and voluntary restrictions on tobacco advertising and marketing.

Since 2003, Alabama has received nearly $1 billion from the MSA. Alabama Attorney General Luther Strange had this to say in a prepared statement:

This settlement is important for Alabama and essential to the future of our public health funding from the Alabama 21st Century Fund. The Leg-islature has utilized the state’s MSA funds by funding incentives for economic development and supporting health care programs for children and seniors. Our office is focused on maintaining the integrity of that fund. Under the terms of the settlement, we avoid the significant uncertainty of costly litigation and the potential loss of one or more entire annual MSA payments.

The tobacco companies must be held accountable for their wrongdoing over the years that has killed and injured hundreds of thousands of Americans. Many believed at the time that the settlements under the MSA were actually better for the tobacco industry than they were for the states. I tend to agree with that assessment. Nevertheless, it appears this latest settlement is good for all concerned.

Source: Associated Press

JUDGE ORDERS TOBACCO FIRMS TO ADMIT THEY LIED ABOUT SMOKING DANGERS

A federal judge has ordered tobacco companies to publish corrective statements that say they lied about the dangers of smoking and that disclaim smoking’s health effects, including the death on average of 1,200 people a day. U.S. District Judge Gladys Kessler previously said she wanted the industry to pay for corrective statements in various types of advertisements. But this ruling is the first time Judge Kessler actually laid out what the statements will say. The ruling requires each corrective ad to be prefaced by a statement that a federal court has concluded that the Defendant tobacco companies “deliberately deceived the American public about the health effects of smoking.”

The corrective statements are part of a case the government brought in 1999 under the Racketeer Influenced and Corrupt Organizations Act. Judge Kessler ruled in that case in 2006 that the nation’s largest cigarette makers concealed the dangers of smoking for decades, and said she wanted the industry to pay for “corrective statements” in various types of ads, both broadcast and print. The Justice Department proposed corrective statements, which Judge Kessler used as the basis for some of the ones she ordered. Judge Kessler wrote that all of the corrective statements are based on specific findings of fact made by the court, adding:

This court made a number of explicit findings that the tobacco companies perpetrated fraud and deceived the public regarding the addictiveness of cigarettes and nicotine.
The statements Judge Kessler chose included five categories: adverse health effects of smoking; addictiveness of smoking and nicotine; lack of significant health benefit from smoking cigarettes marked as “low tar,” “light,” etc.; manipulation of cigarette design and composition to ensure optimum nicotine delivery; and adverse health effects of exposure to secondhand smoke. The following are among the statements within those categories:

- Smoking kills, on average, 1,200 Americans, every day.
- Defendant tobacco companies intentionally designed cigarettes to make them more addictive.
- When you smoke, the nicotine actually changes the brain—that’s why quitting is so hard.
- All cigarettes cause cancer, lung disease, heart attacks and premature death—lights, low tar, ultra lights and naturals. There is no safe cigarette.
- Secondhand smoke causes lung cancer and coronary heart disease in adults who do not smoke.
- Children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory infections, ear problems, severe asthma and reduced lung function.
- There is no safe level of exposure to secondhand smoke.

According to Justice Department spokesman Charles Miller, the Department was pleased with the order. Matt Myers, president of the Campaign for Tobacco-Free Kids, called it an important ruling, and had this to say:

The most critical part of the ruling is that it requires the tobacco companies to state clearly that the court found that they deceived the American public and that they are telling the truth now only because the court is ordering them to do so. This isn’t the last word, but this is a vitally important step because this should resolve exactly what the tobacco companies are required to say.

In July, a federal appeals court rejected efforts by the tobacco companies to overrule Judge Kessler’s ruling requiring corrective statements. The companies had argued that a 2009 law that gave the Food and Drug Administration authority over the industry eliminated “any reasonable likelihood” that they would commit future RICO violations. In her ruling, Judge Kessler ordered the tobacco companies and Justice Department to meet beginning next month to address how to implement the corrective statements, including whether they will be put in inserts with cigarette packs and on websites, TV and newspaper ads. Those discussions are to conclude by March.

Source: NBC News

AN ITALIAN COURT MAKES AN IMPORTANT RULING

Italy’s Supreme Court recently upheld a ruling that allowed disability payments to a businessman who claimed his brain tumor was tied to his excessive cell phone use. This was a most significant ruling. Previously, studies conducted over the years attempting to link cell phone usage to cancer have been inconclusive. The World Health Organization (WHO) most recently noted that radiation from cell phones can “possibly” cause cancer, and it listed mobile phone use in the same carcinogenic hazard category as lead, engine exhaust and chloriform. But, the definitive causal link between cell phones and cancer has been missing.

The CTIA-Wireless Industry Association noted that WHO researchers did not conduct any new research, but rather reviewed published studies. Interestingly, most of those prior studies were funded by the wireless industry itself. But there was new scientific evidence presented in the Italian court. The case referenced an independent study conducted by a cancer specialist in Sweden. The court in its ruling broke new ground. The ruling by the Italian Supreme Court may have an effect in this country.

Some observers believe the Italian court’s ruling may open the gates for future litigation. But I am not sure that will happen. Certainly, it won’t change the landscape quickly. Clearly, the decision will garner attention beyond Italy’s national borders, and especially since wireless has such a global footprint. I have always believed that brain cancer and excessive cell phone use over an extended period of time had to be related. We will see what happens now that a high level court has broken new ground.

Source: Claims Journal

ALABAMA SUPREME COURT ALLOWS LOSS OF USE DAMAGES

The Alabama Supreme Court, in a recent case, ruled that loss of use damages could be recovered in a property damages case even though the commercial vehicle involved was rendered a total loss. This ruling reversed a previous decision that really needed to be changed. The Court made a good decision in my opinion. The owner of a commercial vehicle can now recover the loss of revenues relating to the vehicle’s use for a reasonable time as damages.

The Alabama Court looked to other jurisdictions that have allowed recovery for loss of use during a reasonable time in which the owner seeks a replacement for the destroyed vehicle. Like those courts, the Court saw no logical reason why a distinction should be drawn between cases in which the property is totally destroyed and those in which it has been injured but is repairable. The Court explained that the purpose of compensatory damages in Alabama is to make the injured party whole by reimbursing him for the loss suffered.

The Supreme Court concluded that the current rule, established by a previous court and followed by subsequent cases, was insufficient to accomplish that purpose when the commercial vehicle at issue is destroyed and a replacement vehicle is not immediately available. The Court thus modified the existing rule to allow the recovery of reasonable loss of use damages during the time reasonably required to procure a suitable replacement vehicle.

Source: Associated Press

VI. THE NATIONAL SCENE

HEALTHCARE LAW SAVES CONSUMERS NEARLY $1.5 BILLION

Consumers saved nearly $1.5 billion in 2011 as a result of rules in the new federal healthcare law that limit what insurance companies can spend on expenses unrelated to medical care, including profit, according to a new analysis. Much of those savings—an estimated $1.1 billion—came in rebates to consumers required because insurers had exceeded the required limits. The study by the New York-based Commonwealth Fund also suggests that the Affordable Care Act forced insurers to become more efficient by limiting their administrative expenses, a key goal of the 2010 law.

In some cases, insurers passed savings on to consumers in the form of lower premiums and higher spending on medical care, the researchers found. This was primarily true in the individual market, where consumers buy health insurance on their own. The rules “appear to be producing important consumer benefits,” concluded the report’s authors, Michael McCue, a professor of health administration at Virginia Common-

www.BeasleyAllen.com
wealth University, and Mark Hall, a health-care law professor at Wake Forest University.

Administrative costs in the individual market dropped in 39 states, with major improvements in Delaware, Ohio, Louisiana, South Carolina and New York. It was reported that insurers in 37 states spent relatively more of their customers’ premiums on medical care, with big gains in New Mexico, Missouri, West Virginia, Texas and South Carolina. Americans who get health insurance through work saw fewer benefits, as insurers often “pocketed savings” from lower administrative expenses. But some insurers were forced to pay rebates to customers. Researchers attributed the reduced benefits for consumers in the so-called group market to the fact that many insurers already met the law’s requirements.

Stepping up regulation of health insurance companies has been a top priority for consumer advocates, who have complained for years that insurers routinely increase premiums “to pad profits and executive salaries” rather than pay for “medical care.” The new healthcare law attempts to address this by requiring insurers to spend at least 80 cents of every dollar they collect in premiums on medical care, rather than on administrative expenses. This is a standard known as the medical loss ratio (MLR). Insurers selling to employers must meet an even tougher standard, spending at least 85 cents of every dollar on medical care.

Supporters of this strategy hope it can help hold down premium increases, which have been surging for years. Dr. McCue said the approach appeared to have helped slow premium growth in the individual market, where he estimated that rates increased about 6% on average between 2010 and 2011, when the new standards were put in place. But premium growth, although slower than in years past, continues to outpace inflation and wage growth, a major challenge to the President’s law, which held out the promise of lowering healthcare costs.

The average cost of an employer-provided family health plan jumped 4% to $15,745 between 2011 and 2012, a cost shared by employers and employees, according to an annual survey released in September by the Kaiser Family Foundation and the Health Research & Educational Trust. Some believe that premium increases are driven largely by rising medical costs, not profit-taking. Personally, I suspect it’s a combination of the two. And predictably, insurance companies continue to vigorously oppose the standards.

I believe that insurers must continue to be monitored and their actions closely scrutinized. That was the belief stated by Sara Collins, Commonwealth Fund vice president for affordable health insurance, who said the findings confirmed her assessment. In that regard, Ms. Collins said:

**It will be crucial to monitor insurers’ responses to this regulation over time to ensure that all purchasers and consumers benefit from the savings the law is designed to encourage.**

The Commonwealth Fund report was based on financial reports that insurers file with the National Association of Insurance Commissioners. The analysis does not include complete data from California because health maintenance organizations in the state are not subject to the same reporting requirements.

Source: Los Angeles Times

**SHOULD THE U.S. BOYCOTT COMPANIES THAT OPERATE DEATH TRAPS IN FOREIGN COUNTRIES?**

It has been suggested, after a horrific fire at a factory in Bangladesh that killed 112 workers last year, that we should boycott American companies that make their brand name apparel in Bangladesh. The factory in Bangladesh was, without question, a death trap. But it appears many of the factories that make apparel for U.S. universities and outlets may also be death traps. So, why not, as suggested, boycott Bangladesh until they clean up their act?

Scott Nova, executive director at the Worker Rights Consortium (WRC), believes that’s exactly what we should do. In an interview with Corporate Crime Reporter recently, Nova had this to say:

**If it were up to us, we would ask universities to require their licensees not to do business in Bangladesh or Pakistan, for that matter. But we have been asked not to do that by the unions in Bangladesh. The unions in Bangladesh are dealing with a situation in which this is the primary source of employment for workers in the country. It is 80 percent of the country’s export earnings. The unions themselves are under enormous political pressure internally. And they have opposed a boycott. So, as a labor rights organization in the U.S., we feel an obligation to act in a manner consistent with the wishes of people who actually represent workers in Bangladesh. Like other labor rights organizations in the U.S. and Europe, we have not called for companies to boycott Bangladesh. Although, if we were purely up to us, we would advise universities to prohibit their licensees from doing business in Bangladesh until the situation is addressed.**

The Worker Rights Consortium budget is $1.25 million a year. Seventy-five percent of that budget comes from universities. And WRC uses that money to enforce mandatory labor codes. But it appears that the mandatory labor codes are routinely violated in Bangladesh. Nova had this to say about the situation:

**The mandatory codes prohibit all sorts of violations that are probably taking place in 95 percent of factories making university apparel. We have told the universities that we cannot enforce the codes because of the way that these companies operate their global supply chains, that we are in effect powerless to do so because we cannot affect the prices that are paid and the nature of the relationship between the brands and the factories. All we can do is investigate individual factories in response to worker complaints and use the leverage we can bring to bear to try and force the owners and managers of those factories to change those factories.**

**The overall system continues to be one in which violations are the norm. And we have said repeatedly to universities that the only way to change that is to force the companies to radically change the way they operate their supply chains—higher prices to the supply chains, long term relationships with the factories. And until and unless that happens, it is effectively impossible for us to enforce these standards. That is something that we have publically acknowledged for years.**

So, we have a system of monitoring and corrective action that makes sense and is workable if you have 1,000 factories and 900 of them are in compliance. That kind of system works if compliance is the norm and non-compliance is the exception. In an industry where the status quo is one in which non-compliance is the norm, in which the vast majority of factories on any given day are violating multiple elements of the applicable law and standards, the kind of monitoring that we were created to do—factory by factory inspections—does not work to solve the problem on a broad scale. The most we can do is identify particularly egregious abuses in individual factories and try to press for change.

Nova told the Corporate Crime Reporter “the only thing that the factory owners in Bangladesh and their allies in the govern-
ment have ever responded to is economic pressure.” So, if there isn’t going to be a boycott, how do we improve conditions in Bangladesh? Nova made these observations during the interview:

WRC and a dozen or so labor rights organizations and a dozen or so unions in Bangladesh have signed an agreement with PVH—Phillips Van Heusen—a company that is the owner of Tommy Hilfiger and Calvin Klein and other brands. PVH was under pressure to do something because of an ABC News expose about a fire that took place in 2010 that killed 30 people. It was right near the factory that burned last Saturday. We signed an agreement with PVH in March.

Under that contract, they must pay prices to their suppliers in Bangladesh sufficient to enable those suppliers to undertake necessary repairs and renovations and to operate safely. They must require their local suppliers to allow genuinely independent inspections of the factories with publication of all results and inspections and with a mandate that the factories must implement whatever repairs, renovations and changes in policy that the independent inspectors require.

And most importantly, they may not do business with any factory that refuses to implement the necessary repairs and renovations. They must also require their suppliers to allow unions into these factories to educate workers about worker safety and worker rights. This agreement cannot be implement until at least three other apparel companies sign on. In order for this to work, we need sufficient leverage over the producers in Bangladesh.

A second company, a large German company—Tchibo—signed on in August. We have negotiated for months with GAP—which is one of the biggest buyers in Bangladesh and a company which has put itself out there as a supposed leader on corporate social responsibility. But GAP has refused to make these commitments. With GAP, it has become clear that they don’t want to make any commitments that can be enforced. They will not deviate from the model of corporate self-regulation that they have employed for years, and that has done nothing to actually protect the rights and safety of the workers who make their clothes in Bangladesh.

So, our negotiations with GAP broke down two months ago. But in the aftermath of this last fire, we have called upon other major buyers from Bangladesh—GAP, Wal-Mart, H&M, Inditex—which owns Zara—Sears and Disney—to make the same binding enforceable commitments that PVH has made.

Wal-Mart Stores Inc., has made a rather interesting response to what happened at the Bangladesh factory. The world’s largest retailer has conceded that it needs to do more to control its supply chain and keep unauthorized manufacturers out. But companies such as Wal-Mart must figure out how to get more involved in the operations of factories in countries such as Bangladesh. Hoping that contact with suppliers and factory audits will suffice, thus serving to shield the U.S. companies from public scrutiny or government controls, simply isn’t enough.

But, I am not sure that the public has enough information on the out-sourcing issue described above to be interested in boycotting companies that out-source to countries such as Bangladesh. But the universities and other corporations that use these factories certainly do. But will they take any type action? We will see.

Source: Corporate Crime Reporter

VII. THE CORPORATE WORLD

GOVERNMENT TO GET $23 BILLION TOTAL PROFIT ON AIG BAILOUT

The U.S. Treasury’s sale of its remaining stake in American International Group Inc. (AIG) will bring in $7.6 billion, giving the government a total profit of $22.7 billion from its crisis-era bailout of the insurer. The share offering will close the chapter on the bailout in 2008. As you may recall, the government wound up giving AIG up to $182 billion of government support. At one point, the government estimated that it would never recover all of the bailout money, but as AIG restructured and returned to viability, it was able to repay the entire rescue fund plus generate a profit for U.S. Taxpayers.

The Treasury agreed to sell 254.2 million shares to investors for $32.50 a share. Treasury has additional AIG warrants that it can sell to boost the government’s $22.7 billion of total returns so far. Jim Millstein, the Treasury’s former chief restructuring officer, had this to say:

*No taxpayer should be pleased that the government had to rescue this company, but all taxpayers should be pleased with today’s announcement, ending the largest of the government’s financial industry bail-outs with a profit to the Treasury Department.

AIG was rescued just before it would have been forced to file for bankruptcy protection in September 2008 as losses on risky derivatives mounted. It was bailed out as the world’s financial system stood at the brink of disaster, shortly after Lehman Brothers filed for bankruptcy and Merrill Lynch sold itself to Bank of America Corp.

AIG was one of the Treasury Department’s most hotly-contested bailouts. U.S. lawmakers began calling for Treasury Secretary Timothy Geithner’s resignation after it was revealed that AIG paid $165 million in retention bonuses to employees of the derivatives unit that had been blamed for the company’s financial distress at that time. The company also funneled over $90 billion of taxpayer money—more than half the funds the government used to rescue AIG—to various European and Wall Street banks, including Goldman Sachs, Deutsche Bank and Barclays Plc. None of this was popular with the American people. But it appears all will now end well with the AIG bailout.

Source: Insurance Journal

HSBC TO PAY $1.9 BILLION IN SETTLEMENT

HSBC Holdings Plc., a United Kingdom corporation headquartered in London, and HSBC Bank USA N.A., a federally-chartered banking corporation headquartered in McLean, Va., will forfeit $1.256 billion and enter into a deferred prosecution agreement with the Justice Department for HSBC’s violations of the Bank Secrecy Act (BSA), the International Emergency Economic Powers Act (IEEPA) and the Trading with the Enemy Act (TWEA).

Federal officials alleged that HSBC Bank USA violated the BSA by failing to maintain an effective anti-money laundering program and to conduct appropriate due diligence on its foreign account holders. It appears that the HSBC Group violated IEEPA and TWEA by illegally conducting transactions on behalf of customers in Cuba, Iran, Libya, Sudan and Burma—all countries that were subject to sanctions enforced by the Office of Foreign Assets Control (OFAC) at the time of the transactions.

A four-count felony criminal information was filed in federal court in the Eastern District of New York charging HSBC with willfully failing to maintain an effective anti-money laundering (AML) program, willfully failing to conduct due diligence on its
foreign correspondent affiliates, violating IEEPA and violating TWEA. HSBC waived federal indictment, agreed to the filing of the information, and accepted responsibility for its criminal conduct and that of its employees. The Justice Department will appoint a monitor to oversee the company. The monitor will serve for a period of five years. Assistant Attorney General Lanny Breuer had this to say:

**HSBC is being held accountable for stunning failures of oversight—and worse—that led the bank to permit narcotics traffickers and others to launder hundreds of millions of dollars through HSBC subsidiaries, and to facilitate hundreds of millions more in transactions with sanctioned countries. The record of dysfunction that prevailed at HSBC for many years was astonishing. Today, HSBC is paying a heavy price for its conduct, and, under the terms of today's agreement, if the bank fails to comply with the agreement in any way, we reserve the right to fully prosecute it.**

In addition to forfeiting $1.256 billion as part of its deferred prosecution agreement (DPA) with the Department of Justice, HSBC will also pay $665 million in civil penalties—$500 million to the Office of the Comptroller of the Currency (OCC) and $165 million to the Federal Reserve—for its AML program violations. The OCC penalty also satisfies a $500 million civil penalty of the Financial Crimes Enforcement Network (FinCEN). The bank’s $375 million settlement agreement with OFAC is satisfied by the forfeiture to the Department of Justice. The United Kingdom’s Financial Services Authority (FSA) is pursuing a separate action.

As required by the deferred prosecution agreement, HSBC also has committed to undertake enhanced AML and other compliance obligations and structural changes within its entire global operations to prevent a repeat of the conduct that led to this prosecution. HSBC has replaced almost all of its senior management, “clawed back” deferred compensation bonuses given to its most senior AML and compliance officers, and has agreed to partially defer bonus compensation for its most senior executives—its group general managers and group managing directors—during the period of the five-year DPA. HSBC has also made significant changes in its management structure and AML compliance functions that increase the accountability of its most senior executives for AML compliance failures.

Source: Corporate Crime Reporter

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**UBS PAYS $1.5 BILLION TO SETTLE RATE RIGGING CASE**

UBS, the Swiss banking giant, entered into a record settlement with global authorities last month, agreeing to a combined $1.5 billion in fines for its role in a multi-year scheme to manipulate interest rates. Officials are increasingly taking a hard line against financial wrongdoing, which is a good thing. The Justice Department also got a guilty plea from the bank’s Japanese subsidiary. This should send a warning shot to other big banks suspected of rate rigging. The UBS subsidiary, which agreed to plead guilty to a single count of wire fraud, is the first unit of a big bank to agree to criminal charges in more than a decade.

The cash penalties represent the largest fines to date related to the rate-rigging inquiry. The fine is also one of the biggest sanctions that American and British authorities have ever levied against a financial institution, falling just short of the $1.9 billion payout that HSBC made a week earlier over money laundering accusations. The severity of the UBS penalties, according to the authorities, reflected the extent of the problems. The government complaints exposed a scheme that spanned from 2005 to 2010, describing how the bank reported false rates to squeeze out extra profits and deflect concerns about its health during the financial crisis. Tracey McDermott, the enforcement director for the Financial Services Authority of Britain, said in a statement:

*The findings we have set out in our notice today do not make for pretty reading. The integrity of benchmarks, are of fundamental importance to both U.K. and international financial markets. UBS traders and managers ignored this.*

The UBS case reflects a pattern of abuse that authorities have uncovered as part of a multi-year investigation into rate rigging. The inquiry, which has ensnared more than a dozen big banks, is focused on key benchmarks like the London interbank offered rate, or Libor. Such rates are used to help determine the borrowing rates for trillions of dollars of financial products like corporate loans, mortgages and credit cards.

It was reported that in the UBS matter, the wrongdoing occurred largely within the Japanese unit, where traders colluded with other banks and brokerage firms to tinker with Yen denominated Libor and bolster their returns. During the 2008 financial crisis, the authorities said UBS managers also “inappropriately gave guidance to those employees charged with submitting interest rates, the purpose being to positively influence the perception of UBS’s creditworthiness.” A series of interesting e-mails and phone calls were discussed in which traders tried to influence the rate-setting process. For example, one UBS trader said to an employee at another brokerage firm in September 2008:

*I need you to keep it as low as possible. If you do that the trader promised to pay whatever you want. I’m a man of my word.*

As the employees carried out the alleged manipulation, according to the Financial Services Authority, they also celebrated the efforts, with one trader referring to a partner in the scheme as “superman.” “Be a hero today,” he urged, according the complaint by regulators.

The UBS case provides a look at broader problems in the rate-setting process, which affects how consumers and companies borrow money around the world. In June, authorities reached their first Libor settlement, securing a $450 million payout from Barclays, the big British bank. The UBS case—the product of cross-border collaboration among regulators and federal prosecutors—is more than triple the earlier fine.

The Commodity Futures Trading Commission and the Justice Department leveled about $1.2 billion in combined fines. The Financial Services Authority of Britain fined the bank $260 million. The Swiss Financial Market Supervisory Authority, which does not have the power to fine, recovered $65 million of the bank’s ill-gotten gains. The Justice Department’s criminal division, which arranged the guilty plea with the Japanese subsidiary, also struck a non-prosecution agreement with the parent company. The exact total of the penalties was uncertain at press time because the Department hadn’t released its settlement documents. I suspect there are some top executives with other banks who may be sort of concerned over what has been happening. Some American institutions, including Citigroup and JPMorgan Chase, according to reports, may still be in regulators’ crosshairs. The UBS case has exposed the systemic problems with the rate-setting process. Over a six-year period, UBS traders targeted the major currencies that form the Libor system, including the U.S. dollar denominated rate. The bank in this settlement was also cited for attempting to manipulate other benchmarks like the Euro Interbank Offered Rate, or Euribor, and the Tokyo Interbank Offered Rate, or Tibor.

Source: New York Times

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KBR Charged with False Claims

The Justice Department has filed a False Claims Act lawsuit against Kellogg, Brown & Root Services Inc. (KBR) and First Kuwaiti Trading Company for submitting inflated claims for the delivery and installation of trailers to house troops in Iraq. KBR is headquartered in Houston. First Kuwaiti, a KBR subcontractor, is based in Kuwait. KBR is the Army’s primary contractor for logistical support in Iraq. Civil Division chief Stuart F. Delery had this to say:

*We depend on companies like KBR to provide valuable noncombat services to our military such as housing and feeding our troops. We will ensure that contractors live up to their promises, and are not permitted to profit at the expense of the taxpayers at home who are supporting our men and women in uniform.*

On December 14, 2001, the Army awarded KBR the LOGCAP III contract, the third generation of contracts under the Army’s Logistics Civil Augmentation Program (LOGCAP) since the program’s inception in the 1980s. LOGCAP III required KBR to provide logistical support in the military theater whenever and wherever it was needed. Support included services such as transportation, dining services, facilities management, maintenance and living accommodations for United States and coalition forces.

LOGCAP III was originally awarded to Brown and Root Services, a division of KBR. The United States has paid KBR tens of billions of dollars for logistical support services since awarding the contract. The government’s complaint arises from the Bed Down Mission, a push to replace the tents used to house soldiers during the early days of the war with trailers, also called living containers. KBR performed many of the services required under LOGCAP III, including the Bed Down Mission, through foreign and domestic subcontractors.

Federal officials alleged that KBR awarded a subcontract to First Kuwaiti on October 16, 2003, to supply, transport and install 2,252 living containers at Camp Anaconda in Iraq for about $80 million. First Kuwaiti was required to complete delivery and installation of the trailers at Camp Anaconda by December 15, 2003. In July 2004, First Kuwaiti presented two claims to KBR contending that government-caused delays in providing military escorts for convoys into Iraq entitled the company to an increase in the contract price to cover its increased costs.

KBR agreed to pay First Kuwaiti an additional $48.8 million and passed that cost on to the United States. Federal officials alleged that First Kuwaiti knowingly inflated its crane, truck and driver costs, among other items, and misrepresented the cause of its delays and that KBR charged these costs to the United States knowing they were improper.

*Source: Corporate Crime Reporter*

**Deutsche Bank Whistleblower Goes to the SEC**

Dr. Eric Ben-Artzi has been talking to the Securities and Exchange Commission and has blown the whistle on alleged multi-billion dollar securities violations at Deutsche Bank, the Germany-based global investment bank. Dr. Ben-Artzi, a former quantitative risk analyst at Deutsche Bank, first reported the violations internally in accordance with bank policies and procedures. Apparently, he got nowhere even though his reporting was extensive. Since the problem was neither acknowledged nor corrected, Dr. Ben-Artzi informed the proper law enforcement authorities. Apparently, the man and his family are now “paying a heavy price for doing the right thing,” and that’s most unfortunate.

Dr. Ben-Artzi discovered and internally reported possible securities violations stemming from Deutsche Bank’s failure to accurately report the value of its credit derivatives portfolio. The bank, according to Dr. Ben-Artzi, failed to properly value the gap option component in its portfolio of Leveraged Super Senior (LSS) tranches of credit derivatives. The gap option is the difference between the collateral paid by the LSS note buyer and the mark-to-market expected loss that the LSS note seller agreed to cover.

*With a $120–$130 billion portfolio in notional value, Deutsche Bank was the largest holder of LSS trades in the marketplace. By not accurately valuing the LSS portfolio, the bank was able to maintain its carefully crafted public image that it was weathering the financial crisis better than its peers—many of which required financial assistance from the government and experienced significant deterioration in their stock prices. Even using conservative assumptions, if the LSS portfolio had been properly valued, the bank would have substantially missed its earnings estimates.*

Troubled by the bank’s unwillingness to acknowledge and appropriately address this significant valuation problem, Dr. Ben-Artzi sought legal representation and then reported the possible securities violations to the SEC’s Whistleblower Program. The program, established by the Dodd-Frank Wall Street Reform and Consumer Protection Act in July 2010, has broad international reach and offers eligible whistleblowers significant employment protections, monetary awards and the ability to report anonymously. Jordan Thomas, a former SEC Assistant Director and chair of the Whistleblower Representation Practice at Labaton Sucharow, had this to say:

*When Dr. Ben-Artzi first consulted with me, I was shocked by the size and scope of the alleged misconduct. This is exactly the type of significant and unreported securities violations that the SEC Whistleblower Program was intended to address. It is one of many high-profile matters in the pipeline.*

Dr. Ben-Artzi repeatedly attempted to work through internal reporting channels, at increasingly higher levels, to correct the valuation problem. It was alleged in his retaliation complaint, filed with the Department of Labor, that when he pressed his concerns further he was subjected to severe hostility, isolated, denied access to records necessary to perform his job, lost his job independence and was stripped of responsibilities. In November 2011, shortly after returning from paternity leave, Deutsche Bank informed Dr. Ben-Artzi that his position had been moved to Europe and laid him off without warning. He lost the chance to move with his job, and was not offered a real opportunity to find a new position within the financial institution.

Dr. Ben-Artzi had received favorable performance reviews, and when laid off, was being recruited to work in other groups within the bank due to his professional expertise and reputation. In his retaliation case, Dr. Ben-Artzi alleged violations of the whistleblower protection provisions contained within the Sarbanes-Oxley Act. His lawyer Tom Devine said:

*This is a classic illustration of what whistleblowers risk when trying to work within the system at firms acting in bad faith. Dr. Ben-Artzi was a model corporate citizen who discovered SEC violations that could incur serious liability, and stuck his neck out internally to warn bank management. Deutsche Bank’s response was to personally harass him, and fire him as soon as it pinned down what he knew. The retaliation was crude, and not camouflaged. Quite clearly, the point was to scare other would-be whistleblowers into silence. The lesson learned is that working within Deutsche Bank’s corporate compliance and reporting system is an act of professional suicide.*

This case is a prime example of why whistleblowers, who perform badly-needed protections for corporate shareholders and also

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proceedings in other places while their therapy—the radiation oncologists—should have been supervising the radiation treatment delivery without corroboration of physician supervision.

It was this last allegation—high dose radiation treatment without physician supervision—that drove the litigation. At the very heart of the case, according to the complaint, was Baylor’s “disregard for the safety and well-being of their patients—patients who, in hopes of surviving cancer, agree to undergo extremely powerful forms of radiation therapy.” It was claimed that “by their very natures, these forms of radiation therapy involve inherent risks—most notably the risk of radiation overdose and the risk that the radiation will be delivered to the wrong area.” The complaint alleges further:

While patients at the Baylor University Medical Center believe that they are in the hands of caring, capable physicians during these highly complex and risky procedures, the radiation is actually delivered without required physician supervision. In fact, in order to maximize their own profits and at the expense of patient safety, Baylor allowed and encouraged physicians who are supposed to be supervising the radiation therapy—the radiation oncologists—to perform other duties and procedures in other places while their patients are being exposed to potentially lethal levels of radiation.

The lawsuit cites a 2010 New York Times investigation into 621 radiation mistakes in New York. The investigation found that on 284 occasions, radiation missed all or part of its intended target or treated the wrong body part entirely. Fifty patients received radiation intended for someone else, including one brain cancer patient who received radiation intended for breast cancer, the Times investigation found. The Times investigation focused on the case of 43-year old Scott Jerome-Parks who was given seven times the amount of prescribed radiation. He died as a result. The Times wrote:

As Scott Jerome-Parks lay dying, he clung to this wish: that his fatal radiation overdose—which left him deaf, struggling to see, unable to swallow, burned, with his teeth falling out, with ulcers in his mouth and throat, nauseated, in severe pain and finally unable to breathe—be studied and talked about publicly so that others might not have to live his nightmare.

The Times investigation also centered on another death. At about the same time of Jerome-Parks’ death, a 32-year-old breast cancer patient named Alexandra Jn-Charles absorbed the first of 27 days of radiation overdoses, each three times the prescribed amount. “A linear accelerator with a missing filter would burn a hole in her chest, leaving a gaping wound so painful that this mother of two young children considered suicide,” the Times reported. Ms. Jn-Charles died a few months later. The whistleblowers—Dr. Berger and Ms. Delp—were represented by Joel Androphy, a lawyer with Berg & Androphy in Houston, Texas. He did a very good job in the case. The government also did the right thing by getting involved in the case.

Source: Corporate Crime Reporter

SEC CHARGES EXECUTIVES WITH OVERVALUING ASSETS DURING FINANCIAL CRISIS

The Securities and Exchange Commission has charged three top executives at a New York-based publicly-traded fund being regulated as a business development company (BDC) with overstating the fund’s assets during the financial crisis. The fund’s asset portfolio consisted primarily of corporate debt securities and investments in collateralized loan obligations (CLOs). An SEC investigation found that KCAP Financial Inc. failed to account for certain market-based activity in determining the fair value of its debt securities and certain CLOs.

KCAP also failed to disclose that the fund had valued its two largest CLO investments at cost. KCAP’s chief executive officer, Dayl W. Pearson, and chief investment officer, R. Jonathan Corless, had primary responsibility for calculating the fair value of KCAP’s debt securities. KCAP’s former chief financial officer, Michael I. Wirth, had primary responsibility for calculating the fair value of KCAP’s CLOs. Wirth, a certified public accountant, prepared the disclosures about KCAP’s methodologies to fair value its CLOs, and Pearson reviewed those disclosures. Pearson and Wirth will each pay a $50,000 penalty and Corless will pay a $25,000 penalty to settle the charges made by the SEC.

KCAP and the three executives consented to the SEC’s order requiring them to cease and desist from committing or causing any violations or any future violations of these federal securities laws. Associate SEC Enforcement Chief Antonia Chion had this to say:

When market conditions change, funds and other entities must properly take into account those changed conditions in fair valuing their assets. This is particularly important for BDCs like KCAP, whose entire business consists of the assets that it holds for investment.

The case represented the first SEC enforcement action against a public company that failed to properly fair value its assets according to the applicable financial accounting standard—FAS 157—which became effective for KCAP in the first quarter of 2008. Julie M. Riewe, Deputy Chief of the SEC Enforcement Division’s Asset Management Unit, had this to say about the accounting standard:

KCAP should have accounted for market conditions in the fourth quarter of 2008 in determining the fair values of its assets. FAS 157 is critically important in fair valuing illiquid securities, and funds must consider market information in making FAS 157 fair value determinations and comply with their disclosed valuation methodologies. It’s good to see the SEC taking action to make sure that public companies comply with applicable laws.

Source: Corporate Crime Reporter

SEC CHARGES THE STREET WITH ACCOUNTING FRAUD

In another case, the Securities and Exchange Commission charged TheStreet Inc. and three executives for their roles in an accounting fraud that artificially inflated company revenues and misstated operating income to investors. The SEC alleged that TheStreet Inc., which operates the website TheStreet.com, filed false financial reports throughout 2008 by reporting revenue from fraudulent transactions at a subsidiary it had acquired the previous year. It was alleged that the co-presidents of the subsidiary—Gregg Alwine and David Barnett—entered into sham transactions with friendly counterparties that had little or no economic substance. The SEC also alleges that TheStreet’s former chief financial officer Eric Ashman caused the company to report revenue before it had been earned.

It was alleged that the executives also fabricated and backdated contracts and other documents to facilitate the fraudulent accounting. Barnett is also charged with misleading TheStreet’s auditor to believe that the subsidiary had performed services to earn revenue on a specific transaction when in fact it did not perform the services. The three executives agreed to pay financial penalties and accept officer-and-director bars to settle the SEC’s charges. Andrew M. Calamari, Director of the SEC’s New York Regional Office, stated:

Alwine and Barnett used crooked tactics, Ashman ignored basic accounting rules, and TheStreet failed to put controls in place to spot the wrongdoing. The SEC will continue to root out accounting fraud and punish the executives responsible.

According to the SEC’s complaints filed in federal court in Manhattan, the subsidiary acquired by TheStreet specializes in online promotions such as sweepstakes. After the acquisition, TheStreet failed to implement a system of internal controls at the subsidiary, which enabled the accounting fraud. The SEC alleges that through the actions of Ashman, Alwine, and Barnett, TheStreet:

• Improperly recognized revenue based on sham transactions,

• Used the percentage-of-completion method of revenue recognition without meeting fundamental prerequisites to do so, including reliably estimating and documenting progress toward the completion of relevant contracts, and

• Prematurely recognized revenue when the subsidiary had not performed actual work and therefore had not really earned the revenue.

The SEC alleged that when the subsidiary’s financial results were consolidated with TheStreet’s financial results for financial reporting purposes, the improper revenue on the subsidiary’s books resulted in material misstatements in the company’s quarterly and annual reports for fiscal year 2008. On February 8, 2010, TheStreet restated its 2008 Form 10-K and disclosed a number of improprieties related to revenue recognition at its subsidiary, including transactions that lacked economic substance, internal control deficiencies, and improper accounting for certain contracts.

Ashman will pay a $125,000 penalty and reimburse TheStreet $34,240.40 under Section 304, the clawback provision of the Sarbanes-Oxley Act, and he will be barred from acting as a director or officer of a public company for three years. Barnett and Alwine will pay penalties of $130,000 and $120,000 respectively, and will be barred from serving as officers or directors of a public company for ten years. The three executives and TheStreet will be permanently enjoined from future violations of the federal securities laws. I have to wonder how much of this sort of thing has been going on—undetected—with innocent persons who invested their money being hurt. I suspect it is more common than we know.

Source: Corporate Crime Reporter

BRITISH IRAQ CONTRACTOR TO PLEAD GUILTY

It was reported last month that British contractor APTx Vehicle Systems will plead guilty to conspiracy to defraud the United States, the Coalition Provisional Authority that governed Iraq from April 2003 to June 2004, the government of Iraq and JP Morgan Chase Bank. The company also entered into civil settlement agreement resolving a related action filed under the False Claims Act. As part of the criminal plea agreement filed with the information, APTx agreed to pay a criminal fine of $1 million.

Federal officials alleged that APTx engaged in a fraudulent scheme involving an August 2004 contract valued at over $8.4 million for the procurement of 51 vehicles for the Iraqi Police Authority. The contract was initially awarded to a different, “prime” contractor, which in turn subcontracted the procurement to APTx for over $5.7 million. Payment under the contract was by letters of credit issued by JP Morgan Bank. Federal officials alleged that APTx submitted shipping documents to JP Morgan to draw down on the letters of credit, which falsely and fraudulently asserted that all 51 vehicles were produced and ready to ship to Iraq. As APTx knew, none of the vehicles had been built, none of the vehicles were legally owned or held by APTx and none of the vehicles were in the process of transport to Iraq. The fraudulent shipping documents also listed a company as the freight carrier that APTx knew was not a shipping company and named a fictitious company as the freight forwarder.

In the related civil settlement agreement, APTx, along with Alchemie Grp Ltd., a United Kingdom corporation, and Haslen Back, the director and shareholder of Alchemie, agreed to pay $2 million to the United States to resolve claims originated by Ian Rycroft, an individual retained by the prime contractor to oversee transportation of the vehicles, under the qui tam, or whistle-blower, provisions of the False Claims Act in the District of Massachusetts. Rycroft’s estate will receive $540,000 as its share of the settlement amount.

Benjamin Kafka, a representative for APTx in the United States, was charged on April 13, 2009, with one count of misprision of a felony in connection with his role in the wire fraud conspiracy. Kafka allegedly allowed APTx to use his corporate name and identity as the freight carrier and freight forwarder on the fraudulent shipping documents presented to JP Morgan.

Source: Corporate Crime Reporter

TOLL BROTHERS OFFICIALS TO PAY $16.2 MILLION SETTLEMENT

Officials at luxury-home builder Toll Brothers Inc. have agreed to pay $16.2 million to settle claims that they misled shareholders about the company’s future prospects while reaping $615 million from sales of the company’s stock. The settlement, filed last month in Delaware Chancery Court, if approved will resolve claims that several Toll Brothers directors—including co-founders Robert and Bruce Toll—went to great lengths to convince investors that the company was uniquely positioned to weather a downturn in the housing market. The lawsuit was filed by Toll Brother shareholder Milton Pfeiffer in 2008.

The complaint accused the Defendants of profiting from their “rosy predictions.” They earned proceeds of more than $615 million from selling off millions of company shares between late 2004 and 2005. It was alleged that even as concerns were raised about a potential housing bubble, the Defendants went to great lengths to convince investors otherwise. From late 2004 until late 2005, Toll Brothers executives stuck by projections of 20 percent net income growth in 2006 and 2007. But in December 2005, management abruptly lowered its annual growth projections for 2006 to just 0.5 percent. This
sudden change received a negative reaction from analysts and shareholders. Toll Brothers’ insurers will pay $9.8 million of the settlement amount, while the executive Defendants will pay the remaining $6.45 million. The settlement, if approved, will resolve the 2008 Delaware lawsuit, as well as two other investor lawsuits filed in a Pennsylvania federal court. Lawyers for the Plaintiffs believe the settlement “is in the best interest of the parties and Toll Brothers’ current stockholders,” and stated their belief to the court. The case is Pfieffer v. Toll et al., in the Delaware Chancery Court, no. 4140-VCL.

Source: Reuters

NEW YORK FALSE CLAIMS LAW ALLOWS QUI TAM TAX CASES

I suspect most folks would be surprised to learn that if a major corporation defrauds the federal government out of $100 million in taxes, it can’t be sued under the federal False Claims Act. That’s because of a loophole in the federal law prohibiting a whistleblower from bringing a tax qui tam case. But if that same major corporation was defrauding the state of New York out of $100 million in taxes, that state could bring a qui tam case under New York’s False Claims Act.

New York closed the tax loophole in its state False Claims Act case in 2010. In fact, a whistleblower has brought such a case. Earlier this year, New York Attorney General, Eric Schneiderman, intervened in that case against Sprint-Nextel Corp. for deliberately under-collecting and underpaying millions of dollars in New York state and local sales taxes on flat-rate access charges for wireless calling plans.

The Internal Revenue Service has a whistleblower office now. Whistleblowers can go to the IRS and file a complaint. But if the IRS decides not to take the case, the potential whistleblower case is over and done with. Because there is no qui tam provision, the whistleblower can’t proceed without the IRS on the federal level. To be a whistleblower in a tax whistleblower case in New York, the Defendant must have at least $1 million in income and deprive the state of at least $350,000 in revenue. Perhaps, Congress should take a look at what New York is doing and then make some needed changes in the federal law.

Source: Corporate Crime Reporter

ABA LAUNCHES TASK FORCE ON CORPORATE MONITORS

The American Bar Association has created a Task Force on Corporate Monitors. The task force will be chaired by Ronald Goldstock, a Commissioner with the Waterfront Commission of New York Harbor. He is a faculty member at NYU, Columbia and Cornell Law Schools and an independent private sector inspector general. In addition to Goldstock, task force members include U.S. District Court Judge Barbara Jones, Mary Jo White, a partner at Debevoise in New York, John Hanson, a retired FBI Agent and corporate monitor, Deborah Rhodes, a former Assistant U.S. Attorney in San Diego, Ronald Aborn, a partner at Constantine Cannon in New York, and Gerald Coyne, a deputy Attorney General in Rhode Island.

Larry Thompson, general counsel at PepsiCo, will be a special adviser to the task force, which will set standards for corporate monitors. Possible subject areas for the task force include how the monitor is chosen, the scope of the monitor’s work, ethical considerations of the monitor, how the monitor is paid, how much and by whom, if there are disputes how they are resolved, and oversight of the monitor. Interested parties such as the Department of Justice or the Association of Corporate Counsel may appoint liaisons to the task force.

The work of the task force is estimated to take about two years. When its work is completed, the task force’s recommendations will be made to the ABA. According to Goldstock, there are many more monitors appointed by state and federal regulatory agencies than by the Department of Justice every year. In this regard, he had this to say:

Just here in New York there are probably more regulatory monitors appointed than by the Department of Justice. And the scope of monitoring through administrative bodies tends to be much greater than it would be through deferred prosecution agreements at the federal level.

As we have previously reported, the use by the federal government of deferred prosecution agreements and monitors has become quite prevalent. So it makes sense to make sure that monitors know what to do and then how to do the job expected of them. Hopefully, the Task Force will help make the system work.

Source: Corporate Crime Reporter

DIRTY MONEY COSTS DEVELOPING WORLD $6 TRILLION

A financial watchdog group said in a new report that crime, corruption and tax evasion have cost the developing world nearly $6 trillion over the past decade, and that illicit funds keep growing, led by China. In this report, Global Financial Integrity (GFI), a Washington-based group that campaigns for financial accountability, states that China accounted for almost half of the $858.8 billion in “dirty money” that flowed into tax havens and Western banks in 2010, more than eight times the amounts for runner-ups Malaysia and Mexico. Total illicit outflows increased by 11 percent from the prior year. GFI said in its latest report released on December 17, 2012. Raymond Baker, director of GFI, stated:

Astronomical sums of dirty money continue to flow out of the developing world and into offshore tax havens and developed country banks. Developing countries are hemorrhaging more and more money at a time when rich and poor nations alike are struggling to spur economic growth. This report should be a wake-up call to world leaders that more must be done to address these harmful outflows.

All the countries in the top ten, which this year saw India, Nigeria, and the Philippines join the ranks, face significant problems with corruption, and in most there are vast gaps between rich and poor citizens as well as internal security problems. GFI called on world leaders to accelerate efforts to curtail the flow of dirty money by clamping down on secret bank accounts and ownership of shell companies; reforming customs and trade protocols so that export/import payments cannot be used to hide illegal fund transfers; requiring multinational companies to report their profits by country to prevent tax avoidance; and strongly enforcing anti-money-laundering laws.

Source: Insurance Journal

VIII. MASS TORTS UPDATE

NAVAN WARD APPOINTED TO PSC IN BIOMET LITIGATION

Navan Ward, a lawyer in our firm’s Mass Torts Section, was recently appointed to the Plaintiffs’ Steering Committee (PSC) for the Biomet hip replacement defect Multi-District Litigation (MDL) which is situated in South Bend, Ind. The PSC is responsible for the management of all of the cases involved in the Biomet MDL. Biomet is one of the latest corporations that has come under fire for its manufacture of its M2a-Magnum and M2a 38-diameter metal-on-metal hip replacement implant devices. Both of these devices are
still sold and implanted into an unsuspecting patient population in the United States.

Hip replacement devices are implanted in patients with conditions such as osteoarthritis, rheumatoid arthritis, avascular necrosis, functional deformity or femoral fracture. Once implanted, these devices are expected to last for an average of about fifteen (15) or more years before requiring replacement. However, these devices fail at rates higher than other hip replacement devices necessitating early removal.

Biomet marketed the M2a as having numerous advantages over other hip replacement systems. It described the M2a as having ‘set the standard for performance and design in hip systems’ and as ‘an ultra-high performance metal-on-metal articulation.’ Biomet further advertised the M2a as a superior device because the hip system was subject to low wear, excellent stability, good range of motion and superior joint mechanic restoration.

Unfortunately, metal-on-metal implants have been found to cause a multitude of problems including, but not limited to, metallic debris causing the destruction and degradation of surrounding tissue and bone, pseudotumors, metal blood poisoning. These metal-on-metal implants are worse than their polyethylene predecessors because of the damage caused to the body from the metal debris. These Biomet hip replacement systems have a higher propensity to produce high levels of metal ions, particularly cobalt, in the bloodstream. High levels of cobalt can lead to headaches, blindness, peripheral neuropathy, and convulsions, among other illnesses. There is no medical solution to elevated metal ions.

Navan was also selected to the Plaintiffs’ Steering Committee for the DePuy Hip Implant Recall MDL, as well as to the PSC for the Pinnacle hip replacement MDL. Additionally, he serves as Co-Chair to the DePuy Metal-on-Metal Hip Implant Litigation Group for the American Association for Justice (AAJ). Lawyers in our firm, led by Navan Ward, represent clients with the following hip and knee replacement implants:

- DePuy ASR and Pinnacle;
- Biomet M2a-Magnum and M2a-38;
- Zimmer Durom cup;
- Stryker Rejuvenate and ABG II;
- Wright Conserve, Dynasty, Lineage, and Profemur (femur fractures);
- Smith and Nephew R3 liner hips; and,
- Zimmer NexGen knee replacements.

If you have any questions about anything relating to either the hip or knee replacement litigation, contact Navan Ward at 800-898-2034 or by email at Navan.Ward@beasleyallen.com.

**Hormone Therapy Litigation Update**

I last reported on the Hormone Therapy litigation in September of this year. At that time we were awaiting jury verdicts in two cases: one case we were trying along with the Littlepage Booth firm, was in front of the MDL Judge in Little Rock, Ark.—Welch v. Wyeth. Unfortunately, we lost the Welch trial, but then won a $5.1 million verdict in a case we were trying in a Utah Federal Court—Okuda v. Wyeth. The Welch verdict is currently being appealed and the Okada verdict is going through post-trial motions. As I write this, our firm is trying another case in Little Rock—Lewis v. Wyeth—and hope to have a verdict before Christmas. Unfortunately, our Philadelphia trials, which were set for January, have been postponed to start in August. But we have trials in Little Rock in February and April, and one in an Oxford, Miss., federal court in March.

We continue to be excited that after all these years we are finally getting a number of trials set. We have made this litigation a top priority for the firm. Thousands of women and their families were badly hurt by what happened to them. The corporations responsible for the hurt and misery they caused must be held accountable. If you need additional information on the Hormone Therapy litigation, contact Ted Meadows, a lawyer in our Mass Torts section, at 800-898-2034, or by email at Ted.Meadows@beasleyallen.com.

**An Update On The Zoloft Litigation**

Lawyers in our Mass Torts Section are investigating claims on behalf of minor children born with Zoloft-related injuries, such as heart defects, lung defects, and other birth defects. Manufactured by Pfizer, Zoloft (Sertraline) is part of a class of drugs known as selective serotonin reuptake inhibitors (SSRI) and is among the most widely-prescribed medications in the United States. Studies have shown that SSRI usage, including Zoloft usage, during pregnancy carries a substantial risk of having a baby born with a congenital birth defect.

Approximately 250 Zoloft lawsuits have been filed on behalf of minor children born with Zoloft-related injuries in the Zoloft MDL, which is pending before the Honorable Cynthia Rufe in the Eastern District of Pennsylvania. The Court issued a scheduling order last month tentatively scheduling discovery deadlines and setting the first trial to begin no later than September 2014.

Andy Birchfield, who heads up our Mass Torts Section, is serving on the Plaintiffs Steering Committee, in the MDL. Roger Smith, another lawyer in the section, is actively participating in various litigation committees in the Zoloft MDL. If you need additional information on this litigation, including information relating to potential claims, contact Roger Smith or Linda Reynolds who are in our Mass Torts Section, at 800-898-2034 or by email at Roger.Smith@beasleyallen.com or Linda.Reynolds@beasleyallen.com.

**$10 Million Award In Zometa Lawsuit**

Although much of the focus on bisphosphonate side effects has been on Fosamax, bisphosphonate lawsuits have been filed regarding other medications, including Zometa. One such lawsuit recently resulted in a $10.4 million verdict for the Plaintiff. Zometa is a cancer medication used to treat hypercalcemia of malignancy. It is also used to delay bone complications due to multiple myeloma. Barbara Davids filed a lawsuit against Novartis, maker of Zometa, alleging she developed osteonecrosis of the jaw from her use of Zometa. She was given Zometa for breast cancer.

During Ms. Davids’ trial, a 2003 Novartis internal email discussing a link between Zometa and jawbone problems was introduced into evidence. The jury ruled for Ms. Davids’ and awarded her $450,000 in compensatory damages and $10 million in punitive damages. Another woman, who had been a Plaintiff in this case, settled her claims prior to the trial.

Other lawsuits regarding Zometa have also gone to trial. So far, eight Zometa lawsuits concerning claims of jawbone death have gone to trial. Plaintiffs have won four of those cases. Bisphosphonates, a class of drug that includes Zometa and Fosamax, have been linked to osteonecrosis of the jaw and atypical subtrochanteric femur fractures.

In 2010, the U.S. Food and Drug Administration issued a Drug Safety Communication concerning the possible link between bisphosphonates and atypical femur fractures. At the time, the FDA noted that its research did not show a clear link between bisphosphonates and atypical femur fractures, but the agency said it would continue to review reports concerning bisphosphonates and update patients as new information became available.

In addition to concerns about jawbone death and atypical femur fractures, the FDA is investigating a potential link between the use of bisphosphonates and the development of
Fosamax Litigation Ready for Next Step in Bellwether Cases

The Fosamax litigation is about to start a new chapter. The first Fosamax lawsuit was filed about six years ago. As we have previously reported, suits against Merck, the drug’s manufacturer, fall into two categories: the first group by Plaintiffs alleging they suffer from osteonecrosis (jaw damage), and a second group by persons who suffered a non-traumatic femur fracture as a result of taking the drug.

In total, more than 3,000 cases have been filed in state courts and in two separate multi-district litigations. The femur fracture trials have yet to begin. Merck will soon face the next wave of cases. The bellwether trials in the femoral fracture suits are set for this year. The first suit was filed against Merck over Fosamax in 2006. In the next two years 700 lawsuits were filed alleging that the drug maker failed to warn users of the potential risk of osteonecrosis of the jaw, or severe jaw decay. The suits were consolidated into an MDL in the U.S. District Court for the Southern District of New York. The Plaintiffs allege that they suffered injuries including infections or sores on their jawbone, many had teeth fall out, and with others their jaw bones literally decayed.

There are already more femur suits than jaw cases filed, with more than 2,000 pending in the MDL in the New Jersey federal court. The femur cases deal with sudden, catastrophic fractures without evidence of any trauma. They occur when patients, in the middle of a stride, suffer a fracture of the femur. When the femur is fractured, the patient must undergo surgery. In the surgery, an open reduction internal fixation, a doctor cuts the thigh open and uses a rod inside the bone to bolt it back together.

U.S. District Court Judge Carole E. Higbee has scheduled bellwether trials in the femur cases starting in the spring of 2013. Merck has let it be known that it intends to “vigorously defend” the cases on this subject. Lawyers in our firm have handled both jaw injury and femur cases. If you need additional information, contact Chad Cook or Leigh O’Dell, lawyers in our Mass Torts Section, at 800-898-2034 or by email at Chad.Cook@beasleyallen.com or Leigh. Odell@beasleyallen.com.

Source: Lawyers USA Online

Judge Allows Civil Suits in Meningitis Outbreak To Proceed

A federal judge in Boston has allowed civil suits against the pharmacy at the heart of the deadly U.S. meningitis outbreak to proceed and noted that any criminal case would have priority in gathering evidence. U.S. District Judge Dennis Saylor rejected arguments by lawyers for the pharmacy, its owners and an affiliate company to delay the start of civil proceedings until a panel of judges in Washington meets early next year to determine how to handle the roughly 70 suits filed in Massachusetts, Minnesota, Tennessee and Michigan.

U.S. District Court Judge Dennis Saylor, at a hearing in Boston, said that he didn’t “want two or three or four months to go by with nothing happening.” Judge Saylor said the needs of lawyers in the civil cases would fall behind those of federal and state health authorities and any criminal investigators. “There may be a grand jury investigation, I don’t know, but there is certainly a potential criminal investigation overlaid on this,” Judge Saylor added.

After federal authorities in October raided the New England Compounding Center’s facilities in Framingham, Mass., U.S. Attorney Carmen Ortiz confirmed that her office was investigating the company. The Attorney General’s office declined to comment on whether a grand jury had been convened to hear potential criminal charges linked to the outbreak, citing secrecy rules surrounding grand juries.

More than 500 people in 19 states have been infected with meningitis and 36 have died in the outbreak linked to an injectable steroid used to treat back pain produced by the New England Compounding Center, according to the Centers for Disease Control and Prevention. Judge Saylor said he would consider ordering NECC and its affiliates to preserve all evidence related to the outbreak, but noted that the needs of federal investigators from the Food and Drug Administration and Drug Enforcement Agency and state officials would come first when it came to accessing evidence.

Judge Saylor had previously denied a motion in one of the civil suits that had sought to freeze the assets of NECC’s owners, though he ordered the company not to make extraordinary cash transfers or to pay dividends or bonuses to its owners.

NECC suspended its operations and recalled its products after its role in the outbreak became clear. Ameridose, a firm owned by the same people who own NECC, has also shut down temporarily as investigators review its sterility practices. A report by the U.S. Food and Drug Administration said investigators found bugs and other unsterile conditions when they inspected Ameridose’s Westborough, Mass., facility.

Source: Claims Journal

IX. AN UPDATE ON SECURITIES LITIGATION

Supreme Court Hears Argument in Important Securities Class Action Case

On November 5, 2012, the United States Supreme Court heard oral arguments in the case of Amgen, Inc. v. Connecticut Retirement Plans & Trust Funds. Amgen, Inc. is a large pharmaceutical corporation based in California. The Food and Drug Administration approved two Amgen products that stimulate production of red blood cells and reduce the need for blood transfusions in anemic patients. Amgen allegedly made misrepresentations to the FDA about the safety of these products. Connecticut Retirement Plans and Trust Funds brought an action against Amgen alleging misrepresentation on the part of the corporation and certain officers.

Specifically, the Trust alleged that Amgen and certain officers misrepresented the nature of several FDA Committee meetings to shareholders and that when certain facts became public, it caused a dramatic decrease in the stock price for Amgen. On May 10, 2007, when certain information became public, Amgen stock value dropped by more than nine percent.

Amgen opposed the class certification, arguing that the misrepresentations allegedly made did not have any impact on Amgen stock. The district court rejected Amgen’s arguments and granted the Trust’s motion for class certification. The Ninth Circuit Court of Appeals affirmed, rejecting Amgen’s argument that a Plaintiff must give proof that the misrepresentations were material at the class certification stage rather than only at the trial.

The two questions to be decided by the Supreme Court are whether the district court must require proof of materiality before certifying the class action based on the fraud-upon-the-market theory in a misrepresentation case; and whether the district court must allow Amgen to present evidence rebutting the applicability of the fraud-upon-the-market theory before certifying the
class. The thrust of this case is really what facts need to be decided before a class action certification decision may be made. Whatever the ruling, the Court will probably make an important statement about the role of factual inquiry and proof for class certification. A decision is not expected before the end of the year. If you need more information on this case or on securities litigation generally, contact Bill Hopkins, a lawyer in our firm who handles securities and class action litigation, at 800-898-2034 or by email at Bill.Hopkins@beasleyallen.com.

X.
INSURANCE AND FINANCE UPDATE

AETNA TO PAY UP TO $120 MILLION TO SETTLE CASE OVER PAYMENT PRACTICES

Aetna Inc. has agreed to pay as much as $120 million to settle litigation over its practices on the payment of claims for services by providers with which Aetna does not have a contract. The agreement calls for Aetna to pay $60 million, plus as much as $60 million more following a claims submission period that will begin after a court grants final approval to the settlement. The Plaintiffs alleged that Aetna improperly used third-party databases to systematically underpay claims involving services and supplies provided to members by out-of-network providers. The litigation also challenged other methods by which Aetna calculated out-of-network reimbursement rates, and its disclosures for how it calculated those rates.

Source: Claims Journal

XI.
PREDATORY LENDING UPDATE

IMPACT OF PREDATORY LENDING ON U.S. HOUSEHOLDS

The Center for Responsible Lending recently released the first in a series of reports on the impact of predatory lending in the consumer markets. Despite recent regulatory reforms, predatory lending continues to undermine American households trying to rebuild their finances after the recession. The report outlines predatory practices in mortgage lending, credit cards, student loans, and automobile loans that undercut the benefits of these products.

The housing crisis has produced the largest documented wealth gap ever between White households and families of color. From 2000-2010, African-American family wealth dropped 53 percent, while Hispanic families lost 66 percent. By comparison, average White household wealth dropped only 16 percent. The report states:

There is significant evidence that African-American and Latino borrowers and their neighborhoods were disproportionately targeted by subprime lenders. Borrowers of color were about 30 percent more likely to receive higher-rate subprime loans than similarly situated White borrowers.

The study revealed that spillover costs of foreclosures have wiped out nearly $2 trillion in family wealth. Automobile loan interest-rate markups cost consumers nearly $26 billion each year, and borrowers in lower credit tiers pay up to 68 percent higher monthly payments on private student loans than on safer federal loans. Based on our experience, coming from litigation, lawyers in the firm know that predatory lending harms the entire U.S. economy.

Former Federal Deposit Insurance Corporation Chair Sheila Bair gave this stark warning: “If abusive lending practices are not reformed, we again will all pay dearly.” Hopefully, members of Congress, as well as governors and legislators around the country, will read the report.

Source: Center for Responsible Lending

WELLS FARGO NOT MODIFYING MORTGAGES AS REQUIRED

Wells Fargo & Co. has been accused of reneging on a sweeping mortgage-modification deal. Troubled homeowners are trying to reopen a case involving risky “pick-a-pay” loans written during the housing bubble. It’s alleged that Wells Fargo failed to provide wide-ranging reductions of loan balances to delinquent borrowers as it had promised two years ago when it settled a combined national class-action suit. A bank spokeswoman strongly disputed the claim.

The original lawsuits over pick-a-pay, or pay-option, mortgages contended that the loans were issued with inadequate notice to borrowers that the amount owed would rise if they chose the lowest payment among four options. The loans were made by banks later acquired by Wells Fargo. It’s alleged in the latest lawsuit:

Hundreds of thousands of homeowners were suffering the effects of undisclosed negative amortization for their Pick-a-Payment loans, while the declining U.S. housing market was sucking the remaining equity out of their homes.

The settlement was reached in December 2010 before U.S. District Judge Jeremy Fogel in San Jose, California. At the time, the San Francisco-based bank said it would provide at least $50 million and as much as $600 million in modification benefits to troubled borrowers with the pay-option loans. It was calculated that the number might reach $2 billion. It was alleged that of the 66,000 requests for loan modifications made in the 18 months ending Sept. 30, Wells Fargo granted only 1,746, or 2.6%.

Thousands of people have been denied loan modifications—people who should not have been denied. The new lawsuit filed accuses Wells Fargo of breaching the settlement agreement, acting in bad faith and violating a state unfair competition law. The court was asked to order the bank to stop all foreclosures on the loans to allow time to investigate the situation.

The pay-option loans were made by a large Oakland savings and loan, World Savings, which was acquired in 2006 by Wachovia Corp. of Charlotte, N.C. Wachovia continued to make the mortgages and was near collapse in 2008 when it was acquired by Wells Fargo. In a statement, Wells Fargo said it would “immediately and forcefully” defend the new lawsuit, which it said “maligns a very effective consumer loan settlement program.” Wells Fargo has not revealed how many borrowers covered by the settlement had received reductions in the principal on their loans. But it said its overall efforts on behalf of people with the tricky loans had been extensive, including many loan modifications that included principal reduction in the two years leading up to the settlement. The bank had this to say:

We have provided modifications for nearly 110,000 borrowers with Pick-a-Pay loans and principal reductions of more than $5 billion for those borrowers. That means that more than a third of all Pick-a-Pay loans—including those covered by the settlement and those not included—have been modified since the beginning of 2009.

Jeffrey K. Berns, a lawyer with the Berns Weiss law firm, represents the plaintiffs in this new lawsuit. The firm has an outstanding record in consumer-related litigation. It will be interesting to see how this case progresses.

Source: Los Angeles Times
XII. EMPLOYMENT AND FLSA LITIGATION

Panera Franchisee Covelli Sets Agrees Lawsuit Claiming Race Discrimination

A federal judge has approved the settlement of a class-action lawsuit in which Covelli Enterprises, a major Panera Bread franchisee, was accused of denying promotions to black employees. Under the settlement, any African American who worked for Covelli’s Panera stores for longer than a year and wanted a promotion between Jan. 11, 2008, and Jan. 11, 2012, can get payment for alleged lost opportunities. For each hour worked after their first year, they can get 70 cents—about what they would have gotten if promoted.

It was alleged that the company kept black employees on kitchen duty rather than moving them to cashier jobs and denied them promotions. Covelli, based in Warren, Ohio, has claimed it did not discriminate. U.S. District Judge Gary L. Lancaster found in his opinion that the proposed settlement with some 200 to 300 current or former employees of Covelli is “fair, within the range of reasonableness, and is not obviously deficient in any way.” Sam Cordes, a Pittsburgh lawyer, represented the Plaintiffs in this case and he did a very good job.

Source: Post-Gazette.com

XIII. PREMISES LIABILITY UPDATE

Family Awarded $109 Million In Wrongful Death Lawsuit

A jury has awarded a $109 million verdict in a wrongful death case against West Penn Power Co. The award was to the husband and family of Carrie Goretzka, a woman who was killed by a falling power line in her backyard. Mrs. Goretzka burned for more than 20 minutes while her mother-in-law was killed by a falling power line in her and family of Carrie Goretzka, a woman who was burned in the process and was forced, along with the children, to watch Mrs. Goretzka suffer as she was repeatedly shocked.

Mrs. Goretzka had several fingers severed from her left hand and her left arm was amputated as doctors sought to save her, but she died three days later in a local hospital. The lawyers for West Penn argued that Mrs. Goretzka put herself in harm’s way by standing under the power line while making the cell call. That obviously didn’t play well with the jurors. The verdict was the largest personal injury award in the history of Allegheny County. This was a tragic event and one that should never have happened. Shanin Specter, a lawyer with Kline & Specter, represented the family and he did a very good job for them.

Source: Clarion Ledger

Children Settle Claim Over Parents’ Death in Missouri Fire

The four children of a couple killed in a fire at a senior housing unit in St. Joseph, Mo., have settled their claims against several Defendants. The fire at the Danford Hall Apartments in St. Joseph in July 2010 killed 89-year-old Ellis Marion Stephens and his 86-year-old wife, Iris. Five others were injured in the fire. The Stephens’ children sued four companies after the fire, alleging their negligence caused their parents’ deaths. Investigators say the fire started when a man in another apartment who used oxygen fell asleep while smoking. The settlement, which totaled $1 million, was approved by the court.

Source: The St. Joseph News-Press

Lawsuit Filed In Florida Garage Collapse

The family of a construction worker who was killed after a parking garage collapsed at Miami Dade College has filed a wrongful death lawsuit against the construction company and several contractors. In the lawsuit, it’s alleged that Samuel Perez was driving a cement truck when part of the five-story garage collapsed in early October. Mr. Perez was trapped inside the truck’s cab for 17 hours. Rescuers had to amputate the man’s leg to remove him. Mr. Perez later died at a local hospital. Three other workers were also killed in the collapse. The family of Robert Budhoo, who also died in the accident and was the last victim pulled from the rubble, has also filed a lawsuit. That victim’s body was trapped in the rubble for several days.

Source: Associated Press

Lawsuit Filed Over Fire That Killed A Mother And Her Daughter

A wrongful death suit has been filed on behalf of Suzanne Donovan and her sixty-year-old daughter who died in a September fire. It’s alleged that the landlords were negligent in failing to install working smoke detectors in the apartment the two shared. Suzanne Donovan and her daughter, Fina Impagliazzo, died Sept. 5 as a fire raged through the converted farmhouse as they slept. The farmhouse, which had been converted into five apartments, was completely destroyed by the fire.

The first suit, a wrongful death action, was filed in Worcester Superior Court for the death of the mother. A second suit was recently filed by Alex Impagliazzo, Fina’s father. It’s alleged in that suit that new evidence was discovered that indicated Ms. Donovan complained several times about the lack of working smoke detectors in the apartment she had been renting for only a few months before the fire.

The fire started at 10:30 p.m. on the date in question. Ms. Donovan and her daughter had gone to bed early because the child was starting school the next day. It’s alleged in the lawsuit that the two victims could have been alerted and would have escaped the blaze had working smoke detectors been installed in their apartment. It appears the previous residents had also complained of the lack of smoke detectors and other issues with the apartment that were never properly addressed by the landlord.

Source: Telegram.com
You may recall that we wrote in a previous issue of the Report about a hotel housekeeper being sexually assaulted by a powerful man who was a guest in the hotel. The allegations of sexual assault in her lawsuit detailed former International Monetary Fund chief Dominique Strauss-Kahn’s professional career, as well as his political ambitions in France. The civil lawsuit against the financier, more than a year after prosecutors dropped criminal charges, has now been settled. Details of the settlement were not released, but Ms. Nafissatou Diallo, the Plaintiff, says she was satisfied. From media reports, it is likely the amount of the settlement was very large.

Ms. Diallo came to the U.S. from the West African nation of Guinea in 2003. In May 2011 Ms. Diallo, who was working as a housekeeper at Manhattan’s Sofitel hotel, claimed Strauss-Kahn tried to rape her when she entered his suite to clean it. At the time Strauss-Kahn was considered a promising candidate for the French presidency.

Ms. Diallo’s accusations—that Strauss-Kahn emerged from his hotel bathroom naked, shoved her onto the bed, tried to rape her and forced her to perform oral sex—prompted additional allegations against him from other women. French prosecutors are considering whether to press charges against Strauss-Kahn, alleging he was involved in a ring that arranged sex parties with prostitutes. While Strauss-Kahn has denied any wrongdoing, he admitted in an interview with the French magazine Le Point last year that he was “naive” in thinking he could attend sex parties and engage in “free behavior” between consenting adults without offending some people. Strauss-Kahn told French TV in a separate interview that he regretted his encounter with Ms. Diallo.

Kenneth Thompson, a lawyer with the firm Thompson Wigdor, a New York firm, represented the Plaintiff in this case. He never gave up on her case and persisted in his efforts on his client’s behalf until Strauss-Kahn finally agreed to settle the case. On a side note, Thompson, a former federal prosecutor, is now running for District Attorney in Brooklyn against Joe Hynes, a six-term incumbent.

Source: New York Times

**XIV. WORKPLACE HAZARDS**

**$5.75 Million Awarded To Families Of Workers Killed, Injured At Mobile Port**

After more than a week of trial, a Mobile County Circuit Court jury found in favor of the Plaintiffs in a port accident that killed one worker and injured another. The jury awarded approximately $5.75 million in actual and punitive damages to the families of Carl Williams, who died, and Edward Purdu, who was seriously injured. The men were working on a 17-foot skiff when a winch onboard an oil tanker yanked their boat out of the water. Kendall Dunson and Cole Portis from our firm, along with David A. Bagwell, whose law practice is in Fairhope, Ala., represented the Plaintiffs. The Defendants were Groton Pacific Carriers, Inc. and International Tanker Management Holding, Ltd.

The companies deserved to pay a heavy price in this case, not only to accept responsibility for the accident, but because they were not telling the truth about what happened and their role in it. A message needed to be sent that worker safety must be the most important thing, and that companies must stand behind their actions and make things right when they do wrong. This tragic accident should never have happened.

The accident occurred in June 2008 on the Mobile River. The workers, Mr. Williams and Mr. Purdu, were working on a small aluminum boat, moving the heavy docking lines used by large oceangoing ships as they dock and undock in berths at the Port of Mobile. Without warning, the deck winch on the large vessel pulled the docking line in toward the vessel, yanking the small boat into the air and spilling Mr. Williams into the water, where he drowned, and seriously injuring Mr. Purdu. This case was tried in state court applying Maritime Law. This case was a very good result for the family of the decedent and also for the injured worker. If you need more information about this case contact Kendall Dunson at 800-898-2034 or by email at Kendall.Dunson@beasleyallen.com.

**INDUSTRIAL ACCIDENT DEATHS AT MISSISSIPPI PHOSPHATES**

For the second time in two weeks, a worker was killed at the Mississippi Phosphates plant in Pascagoula, Miss. The victim, Jeremy Moore, died in a “steam explosion” at the fertilizer plant. Two other men were injured in the explosion and were hospitalized. Mississippi Phosphates released a statement saying, out of caution it had “temporarily suspended production” at the plant.

In the previous accident which occurred in that same work area, another worker, Jeffrey Simpson, was killed. Over the past ten years, OSHA has found more than a dozen safety violations at Mississippi Phosphates and leveled $20,000 in fines. Earl Etheridge, who is with the Department of Environmental Quality, says this accident involved a steam explosion and not any chemicals. The most recent safety issues at Mississippi Phosphates were reported by OSHA in 2009, when the company was fined $5,000 for “electrical” and “housekeeping” violations.

Mississippi Phosphates Corp. was cited by the government for 40 safety and health violations following the deaths of two workers in separate incidents at the company’s Pascagoula facilities, according to the Occupational Safety and Health Administration. OSHA proposed penalties of $165,900. Richard Johnson, vice president of operations at MPC, had this to say in a statement:

The company is undertaking a comprehensive review of OSHA’s report and will expeditiously address OSHA’s recommendations for improving the safety of our workplace. MPC remains committed to providing a safe and healthy workplace for its employees.

It appears the company cooperated with the OSHA investigation. Following the accidents, MPC voluntarily shut down its facility for more than two weeks to examine its safety and training procedures. While the OSHA inspectors were on site, recommendations were made and MPC appears to have addressed them in a timely manner. According to reports, MPC has completed the vast majority of the items noted during the inspection and has a plan to complete them all.

A worker died in the May 22nd incident while attempting to start up a steam turbine in sulfuric acid plant and was hit by flying metal debris when the turbine housing ruptured due to apparent over pressurization. In a similar incident on June 1st, a worker restarting a tripped steam turbine in a sulfuric acid plant also was killed by flying metal debris when the turbine housing ruptured due to over-pressurization. OSHA cited other safety and health violations including exposing workers to “struck-by” hazards by not protecting them against over-pressurization and failing to maintain and service equipment in accordance with the company’s maintenance program to prevent over-pressurization.

Source: New York Times

www.BeasleyAllen.com
The company also was cited for failing to test and inspect pressure relief devices throughout the facility. Mississippi Phosphates is a producer and marketer of diammonium phosphate, which is used as a fertilizer. The company’s manufacturing facilities consist of two sulfuric acid plants, a phosphoric acid plant and diammonium phosphate granulation plant.

Source: Claims Journal

**FAMILY OF VERMONT TROOPER KILLED IN 2003 TO GET SETTLEMENT**

The state of Vermont’s insurance company has agreed to a multi-million dollar out-of-court settlement with the family of a Vermont State Trooper who was killed during a car chase more than nine years ago. Sgt. Michael Johnson was struck by a car driven by then-22-year-old Eric Daley, after Sgt. Johnson laid a spike strip on an interstate highway in an attempt to stop Daley from fleeing. Daley later pleaded guilty to involuntary manslaughter and got a 26- to 33-year sentence. The Vermont Supreme Court ruled in 2009 that Sgt. Johnson’s family could sue the state’s insurer for as much as $11 million. Hartford lawyer John Campbell represented the Johnson family. He did a very good job for them.

Source: Burlington Free Press

**BICYCLE AND LARGE TRUCK DEATHS SOAR AS TOTAL TRAFFIC FATALITIES DROP**

Deaths of bicyclists and occupants of large trucks rose sharply last year even as total traffic fatalities dropped to their lowest level since 1949, federal safety officials said Monday. Bicyclist deaths jumped 8.7 percent and deaths of occupants of large trucks increased 20 percent, the National Highway Traffic Safety Administration said in an analysis of 2011 traffic deaths. Overall traffic fatalities dropped 1 percent, to 32,367. The decline came as the number of miles driven by motorists dropped by 1.2 percent.

The year 2011 also saw the lowest fatality rate ever recorded, with 1.10 deaths per 100 million vehicle miles traveled in 2011, down from 1.11 deaths per 100 million vehicle miles traveled in 2010. The increase in bicycle deaths probably reflects more people riding bicycles to work and for pleasure, according to Jonathan Adkins, deputy executive director of the Governors Highway Safety Association, which represents state highway safety agencies. Washington, D.C., for example, reports a 175 percent increase in bicyclists during morning and evening rush hours since 2004. The city also tripled its bike lane network during the same period. Adkins had this to say:

> Our culture is beginning to move away from driving and toward healthier and greener modes of transportation. We need to be able to accommodate all these forms of transportation safely. The increase in deaths of large-truck occupants is more puzzling, but may be due to more trucks returning to the road as the economy improves. There are more questions than answers about what is occurring here.

**MOTORCYCLE DEATHS AND INJURIES COST $16 BILLION**

Direct costs from deaths and injuries due to motorcycle crashes were $16 billion in 2010, according to a government report, but the full cost is likely higher because long-term medical expenses are difficult to measure. Motorcyclists are involved in fatal crashes at higher rates than drivers of other types of vehicles, and are 30 times more likely to die in a traffic crash than passenger car occupants, according to the Government Accountability Office report. In 2010, 82,000 motorcyclists were injured and 4,502 were killed in crashes, the report said. The average cost for a fatal crash was estimated at $1.2 million, while the cost for injuries ranged from $2,500 to $1.4 million depending upon the severity.

It’s difficult to determine the full costs with accuracy because some types of costs are difficult to measure, the report said. For example, treating serious injuries can be long and expensive, but follow-up analyses of costs are conducted only for a few years. Also, other consequences of long-term injuries such as changes in employment and living status can’t be fully measured, the report said. Laws requiring all motorcyclists to wear helmets are the only strategy proven effective in reducing fatalities and injuries, the report said. Several studies have estimated helmets reduce the risk of death by as much as 39 percent, the report said. The National Highway Traffic Safety Administration has estimated helmets saved the lives of 1,550 motorcyclists in 2010.
There has been strong opposition from motorcycle groups to "universal" helmet laws, and currently only 19 states have them. Another 28 states have "partial" helmet laws that require only some motorcyclists to wear helmets, usually riders under age 21 or under age 18. Three states have no helmet laws: Illinois, Iowa and New Hampshire. Last year, Michigan legislators repealed that state’s helmet requirement for motorcyclists over 21. Other proposals to repeal mandatory helmet laws were considered in California, Maryland, Missouri and Tennessee.

While many motorcycle groups endorse the use of helmets, they also oppose mandatory helmet laws as infringements on personal liberties and their right to assume the risk of riding without a helmet, according to the report. Jeff Hennie, vice president of the Motorcycle Riders Foundation stated:

*We are 100 percent pro-helmet, and 100 percent anti-helmet law. Putting a helmet law in place does not reduce motorcycle fatalities. Educating other motorists to look out for motorcyclists, and teaching motorcyclists how to ride safely, is the ultimate solution for saving lives.*

But Jackie Gillan, president of Advocates for Highway and Auto Safety, which supports mandatory helmet laws, disagreed, saying:

*Education is not a substitute for wearing a helmet. It’s like saying if you take a driver’s ed class, you don’t have to wear your seat belt. Now how silly is that? Partial helmet laws are also difficult to enforce because it’s hard for police to tell the age of motorcyclists as they go whizzing by.*

The National Transportation Safety Board dropped mandatory helmet laws from their list of ten “most wanted” safety improvements earlier this month, angering some safety advocates. It would certainly appear that mandatory helmet laws would save lives. But based on legislation history relating to the subject, my view may be in the minority.

Source: Associated Press

**NTSB Recommends Ignition Locks For All Drunk Drivers**

The National Transportation Safety Board has said that every state should require all convicted drunken drivers, including first-time offenders, to use devices that prevent them from starting a car’s engine if their breath tests positive for alcohol. The ignition interlock devices—already required for all convicted drunken drivers in 17 states—are the best currently available solution to reducing drunken driving deaths, which account for about a third of the nation’s more than 32,000 traffic deaths a year, the board said.

Drivers breathe into breathalyzers mounted on the vehicle’s dashboard. If their breath-alcohol concentration is greater than the device’s programmed limit—usually a blood alcohol concentration of .02 percent or .04 percent—then the engine won’t start. The board also urged the NHTSA to speed up its research effort with automakers to develop systems that can determine a driver’s blood alcohol concentration using infrared light when the driver presses an ignition button. The vehicle won’t start if the alcohol concentration is too high.

The technology, which is sometimes breath-based rather than touch-activated, is already in use in some workplace drug-testing programs. If the technology were incorporated into all new vehicles, eventually all drivers would be alcohol-tested before driving. That could potentially prevent an estimated 7,000 drunken-driving deaths a year, the board said. The five-member board made the unanimous recommendations after receiving a new study from its staff that found an average of 360 people a year are killed when drivers turn the wrong way into the face of oncoming traffic on high-speed highways.

The board’s study analyzed data from 1,566 crashes from 2004 to 2009, as well as nine wrong way collisions NTSB directly investigated. In 59 percent of the accidents, wrong-way drivers had blood alcohol levels more than twice the legal limit, researchers said. In another 10 percent of the crashes, drivers had alcohol levels between .08 and .14. The limit in most instances is .08. In just the week before the board acted, 11 people were killed and 9 seriously injured in wrong-way driving accidents in eight states.

Older drivers also appear to be part of the wrong-way driving problem, researchers said. Drivers over age 70 were overrepresented in the accidents reviewed in the study, accounting for 15 percent of the wrong-way drivers compared with only 3 percent of the right-way drivers they collided with, researchers said.

Wrong-way driving crashes on interstates, expressways and other high-speed highways are especially deadly because over 80 percent involve head-on collisions in which vehicles close in on each other very rapidly, they said. A study in Michigan in 2012 found that 22 percent of wrong-way collisions were fatal, compared with 0.3 percent for all highway accidents over the same period. Often the chain of events begins with drivers entering an exit ramp in the wrong direction, making a U-turn on the mainline of a highway or using an emergency turn-around through a median, investigators said.

Most wrong-way crashes—including seven of the nine accidents directly investigated by NTSB—take place in the fast lane of the highway, investigators said. The accidents also tend to happen at night and on weekends, the study found. Reducing drunken driving is perhaps the most obvious way to reduce wrong-way driving fatalities and injuries. The board hosted a forum early in 2012 on the problem of drivers impaired by alcohol and drugs. Alcohol-impaired crashes overall accounted for nearly 31 percent motor vehicle fatalities 2010. That percentage has remained constant between 30 and 32 percent of overall highway fatalities since 1995, according to the board.

Safety advocates have been lobbying states to pass more laws requiring ignition interlock devices for first-time offenders. According to the Governors Highway Safety Association, states that already have such laws on the books are: Alaska, Arizona, Arkansas, Colorado, Connecticut, Hawaii, Illinois, Kansas, Louisiana, Missouri, Nebraska, New Mexico, New York, Oregon, Utah, Virginia and Washington. Missouri’s law does take effect until next fall. Also, four California counties—including Los Angeles—have ignition interlock laws. “The laws may vary some, but the common thread is that they are for all first time offenders,” according to Jonathan Adkins, deputy executive director of the association.

The group MADD has fought long and hard for the ignition interlock laws. I give this organization a great del of credit for educating the public and also the politicians concerning a most serious problem and how to help fix the problem.

**Source**: MADD

**Wrongful Death Lawsuit Arising Out Of Airport Bus Crash Filed**

A wrongful death lawsuit was filed in Miami-Dade County last month on behalf of the family of Francisco Urena against, Miami Bus Service Corp., and Miami Bus Service II Corp and Ramon Ferreira, the bus driver. Urena, was one of two passengers killed on Dec. 1, 2012 when a charter bus he was riding in en route to a church function slammed into a concrete overpass at Miami International Airport. The 32 passengers on board were part of a congregation of Jehovah’s Witnesses who were traveling from Miami to a gathering in West Palm Beach. The suit alleges the bus driver negligently drove the 11-foot high bus, which was owned and operated by Miami Bus Service Corp. and Miami Bus Service II Corp., into an
8-foot-6-inch overpass at the airport. Urena was fatally injured as a result of the crash and died at the hospital shortly thereafter.

The complaint alleges negligence resulting in the death of Francisco Urena. According to the complaint, the bus driver negligently drove the bus on the wrong route at an unsafe speed at the time and place of the accident. The bus collided with a clearly-marked concrete overpass in broad daylight, with multiple signs warning high vehicles away from the area. Bus companies must do more to ensure that their drivers are properly trained and understand traffic signs to prevent such avoidable accidents. Mike Eidson, a founding partner at Colson Hicks Eidson represents the plaintiff in the lawsuit. Source: SACBee.com

TRIAL BEGINS IN UTAH BOAT CRASH THAT KILLED SCIENTIST

A trial is now under way for one of three men riding in a motorboat when it severed a swimmer’s legs and killed the woman, a University of Utah scientist. A jury panel has been seated for Skyler Shepherd, 22, the boat owner who told police another defendant was driving when it hit Esther Fujimoto on Aug. 21, 2011, at Pineview Reservoir east of Ogden. Shepherd told authorities he took the wheel to circle back on the swimmer. The boaters have said they left the woman in the water after she reported she was OK. That’s sort of hard to believe. A medical examiner determined Fujimoto died from propeller wounds.

Dr. Fujimoto, who was 49-year-old, was part of a University of Utah team that identified a breast cancer gene. More recently, she was seeking a cure for cerebral palsy. Her family has sued the three men for wrongful death, claiming in court records they were drinking and smoking marijuana when they hit her several hundred feet from shore. The defendants’ lawyers counter that their victim was negligent for swimming in open water. A separate criminal trial will be held in February for Colton Raines, 23, and Robert Cole Boyer, 30. All three defendants are charged with misdemeanor counts of obstructing justice, reckless endangerment and failing to render aid.

Shepherd’s trial got under way last month amid speculation he might blame another defendant for the fatal accident. His lawyer, Glen Neeley, raised that possibility in a motion filed in court seeking a separate trial for Shepherd. Prosecutors didn’t object. This incident is but another example of reckless behavior by persons operating boats on lakes and waterways in the U.S.

Source: Claims Journal

FIRE SUPPRESSION SYSTEMS URGED IN ALL CARGO PLANES

Government accident investigators want the Federal Aviation Administration to require fire suppression systems in all cargo planes. The goal is to prevent the kind of ferocious in-flight fires responsible for the deaths of four pilots in three accidents since 2006. The National Transportation Safety Board hasn’t said exactly what type of fire suppression technology airlines should install. It was reported that the United Parcel Service has developed systems that can prevent or contain even fires in shipments of lithium batteries, which burn at very high temperatures. Lithium batteries are suspected to have caused or contributed to the severity of the fire in crashes in Dubai and off the coast of South Korea. Pilots were able to escape a plane in Philadelphia before it was consumed by flames. Source: Claims Journal

XVI. ENVIRONMENTAL CONCERNS

CAN WE CONTINUE TO DENY CLIMATE CHANGE?

The fact that Arctic sea ice has melted this year to its lowest recorded level shows, along with other weather extremes, that “climate change is taking place before our eyes.” That is what the World Meteorological Organization (WMO) reported recently. The first 10 months of 2012 were the ninth-warmest since records began in the mid-19th century, with early months cooled by a “La Nina” weather event in the Pacific, according to the report, issued at global climate change talks in Doha. Many regions have faced extremes of droughts, floods and heat waves. The number of cyclones worldwide was around normal but some, such as Superstorm Sandy, which lashed the Caribbean and the United States, were especially devastating, the WMO said. Michel Jarraud, head of the Geneva-based WMO, had this to say:

The extent of Arctic sea ice reached a new record low. The alarming rate of its melt this year highlighted the far-reaching changes taking place on Earth’s oceans and biosphere. Climate change is taking place before our eyes and will continue to do so as a result of the concentrations of greenhouse gases in the atmosphere, which have risen constantly and again reached new records.

Natural cooling events such as La Nina “do not alter the underlying long-term trend of rising temperatures due to climate change as a result of human activities,” he said. The WMO is an agency of the United Nations and has a membership of 190 member states and territories.

Climate change will continue “as a result of the concentrations of greenhouse gases in the atmosphere, which have risen constantly and again reached new records,” according to Jarraud. The report said that the global land and ocean surface temperature for the first nine months of 2012 was about 0.45 degrees Celsius (0.81° Fahrenheit) above the corresponding 1961-1990 average of 14.2 degrees C [57.56°F]. Worldwide, it said that tropical cyclones were near the 1981-2010 average of 85 storms, with a total of 81. Typhoon Sanba which hit the Philippines, Japan and the Korean peninsula was the strongest.

The Atlantic basin had an above-average hurricane season for a third consecutive year, the report said. Most notable was Sandy, which hit island nations in the Caribbean and the United States. We know the destructive effects of Sandy on our East Coast. High temperatures especially affected North America, southern Europe, western and central Russia and northwestern Asia. Heat waves hit much of the United States and Europe from March to May. About 15,000 daily heat records were broken across the United States. Droughts also affected much of the United States and parts of Russia, Europe and China. The report said that many parts of western Africa and the Sahel, including Niger and Chad, suffered serious flooding between July and September because of a very active monsoon.

Source: Claims Journal

WE SHOULD BE CONCERNED ON HOW COAL FIRMS BUILD SLURRY PONDS

Coal Slurry Impoundments have become a major problems in the U.S. Regulators are ignoring stricter construction standards that could prevent more failures at hundreds of such impoundments, which are dam-like structures, around the country. State and federal regulators allow coal companies to build or expand the massive ponds of gray liquid and silt atop loose and wet coal waste. That has been going on for at least a decade. Jack Spadaro, an engineer-consultant and former director of the National Mine Health and Safety Academy, had this to say:

They’re building on top of the existing slurry, and therein lies the problem. It’s wet and it has no stability. It’s cre-
over the years, including: the dirty water and solids in various ways byproduct of washing coal to help it burn while Illinois is third with 71. Slurry is a according to the federal Mine Safety and Virginia has 114, more than any other state, dams and ponds. Federal law, according to

Coal Corp.'s 68-acre holding pond, sending through the bottom of the Martin County in Martin County, Ky., when slurry burst in 2000 polluted the water supply of more

...happening again. Interestingly, he actually helped write the nearly 40-year-old regulations that are now on the books to guide slurry pond construction. The regulations give the government and coal companies detailed design, compaction strength and other criteria so the structures will withstand internal pressures and additional stress from big rain storms. The regulations require the operator to do daily, quarterly and annual inspections, while the state must make monthly checks. MSHA relies partly on data provided by the companies to detect problems, which is an obvious weakness in the system.

Just two years ago, MSHA said it had improved oversight of impoundments, with better training and a new handbook on dam management. The agency made the comments on the 10th anniversary of a disaster in Martin County, Ky., when slurry burst through the bottom of the Martin County Coal Corp.'s 68-acre holding pond, sending black goo through an underground mine and into 100 miles of waterways. The spill in 2000 polluted the water supply of more than a dozen communities and killed aquatic life before reaching the Ohio River. Massey Energy eventually paid $46 million for the cleanup, along with about $3.5 million in state fines and an undisclosed sum to residents.

Spadaro, who helped investigate the Kentucky accident, believes MSHA could go further, requiring better engineering evaluations of potential weak spots in impoundments. He claims regulators at all levels continue to go easy on the industry in favor of coal production. Rather than require companies to build new dams on solid earth or dispose of the wastewater and refuse through a drying system, they allow the operators to raise the height of existing dams and ponds. Federal law, according to Spadaro, requires impoundments to be stable during all phases of construction.

Source: Yahoo.com

WALGREEN CO. ORDERED TO PAY $16.57 MILLION FOR CALIFORNIA ENVIRONMENTAL VIOLATIONS

An Alameda County Superior Court judge has ordered the Illinois-based pharmacy company Walgreen Co. pay $16.57 million as part of a settlement for apparent environmental violations. Together, 42 state district attorney offices and two city attorney offices filed a lawsuit against the pharmaceutical company in June in for illegal waste disposal and improper handling of confidential medical information. The lawsuit was led by dozens of state and city offices including the district attorney's offices of Alameda, San Mateo, Santa Clara, Monterey and San Francisco counties.

The lawsuit claimed more than 600 Walgreens stores statewide unlawfully handled and disposed of various hazardous waste and materials for more than six years. Some of the waste allegedly dumped was pesticides, bleach, paint, aerosols, automotive products and other hazardous waste, the suit claimed. The case originated from an investigation by the California Department of Toxic Substances Control and local environmental health agencies.

The settlement also resolves allegations that Walgreens unlawfully disposed of customer records containing confidential medical information risking confidentiality. Under the final judgment of Judge Wynne Carvill, the company must pay $16.57 million in civil penalties and costs. Under the settlement, each county and party in the lawsuit will receive various amounts in damages.

Because of the judgment, Walgreens must have more stringent waste disposal procedures and regulation. Additionally, the company is required to take proper steps to ensure confidentiality of pharmacy customer information. Walgreen Co. representatives were not immediately available to provide comment on the settlement.

Source: Mercury News

FORMER MOBIL OIL EXECUTIVE LEADS CHARGE AGAINST FRACKING

Louis W. Allstadt, a former high ranking executive with Mobil Oil Corporation, is leading the charge against natural gas fracting in New York. Allstadt, who was executive vice president for Mobil's oil and natural gas drilling in the western hemisphere, now lives in Cooperstown, New York. For the past couple of years, Allstadt has been campaigning against the controversial practice of hydraulic fracturing—fracking—and he says that fracking is a “bad idea” for New York state. With New York Governor Andrew Cuomo about to make a momentous decision about whether fracking will go forward in New York, many observers believe that Allstadt has become Cuomo’s worst nightmare.

Allstadt has been speaking to community groups around the state about the problem. He lays out in detail why he believes New York isn’t ready for fracking. Allstadt says that regulators are “steeped in an industry mindset” and aren’t able or “willing to impose the necessary regulatory regime on the industry.” Allstadt joined a group of medical professionals, scientists and engineers to call on the Obama administration “to halt the rush toward large-scale export of liquefied natural gas until the health impacts in the U.S. of dramatically expanded fracking can be resolved.”

Physicians, Scientists, & Engineers for Healthy Energy unveiled a petition to the administration. The group says there are “grounds for concern about the potential harm posed to humans by the hydro-fracking of shale gas, and that more research must be done in order to know more about such impacts.” “In the absence of needed testing, the Obama Administration could expose Americans to potential health harms,” according to the joint statement from the experts organized by the group.

Joining Allstadt in the call on President Obama was Seth B. Shonkoff, PhD, MPH, executive director, Physicians, Scientists, & Engineers for Healthy Energy (PSE), and environmental researcher, University of California, Berkeley; Adam Law, MD, physician, Cayuga Medical Center, Ithaca, NY, and Physicans, Scientists, and Engineers for Healthy Energy (PSE); and Madelon L. Finkel, PhD, professor of clinical public health, and director of the Office of Global Health Education, Weill Cornell Medical College, New York City. The jury is still out on the potential for harm—both from a health perspective and on how it affects the environment—caused by fracking. It may be a good while before we really know whether the concerns are justified. It does make sense, however, to make every effort to find answers.

Source: Corporate Crime Reporter

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NHTSA that it was aware of 63 alleged incidents of possible floor mat pedal entrapment in Model Year 2010 Lexus RX 350s since 2009. Toyota’s own technicians and dealer technicians reported that certain alleged incidents of unwanted acceleration had been caused by floor mat pedal entrapment.

In June, Toyota advised NHTSA that it would conduct a recall of 154,036 Model Year 2010 Lexus RX 350 and Model Year 2010 RX 450h vehicles to address floor mat pedal entrapment. As part of today’s settlement, Toyota and its U.S. based subsidiaries agreed to make internal changes to their quality assurance and review of safety-related issues in the United States, and to improve their ability to take into account the possible consequences of potential safety-related defects. The last time Toyota faced civil penalties was in 2010 when the automaker paid $48.8 million as a result of three separate investigations into the automaker’s handling of auto recalls. The automaker paid maximum civil penalties for violations stemming from the pedal entrapment, sticky pedal and steering relay rod recalls.

Source: Corporate Crime Reporter

### Toyota Camry Gets Slammed in New Crash Test

There was some more bad news for Toyota last month. The automaker fared poorly in a new crash test from the Insurance Institute for Highway Safety. The auto safety group, which is financed by the insurance industry, recently tested a group of new family sedans, including the Camry, Honda Accord and Ford Fusion. The cars, 18 different models in all, were subjected to a new type of front crash test in which a car, going at 40 miles an hour, strikes a crash barrier with just a small part of the front bumper on the driver’s side. It’s a tough test, since it concentrates impact forces into a small area. When the IIHS put a group of luxury cars through the same test in August, only two cars out of 11 got top marks.

In the latest test, the two cars that did the worst, earning ratings of “Poor,” were the Toyota Camry and the Toyota Prius v hybrid wagon. In the test, the Camry’s front wheel was pushed back, bending the passenger compartment footwell inward. The steering was also pushed far to the right so that airbag, which is mounted in the steering wheel, did little to protect the crash test dummy’s head. Side curtain airbags also didn’t extend far enough forward to provide needed additional protection. The Prius v’s passenger compartment was also crushed inward and that car’s airbags deployed too late to offer protection.

Source: CNM Money

### NHTSA Is Investigating Ford Floor Mats

The National Highway Traffic Safety Administration is expanding an investigation into floor mats that interfere with pedals in Ford, Mercury and Lincoln cars. NHTSA was initially investigating 2010 Ford Fusion and Mercury Milan vehicles. Last month, it said it would also look at those 2008 and 2009 models and the Lincoln MKZ. NHTSA has gotten 52 complaints of accelerator pedals getting trapped by unsecured or stacked floor mats. No injuries have been reported. The investigation now covers...
around 480,000 vehicles. NHTSA investigations often lead to recalls. As you know, NHTSA said not all 2010 models are affected, since Ford introduced new pedals during that year.

Source: Claims Journal

IGNITION INTERLOCK FAILURES LEAD TO ROLLAWAYS AND RECALLS

Honda Motor Company recently announced it is recalling more than 870,000 Minivans and SUVs worldwide, because the vehicles can roll away even though drivers have removed the keys from the ignition. The recalls include 807,000 vehicles in the United States and another 65,000 vehicles in other countries. The United States recall will include about 318,000 2003-2004 model Honda Odysseys, 259,000 Honda Pilots, and about 230,000 2003-2008 Acura MDX vehicles, all with automatic transmissions. The recall primarily affects older-model vehicles sold in the United States. These vehicles had become major sellers with families due to their generous space and reputation for quality.

The National Highway Traffic Safety Administration opened a preliminary investigation into the 2003-2004 Honda Pilot and Odyssey. After receiving 42 complaints alleging mechanical failures and 26 rollaway vehicles. Complaints indicated that ignition interlock failures caused the rollaway vehicles. The ignition cylinder park-shift interlock is supposed to prevent the key from being removed from the vehicle until the transmission is shifted to park. This mechanism can wear out or become damaged during use, resulting in drivers being able to remove the keys without the automatic transmission shift lever being put in park. There have been 16 allegations of vehicles only coming to a stop when the vehicle finally struck an object. Objects included fences, trees, mailboxes, a pole, a landscape retaining wall 600 feet away, and a brick mailbox two blocks away. Other reports stated some vehicles only came to a rest after hitting multiple parked cars.

The most serious injury reported occurred in California, when an owner tripped while trying to stop a 2003 Odyssey that began rolling backwards after being parked on a sloped driveway. The driver’s left leg was run over by the front tire, resulting in a broken leg and crush injuries on the shin area. Another owner said she was knocked down while trying to get in the moving vehicle to stop it.

As we have reported, problems with ignition switches have plagued Honda for several years. Honda has stated that the current recall is not related to the prior series of recalls for rollaway vehicles. However, prior recalls were due to similar interlock failures as the current recall. In 2003, Honda recalled 563,000 vehicles due to ignition interlock defects, which included the 1999 Odyssey, 1997-1999 Acura TL, and the 1999-2001 Accord vehicles.

In 2005, Honda recalled another 483,000 vehicles over the same issue. Honda said in 2005 it was redesigning the interlock system because the vehicles allowed drivers to remove the key from the ignition without first shifting to park. In September 2008, NHTSA received 15 complaints alleging 10 crashes regarding the Accord. In August 2010, Honda recalled another 384,000 vehicles due to ignition interlock failures.

Owners of the recalled vehicles are to be notified in February. Honda dealers will repair the ignition interlock systems free of charge. Owners of the affected model year vehicles can find out if their vehicles need repair by visiting the online website www.recall.honda.com and www.recall.acura.com. Honda owners can also call (800) 999-1009, and Acura owners can call (800) 382-2238. The recalls mentioned above will be mentioned in the Recall Section of this issue.


RETAILERS UNHAPPY WITH ANTITRUST SETTLEMENT

The largest antitrust settlement in U.S. history involving credit card companies and banks is now under attack. Many of the country’s biggest retailers, who were not parties to the case, are trying to derail the $7.25 billion settlement. Mark Williams, president of financial services at Best Buy, said the settlement “does almost nothing to address why U.S. consumers and merchants continue to pay higher (credit card) costs than nearly every other developed country.” Target Corp. says the settlement has “serious substantive and legal defects” that “perpetuate a broken system” of uncontrolled credit card fees that costs Target hundreds of millions of dollars each year.

Many experts believe that major retailers and trade associations will fight all the way to the U.S. Supreme Court if necessary to kill or materially change the settlement. Opponents say it leaves credit card companies with too few limits on fee increases and prohibits future lawsuits. Georgetown University law professor Adam Levitin, a consumer finance expert, speculated that credit card fees could become a flash point in the U.S. House and Senate, the way debit card fees did in 2011 when Congress voted to restrict them in an amendment to financial regulatory reform. Levitin thinks judicial approval of the current settlement would up the legislative pressure to pass a better long-term solution.

In November, a majority of the merchants and trade associations that brought the lawsuit against Visa, Master-Card and several banks seven years ago announced plans for a new legal strategy. Simply put, they will ask a federal appeals court to throw out the settlement. Preliminary approval of the settlement was granted by U.S. District Judge John Gleeson on November 9th.

In 1993, credit card fees paid for $650 billion in goods and services in roughly 6 billion transactions, according to the U.S. Government Accountability Office (GAO). By 2007, it was said that credit card payments had risen to more than $19 trillion on 27 billion transactions. One to 3 percent of the value of each transaction went to credit card fees, the GAO said. Visa and MasterCard accounted for 71 percent of credit card purchases in 2008, the GAO reported. From 1991 to 2009, MasterCard raised its standard credit card fees by 22 percent, according to the GAO, and from 1995 to 2009, Visa raised its standard fee by 23 percent.

With tens of billions of dollars in credit card fees paid each year, Professor Levitin says the terms of the antitrust settlement are crucial. His analysis of the settlement concluded that it was “a bad deal for merchant plaintiffs and the public at large.” He contends that ordinary consumers should worry because the settlement “allows MasterCard, Visa and big banks to impose a hidden tax on everything.” But not everyone feels that way. Visa and MasterCard have both expressed satisfaction with the settlement even though it would force them to pay billions in damages and temporarily lower their fees.

When the settlement came to light in July, Visa Chairman and CEO Joseph Saunders said he did not expect the penalties to affect earnings estimates issued to Wall Street. Also, a Minnesota business that originally sued—CHS Inc., a giant agricultural cooperative based in Inver Grove Heights—“supports the settlement agreement and believes that it is a fair and equitable resolution of the case,” according to corporate communications director Lani Jordan.

It appears that the retail industry’s pushback against the settlement will continue. In 1993, credit card payments for $650 billion in goods and services in roughly 6 billion transactions, according to the U.S. Government Accountability Office, or GAO. By 2007, credit card payments mushroomed to more

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than $1.9 trillion on 27 billion transactions. One to 3 percent of the value of each transaction went to credit card fees, the GAO said.

Craig Wildfang, who is with the Minnesota firm of Robbins, Kaplan, Miller & Ciresi, was the lead attorney for the plaintiffs in this long-running case. He says this is the best antitrust settlement ever and that the settlement should receive final approval. The litigation has been going on for years and it’s time for finality. It will be most interesting to see how the matter unfolds.

Source: Minneapolis Star

**FDA Issues Adverse Events Report on Energy Drinks**

The Food and Drug Administration has released some detailed information on adverse event reports related to several popular energy drinks. The release takes into account reports of adverse health events and product complaints filed with the FDA between Jan. 1, 2004 and Oct. 25, 2012 involving 5-Hour Energy, Monster Energy, and Rockstar Energy Drinks. Cases have already been filed against energy drink manufacturers over their products, including a wrongful death suit involving a Maryland girl who died after consuming two Monster Energy drinks.

Dietary supplement manufacturers, packers and distributors must notify the FDA if they receive reports about serious adverse events. The FDA’s report details 92 adverse events related to 5-Hour Energy, including 11 resulting in death, 40 events related to Monster Energy, four of which resulted in death, and 13 adverse events related to Rockstar Energy Drink.

Source: Lawyers USA Online

**Fireplace Makers Are Providing Protective Screens To Prevent Severe Burns To Toddlers**

Manufacturers have decided to provide protective screens as standard equipment with new gas fireplaces. This appears to be an attempt to avoid regulation over severe burns to toddlers. The industry has revised its voluntary guidelines to call for the addition of mesh screens to be attached to new fireplaces. The aim is to prevent contact with the scorching glass fronts, which get hot enough to melt skin, which would prevent serious injuries. Fireplace makers will have a very long lead time—until Jan. 1, 2015—to provide screens with new units, though companies are already retooling to do it sooner, according to Tom Stroud, a senior manager with the Hearth, Patio and Barbecue Assn., an industry group.

As reported by FairWarning, more than 2,000 children ages five and under were injured by contact with the unprotected glass in a recent 10-year period. This is according to a federal database, with many suffering 2nd and 3rd degree burns. That has triggered at least a dozen lawsuits and scrutiny by the Consumer Product Safety Commission, which in June, 2011, sought public comments on the need for federal standards. Specifications for the screens are included in revisions to the guidelines that will be published very soon by the American National Standards Institute. The Institute certifies voluntary standards for industry groups. An industry technical committee that previously had rejected the need for a physical barrier developed the new guidelines.

Separately, the health and patio association has launched an information campaign to alert current owners of an estimated 11 million gas fireplaces that the glass can get dangerously hot, and that they should buy a screen from a fireplace store if there are children in the home. Many users of gas fireplaces weren’t the original purchasers and never saw any warning statements. The Consumer Product Safety Commission is holding off on regulations in response to the industry moves. The CPSC will use social media to draw attention to the industry’s safety tips.

The companies will have more than two years before beginning to provide the screens. Apparently, there are no plans to offer retrofits to current owners. Dan Dillard, executive director of the nonprofit Burn Prevention Network and chairman of the prevention committee of the American Burn Association, believe the CPSC should adopt mandatory standards, rather than rely on voluntary steps by the industry. He also believes the federal estimate of about 200 child burn cases per year is unrealistically low. Members of the prevention committee are going to prepare a white paper with injury data from leading pediatric burn centers. The aim, he said, will be to “bring a spotlight focus to the severity of this.”

Under the voluntary standard, the glass is allowed to reach temperatures as high as 500 degrees or 1,328 degrees Fahrenheit, depending on the type of glass used. The limits are meant to keep the glass from failing, not people from getting burned. Up to now, most manufacturers have not provided screens or prominent safety warnings out of fear of marring the aesthetic appeal of fireplaces or scaring off customers.

Source: Fairwarning.com

**Tainted Human Body Parts Prompt FDA Warning**

A Florida firm that supplies human tissue implants to the U.S. and the world is now under fire for producing body parts and products contaminated with bacteria, fungi and other potentially dangerous organisms, according to federal health regulators. Food and Drug Administration officials posted a warning last month saying they had found apparent widespread contamination throughout the Alachua, Fla., site operated by RTI Biologics Inc. Human tendons used to heal sports injuries and “bone putty” that helps repair fractures were among contaminated products, along with sites and processes, detected at the plant that produces tissue used in all 50 U.S. states and more than 50 countries worldwide.

FDA officials had not said at press time whether they had received reports of infection, illness or death linked to RTI products. But company officials in a statement said there have been no reports of disease and that no contaminated products were distributed to the public. An FDA inspection document from 2011, however, indicated that RTI had received 758 internal reports of a wide range of complaints or adverse events in a year, including four reports of infections that were sent on to FDA. Under federal law, the FDA regulates tissue, but it’s up to companies to decide when to pass complaints on to the agency.

Records indicate the FDA sent inspectors to the plant in 2008, 2010 and 2011, as well as during the most recent visit from June 25 to July 11, 2012. But the FDA stopped short of taking stronger action to inspect the distribution of implants, including bones, skin, tendons, ligaments and other tissue obtained from donors in the U.S. and elsewhere.

Source: NBC News

**Bon-Ton Stores Fined $450,000 For Drawstring Error**

The Bon-Ton Stores Inc. has agreed to pay a $450,000 penalty for failing to report that some of its children’s hooded jackets and sweatshirts were sold with drawstrings through the hood. The retailer knowingly failed to report the information immediately to regulators as required by federal law, according to the U.S. Consumer Product Safety Commission.

Children’s upper outerwear with drawstrings, including jackets and sweatshirts, pose a strangulation hazard. Federal law requires manufacturers, distributors and retailers to report to the commission within 24 hours if they find that a product poses a safety risk. Federal law also bars selling
products that have been subject to a recall. The commission and three U.S. importers announced recalls of children's jackets and sweatshirts with drawstrings through the hood on Feb. 18, March 10 and May 27 of 2010. Bon-Ton was a retailer of about 800 total jackets and sweatshirts in all three recalls.

Source: Claims Journal

SETTLEMENTS REACHED IN HOT FUEL LITIGATION

We have seen some major developments arise in the Hot Fuel MDL in the last few months. Centered in the Kansas Federal District Court, these are cases filed against the major oil companies by everyday consumers who have been shortchanged at the pump by deceptive business practices. Essentially, when the temperature of motor fuel rises, the fuel expands and becomes less dense. As a result, when a consumer fills his or her gas tank with hot fuel, he or she gets less energy in each lower density gallon purchased. The oil companies know this, and know that they profit from the sale of hot fuel—that's why motor fuel sales at every step in the distribution chain are adjusted to account for temperature variations, with the sole exception of the final sale to the retail consumer. The good news for consumers is that recent settlements reached with a number of oil companies should go a long way towards correcting these inequities.

The Plaintiff’s Steering Committee has recently obtained preliminary court approval of numerous settlements with the Defendants in this litigation, including BP, Casey's, CITGO, ConocoPhillips, Dansk, ExxonMobil, Sam's, Shell, Sinclair, and Valero. Some of these settlements mimic the recently approved Costco settlement, whereby the Defendants will be required to begin phasing in the installation of retail dispensers that automatically compensate for variations in the temperature of fuel. Major oil companies such as BP, Shell and Exxon must establish separate settlement funds that will reimburse retailers for the cost of installing temperature compensating pumps, in addition to helping state weights and measures departments defray the cost of adjusting their various regulatory regimes to accommodate temperature compensation.

These settlements are extensive in scope, and affect motor fuel sales in the hottest 29 states/jurisdictions throughout the country.

Getting to this juncture in this litigation was not easy—these hard-fought settlements come on the heels of almost six years of battling against some of the largest corporations in the world. These Defendants have employed scorched earth tactics since the very beginning, attempting to overwhelm the Plaintiffs with extensive motion practice, massive discovery and the production of millions of documents. A year ago, the Defendants attempted to derail the MDL, albeit unsuccessfully, by filing over 200 motions for summary judgment all at once. Lawyers from our firm prepared responses to nearly 40 of these motions.

There are currently more than twenty five cases pending in twenty remaining states in the MDL, in addition to several hundred pending motions for class certification and summary judgment. The parties recently submitted their respective plans for dealing with these cases, and the court is expected to rule at any time. If you would like additional information on the Hot Fuel MDL, contact Parker Miller, a lawyer in our Toxic Torts Section, at Parker.Miller@beasleyallen.com.

FIVE INFANT DEATHS PROMPT CPSC TO SUQ MANUFACTURER OF NAP NANNY AND CHILL INFANT RECLINERS

In an effort to prevent children from suffering further harm, U.S. Consumer Product Safety Commission staff members have filed an administrative complaint against Baby Matters, LLC, of Berwyn, Pa., the manufacturer of Nap Nanny® and Nap Nanny Chill™ infant recliners. The complaint alleges that the Nap Nanny Generation One and Two, and Chill model infant recliners contain defects in the design, warnings and instructions, which pose a substantial risk of injury and death to infants. The Commission voted 3-0 to approve the filing of the complaint, which seeks an order requiring that the firm notify the public of the defect and offer consumers a full refund.

CPSC is aware of four infants who died in Nap Nanny Generation Two recliners and a fifth death involved the Chill model. To date, CPSC has received a total of over 70 additional incident reports of children nearly falling out of the product. The staff alleges that the products create a substantial risk of injury to the public.

CPSC staff filed the administrative complaint against Baby Matters, LLC after discussions with the company and its representatives failed to result in an adequate voluntary recall plan that would address that hazard posed by consumer use of the product in a crib or without the harness straps being securely fastened. In July 2010, CPSC and Baby Matters, LLC issued a joint recall news release to announce an $80 coupon to Generation One owners toward the purchase of a newer model and improved instructions and warnings to consumers who owned the Generation Two model of Nap Nanny recliners. At the time of the July 2010 recall, CPSC was aware of one death that had occurred in a Nap Nanny recliner and 22 reports of infants hanging or falling out over the side of the Nap Nanny even though most of the infants had been placed in the harness. Subsequently, despite the improvements to the warnings and instructions, the complaint alleges that additional deaths using Nap Nanny recliners have been reported, including one in a Chill model.

The Nap Nanny is a portable infant recliner designed for sleeping, resting and playing. The recliner includes a shaped foam base with an inclined indentation for the baby to sit and a fitted fabric cover with a three point harness. Five thousand Nap Nanny Generation One and 50,000 Generation Two models were sold between 2009 and early 2012 and have been discontinued. One hundred thousand Chill models have been sold since January 2011. All were priced around $130.

OUTDATED CRASH TEST DUMMIES BLAMED FOR CONTINUED AUTO FATALITIES

U.S. auto manufacturers produce 15 million vehicles a year and there are about 200 million vehicles on the road currently, according to Donald Friedman, a Calif.-based engineer and co-founder of the Center for Injury Research. While safety technology is being added to new cars, Friedman said it can take almost 15 years to rid the roads of older car models. In a paper to be released at this year’s experimental safety vehicle conference, Friedman will examine why 35,000 people are killed in automobile accidents every year despite the fact that so many vehicles have been modified to meet current regulations. He explained:

When they test the vehicles in accordance with the regulations and the dummy that’s called for, the dummy injury measures are half of what they are required to be; meaning that the vehicles ought to be very safe.

The auto safety expert concluded that had the same vehicles been tested with a dummy that was more representative of the people that they are supposed to be protecting, the injury measurements would be much higher and would correspond to what is happening in the real world.

According to Friedman, crash test dummies are modeled after tests that were run 45 years ago on young, volunteer Navy sailors. During the tests, the sailors were instructed to hold their head and necks as stiffly and strongly as they could to resist inertial loading. Friedman observed:
They were put in a little machine that accelerated them forward and then stopped abruptly, which caused their heads to move forward and to move their chins to their chest. In those circumstances, these sailors...described the characteristics that the dummy should have. Those characteristics are the characteristics as we understand it of a 27 year old military man with spinal and neck muscles fully tensed.

The volunteers used in that study are not representative of the typical population, the auto safety expert said. The result, according to the CfIR founder, is that despite good results arising from crash tests using dummies people are still dying. David Zuby, chief research officer at the Insurance Institute for Highway Safety, agrees that the average male crash test dummy may be too short and too thin to be representative of an average male. Zuby said this to say:

The sizes and shapes of dummies that we use today are based on the size and shape of people which is probably not up to date for today's population. We're using the dummy representing the worst case scenarios from the person's size standpoint.

While the most used dummy in crash tests is representative of an average adult male, Zuby said the Institute uses a variety of dummies in its tests. Dummies representative of young children up to age 6 and of petite women and large-framed men are also used.

Zuby says it's unclear if increasing the variety of dummies to better represent today's population would change results. In the future, computer models of human bodies may be used in simulated crashes to better measure injury tolerance in an accident. Zuby added:

Then you can get a read on what's happening in bones that actually do break, rather than try to infer what might happen to a bone that breaks from a measurement made on a dummy that can't break.

Regardless of size, Ruby says crash test dummies serve an important purpose. He said that "there are a whole lot of others tools and ways to use the dummies that allow them to be less of a limitation than it might seem at the surface."

Sources: Center for Injury Research and Claims Journal

XVIII. RECALLS UPDATE

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

FORD RECALLING 90,000 FORD ESCAPES AND FUSIONS

Ford Motor Company is voluntarily recalling thousands of vehicles because of a potential fire hazard. Nearly 90,000 2013 Ford Escapes and Ford Fusions are on the recall list. Ford issued the recall November 30, and says there have been reports of overheating and fires in models with the 1.6 liter Ecoboost engine. The problem doesn't affect other model years, or Escapes and Fusions with different engines. Ford says it's working on a way to fix the problem.

Ford is asking affected owners to contact a dealer as soon as possible to arrange for a loaner vehicle at no charge. Ford says it has identified an issue and is taking actions in the best interest of its customers. The carmaker said it is important that affected customers not ignore this recall and contact their dealer as soon as possible. While we recognize the inconvenience recalls cause our customers, we are taking these actions on their behalf to help ensure their safety. This isn't the first problem Ford has had with the Ecoboost engines. This is the third recall for the new Escapes with this engine, for possible overheating the fire dangers.

FORD RECALLS FUSION TO FIX FAULTY HEADLIGHTS

Ford has also recalled about 19,000 brand-new Fusion midsize cars to fix defective headlights. This is the sixth recall of a new Ford vehicle in the past five months. Reflectors in the low-beam lights on the 2013 Fusions can become hazy over time and reduce the brightness.

Ford will replace the headlights for free to fix the problem. Owners should have received notices in the mail. Ford said the problem was discovered by Ford's internal testing and was caused by improper manufacturing of the headlamp by a parts supply company.

TOYOTA RECALLING 150,000 TACOMA PICKUPS

Toyota has recalled about 150,000 2001-4 Tacoma pickups to fix a rust problem that could allow the spare tire to fall from beneath the vehicle. Toyota told NHTSA that part of the mechanism that holds the tire was not properly treated with an anti-corrosive. That means it could rust, break and allow the tire to fall. On the Tacoma, the spare tire is carried beneath the pickup's bed.

The recall covers only vehicles registered or sold in 20 states and the District of Columbia with "high road-salt usage," Toyota said, adding it does not believe there is a problem in other states. Such an action is called a regional recall, and automotive consumer advocates, like the Center for Auto Safety, have long criticized NHTSA for allowing them. The center contends that such actions save automakers money, but some vehicles that need the repair may not get it. The agency has disagreed with that criticism.

The states covered are Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, Wisconsin and the District of Columbia. Toyota will inspect—and if necessary—repair Tacomas in the other states at no charge. Owners will be notified by mail. That program is being conducted as a service campaign which does not have the same government, legal requirements—like reporting completion rates—as a formal recall.

Toyota says the 2005-13 Tacomas used a different manufacturing process and should not have a problem. Toyota says it first received reports of a rust problem from owners late in 2009. By August 2011, the company had analyzed 135 suspect parts and found the anti-corrosion coating was "inconsistent." The company continued testing parts "under various driving conditions such
GM Recalls 145,628 Mid-Sized Pickups For Hood Latch Issue

General Motors has recalled 145,628 mid-sized pickup trucks globally as the hood could open unexpectedly due to a possible missing latch. Of the Chevrolet Colorado and GMC Canyon pickups affected by the recall, 118,800 are in the United States, 15,264 are in Canada, 7,492 are in Mexico and the rest are exports. GM is recalling the model year 2010 to 2012 trucks because the hood may be missing a secondary hood latch. If the primary latch is not engaged the hood could open and block the driver’s view and increase the risk of a crash, according to documents filed with NHTSA. There are no reports of crashes or injuries related to the issue, and there are four known cases of the secondary hood latch being missing, GM said.

GM will notify owners and instruct them to inspect their trucks for the presence of a secondary hood latch or take the truck to a dealer for inspection. If the secondary latch is missing, a new hood will be installed. Dealers were notified of the issue on December 18 and GM expects to begin mailing letters to owners on the 17th of this month.

BMW Recalls X5 SUVs For Steering Problem

BMW has recalled about 35,000 X5 SUVs in the U.S. and Canada because a bolt can break and cause the loss of power-assisted steering. The recall affects X5 xDrive 35d models with diesel engines from the 2009 through 2012 model years. NHTSA says the bolt holding a belt pulley can loosen and break. If that happens the SUVs can lose power-assisted steering, increasing the risk of a crash. So far no crashes or injuries have been reported from the problem. The trouble was discovered last year in Canada. BMW dealers will replace the bolt and tighten it to the proper specifications. They will also add a coating that keeps the bolts from coming lose. U.S. owners will be notified this month about the recall.

Honda Recalls More Than 870,000 Minivans And SUVs

As we mentioned in another section of this issue, Honda has recalled more than 870,000 minivans and SUVs worldwide because they can roll away even though drivers have removed the keys from the ignition. The recall affects older-model vehicles sold mainly in the United States. They were big sellers with families because of their ample space and reputation for quality. Honda has had problems with the ignition switches for years. It has recalled nearly 2.3 million vehicles for the problem since 2003.

The following models are affected: 347,000 Honda Odyssey minivans and 277,000 Pilot SUVS from the 2003 and 2004 model years. Also 247,000 Acura MDX SUVs from the 2003 through 2006 period. All have automatic transmissions. More than 807,000 were sold in the United States. The mechanism that locks the key in the ignition while the vehicles are in gear can wear out. When that happens, drivers of the vans and SUVs are able to remove keys without shifting into park. Some have left the vehicles, which have rolled off unexpectedly while in gear. The U.S. safety regulators began investigating the problem in October after owners filed 43 complaints with NHTSA. Owners reported 16 crashes due to the problem. Two people were hurt in the crashes, according to NHTSA’s database.

Dealers will repair the ignition interlock system free of charge. Owners will get notices starting in February. Honda has had trouble with its ignition interlock switches in the past. Other vehicles affected by the problem include older Accords, Civics and Elements.

NHTSA Looks At Brake Problems With 2005 Pilot

It was reported that Honda is also having brake problems. NHTSA is investigating brake problems with the 2005 Honda Pilot. The probe covers nearly 88,000 SUVS. The brakes can come on without drivers stepping on the pedal. There is no fix yet, but investigators are looking at problems with a computer-controlled system that stops the vehicle as fast as possible in emergency situations. Honda says it’s cooperating with NHTSA. Investigators will determine if the problem is bad enough for Honda to recall the SUVS. The 2003 Pilot was recalled in March because the low-beam headlights can fail.

Defective Body Armor Plates Recalled

Body armor plates used by special operations forces in combat are being recalled. A manufacturing defect was found in the Generation III ballistic armor plates. No USSOCOM service members have been killed or wounded as the result of a defective ballistic
being recalled, along with specific pro-
torO ridinG mOWers recalled due tO
quality assurance plans.
also will produce replacement plates
ufacture replacement plates. Cerradyne
awarded to Leading Technology Com-
manufactured.
generation of plates until a full inven-
tions Command is now issuing an older
action plan designed to solve the delam-
dent all information that applies to the
manufacturer's internal manufacturing
plates in the field. The problem, accord-
to the government, stems from "the
manicurall all information that applies to the
defect and has developed a corrective
plan designed to solve the delami-

The manufacturer is Cerradyne Inc. of
Costa Mesa, California. Special Opera-
tions Command is now issuing an older
generation of plates until a full inven-
tory of GEN III replacement plates is
manufactured. A contract has been
awarded to Leading Technology Com-
posites Inc. of Wichita, Kansas, to man-
ufacture replacement plates. Cerradyne
also will produce replacement plates
using the revised manufacturing and
quality assurance plans.

TORO RIDING MOWERS RECALLED DUE TO
FIRE HAZARD

The Toro Co., of Bloomington, Minn.,
has recalled Toro® Z Master® Riding
Mowers. The traction drive belt can
wear through the mower's fuel tank and
cause fuel to leak, posing a fire
hazard. Toro has received five reports
of incidents. No injuries have been
reported. This recall involves 2012 Toro
Z Master Commercial 2000 Series ZRT
riding mowers. The mowers are red
and black. “Toro” and “2000 Series” are
printed on the side and “Z Master Com-
mercial” on the front of the
mowers. The model and serial numbers
are on a metal plate located at the front
of the mower, below the seat, on the
left-hand side. The following models
and corresponding serial numbers are
included in this recall: model number
74141 with serial numbers ranging from
312000101 to 312000784; model number
74143 with serial numbers ranging from
312000101 to 312000887; and model number
74145 with serial numbers ranging from
312000101 to 312001178.

The mowers were sold at Toro dealers
nationwide from January 2012 through
August 2012 for between $7,700 and
$8,700. Consumers should stop using
the recalled mowers immediately and
contact a Toro dealer to schedule a free
repair and/or to check if the repair has
already been made to the mower. Toro
has contacted registered owners of the
recalled mowers. Toro; toll-free at
(855) 493-0090, from 8 a.m. To 5 p.m.
CT Monday through Friday, or online at
www.toro.com and click on Product
Recall Information on the bottom
right-hand side of the page for more
information.

AMERICAN MATTRESS MANUFACTURING
RECALLS RENOVATED MATTRESSES

American Mattress Manufacturing, of
Atlanta, Ga., has recalled about 1,500
Mattresses and mattresses with founda-
tions. The mattresses fail to meet the
mandatory federal open flame standard
for mattresses, posing a fire hazard to
consumers. This recall involves Ameri-
can Mattress Manufacturing’s renovated
(rebuilt) twin, full, queen and kingsize
mattresses, and mattresses with built-in
Bunkie boards. The used mattresses
were stripped to the springs and rebuilt
by American Mattress Manufacturing in
a variety of fabrics and colors. The
recalled mattresses have a yellow tag
with “American Mattress Mfg. Co., 1899
Metropolitan Parkway, Atlanta, GA
30315.” Rebuilt mattresses with a
federal tag, indicating they meet the
federal mattress flammability standard,
are not included in this recall.

The mattresses were sold at Bren-Wil
Mattress Wholesale, Millbrook, Ala.;
A&R Furniture, Macon, Ga.; Ahnn’s Mat-
tress, Hampton, Ga.; Blair Village Pawn
Shop, Atlanta, Ga.; E&S Mattress Dis-
count, Columbus, Ga.; General Furnish-
ing, Loganville, Ga.; HRC Furniture,
Jackson, Ga.; Mattress for Less, Macon,
Ga.; Mattress 4 Sale, Riverdale and
Forest Park, Ga.; Starlite Furnishing,
Chamblee, Ga.; Mega Mattress Outlet,
Jackson, Miss. from December 2010
through September 2011 for between
$30 and $200. Consumers should imme-
diately contact American Mattress Manu-
facturing and arrange to have the
recalled mattress sets picked up, rebuilt
to be compliant with the federal flama-
ibility standards and returned to the
consumer. American Mattress Manufac-
turing; toll-free at (855) 628-6344, from
10 a.m. To 4 p.m. ET Monday through
Friday, or online at www.americanmat-
tressmfg.com and click on the recall
link for more information.

CHILDREN’S RIDING TOY RECALLED BY
STEP2 DUE TO FALL HAZARD

About 15,500 Children’s Riding Toys
have been recalled by The Step2
Company LLC, of Streetsboro, Ohio.
Children who lean too far forward on
the seat can go over the handle bar
and hit the ground. This poses a fall
hazard. The firm has received four
reports of incidents, with one incident
resulting in head bumps and one result-
ing in a minor concussion and cuts to
the gum and lip from the child’s front

The toys were sold at Target and other
retailers from January 2012 through
August 2012 for about $25. Consumers
should immediately take the recalled
toy away from children and contact
Step2 to receive a free replacement toy.
Step2: toll-free at (866) 860-1887, from
8 a.m. To 5 p.m. ET Monday through
Friday, or online at www.step2.com,
and click on the “View Details” link
under Recall Information for more
information.

HARBOR FREIGHT TOOLS RECALLS
CORDLESS DRILL DUE TO FIRE AND BURN
HAZARD

Harbor Freight Tools, of Camarillo,
Calif., has sold about 108,000 Cordless
Drills. The black trigger switch on the
19.2v cordless drill can overheat, posing
a fire and burn hazard to consumers.
Harbor Freight Tools has received one
report of a drill overheating and
burning through the handle of the unit,
which resulted in a consumer receiving
a minor injury. This recall involves
Harbor Freight Tools Cordless Drills,
model number 96526. The drills are
blue and black and have a black trigger
switch. They have a 19.2v rechargeable
battery pack. The drill's model number
is located on a yellow label on the left
side of the drill. “Made in China”
appears in black and red lettering on a
yellow warning sticker located on the right side of the unit.

The drills were sold at Harbor Freight Tools stores nationwide, via catalog and online at www.harborfreight.com from April, 2008 through May 2012 for about $27 and $30. Consumers should stop using the recalled drill immediately, remove the rechargeable battery and contact Harbor Freight Tools to receive a free replacement drill. Harbor Freight Tools; toll-free at (800) 444-3353, from 8 a.m. To 5 p.m. PT Monday through Friday, or www.harborfreight.com and click on Recall Safety Information under Customer Service for more information. Consumers can also email the firm at recalls@harborfreight.com

SPORTSPOWER RECALLS CHILDREN’S WATERSLIDES DUE TO INJURY HAZARD

About 1,500 Liquid Motion waterslides have been recalled by Sportspower Ltd., of Hong Kong. The warning labels on the children’s waterslide are inadequate for weight limit and fail to tell consumers never to slide head first. This poses a risk of serious injuries to consumers, including neck injuries. This recall involves Sportspower Liquid Motion waterslides. Consumers inflate the waterslide with air and spray it with water for sliding. They are used on the ground, not at the pool. The waterslides are blue and yellow and measure about 18 feet long by 9 feet high by 5 feet wide. A “Liquid Motion by Sportspower” logo is printed on the side. Recalled waterslides have item number INF-1375 and UPC 687064031340 located on the packaging. Sportspower has received one report of a man who received a neck injury after sliding down the waterslide head first.

The waterslides were sold exclusively at Menards Inc. from April 2010 through July 2010 for about $300. Consumers should immediately stop using the recalled waterslides and contact Sportspower to receive new labels to affix to the waterslide. The labels warn consumers not to use the waterslide if they are older than 13 years of age and/or weigh more than 100 lbs. The labels also warn consumers never to slide head first. Sportspower; toll-free at (888) 965-0565, from 9 a.m. To 5 p.m. ET Monday through Friday, online at www.sportspowerltd.net or email customerservice@sportspowerltd.net for more information.

TRAMPOLINES RECALLED BY SPORTSPOWER DUE TO INJURY HAZARD

Sportspower Ltd. has another recall. About 23,400 trampolines have been recalled the company. The trampoline’s metal legs can move out of position and puncture the jumping area, posing a risk of injury, including deep, penetrating puncture wounds, cuts and bruises to children and adults on the trampoline. Sportspower is aware of one incident of the trampoline leg separating from the frame while in use, causing the leg to puncture through the jumping surface. No injuries have been reported. This recall involves Sportspower Parkside model TR-14FT-COM trampolines. The trampolines are 14 feet in diameter and were sold with an enclosure net. The trampolines have blue or light blue fabric on the safety matting and enclosure pole sleeves. The model number is marked on the packaging and instruction manual. “Parkside” is printed on the enclosure net.

The trampolines were sold exclusively at Sports Authority stores nationwide from April 2007 through May 2012 for about $540. Consumers should immediately stop using the recalled trampolines and contact Sportspower to receive a free repair kit. Sportspower; toll-free at (888) 965-0565, from 9 a.m. To 5 p.m. ET Monday through Friday, online at www.sportspowerltd.net or email customerservice@sportspowerltd.net for more information.

DUNECRAFT RECALLS WATER BALZ, SKULLS, ORBS AND FLOWER TOYS DUE TO SERIOUS INGESTION HAZARD

Dunecraft Inc., of Cleveland, Ohio, has recalled Water Balz, Growing Skulls, H2O Orbs “Despicable Me” and Fabulous Flowers toys.

When the marble-sized toy is ingested, it expands inside the body and causes a blockage in the small intestine, resulting in severe discomfort, vomiting, dehydration and could be life threatening. The toys do not show up on an x-ray and require surgery to be removed from the body. The firm received one report of an 8-month-old girl from Humble, Texas who ingested a Water Balz and suffered an intestinal obstruction in August 2011. The Water Balz had to be surgically removed. This recall involves marble-sized toys that absorb water and grow up to 400 times their original size. They were sold as Water Balz (round-shape), Growing Skulls (skull-shape), H2O Orbs “Despicable Me” (round-shape) and Fabulous Flowers (flower-shape). They were sold in packages of six in green, yellow, red, blue and black colors. “Dunecraft,” the name of the toy and the model number are printed on the toy’s packaging.

The toys were sold at Water Balz and Growing Skulls were sold at Bed Bath & Beyond, Five Below, Hobby Lobby, Lake-shore Learning Materials, Microcenter, Urban Outfitters Direct, Wegmans and other stores nationwide, and online at amazon.com, incrediblescience.com, keyporthandcrafts.com, americantoytoys-tores.com and other websites from September 2010 through November 2012 for about $3 per package. The H2O Orbs “Despicable Me” were sold exclusively at Universal Studios stores during June 2012 for about $3 per package. Fabulous Flowers were sold exclusively at Milaeger’s in Racine, Wis. from June 2012 through November 2012 for about $3 per package. Consumers should immediately take this recalled toy away from children and contact Dunecraft for a free replacement toy. Dunecraft Inc.; at (800) 306-4168, from 8 a.m. To 5 p.m. ET Monday through Friday, or online at www.dunecraft.com and click on the recall tab for more information.

CATALINA OUTDOOR FIREPLACE RECALLED BY CHRISTMAS TREE SHOPS

Nantucket Distributing Co., Inc. of Middleboro, Mass., has recalled about 2,000 Catalina Outdoor Fireplace. The glass components of the Catalina Outdoor Fireplace can break when a fire is lit posing a burn and laceration hazard. Christmas Tree Shops received three reports of the glass component of the outdoor fireplace breaking. No injuries have been reported. The Catalina Outdoor Fireplace is free standing and constructed of glass and black metal. The 21 1/4 in. square base sits on short legs. Black corner pieces hold the glass sides with one hinged side to add logs. It has a square, vented top lid and stands about 30” tall. The model number CT840BL appears on the outside of the packaging and on the instruction manual.

The fireplaces were sold at Christmas Tree Shops retail locations from September 2011 to October 2012 for about $130. Consumers should immediately stop using the recalled outdoor fireplace and return it to any Christmas
LG Recalls Top-Loading Washing Machines Due To Risk Of Injury

About 457,000 Top-Loading Washing Machines have been recalled by LG Electronics Inc., of South Korea. An unbalanced load can cause the washing machine to shake excessively and the drum to come loose during use, posing a risk of injury to consumers and property damage to the surrounding area. LG has received at least 343 reports of washing machines vibrating excessively, of which at least 187 involved minor property damage. One minor injury has been reported. The recall involves three LG and three Kenmore Elite Brand top-loading washing machine models manufactured between February 2010 and November 2011. The units come in beige, white and graphite steel colors. The model and serial number can be found on a label fixed on the rating plate on the top back of the washing machine.

The washing machines were sold at LG models were sold at Best Buy, Home Depot, Kmart, Sears and local retailers nationwide. Kenmore Elite models were sold at Kmart and Sears. All were sold from April 2010 to December 2012 for between $899 and $1,099. Consumers should immediately contact LG or Sears for a free in-home repair of the machine. Consumers will also receive supplemental information to be inserted into their owner's manual and a new caution label to be placed on the washing machine. Consumers who have observed their recalled washing machine shaking excessively should immediately stop using it.

Consumers should be aware that loading their machines with waterproof or water-resistant items, such as mattress pads, mattress covers and similar items, increases the chances of loads being unbalanced. For LG; toll-free at (855) 400-4639, from 8 a.m. to 7 p.m. CT Monday through Friday, or 8 a.m. to 2 p.m. CT Saturday, or online at www.lg.com/us and click on Public Notices. For Kenmore or LG washers purchased at Sears or Kmart; toll-free at (888) 812-2935, from 7 a.m. to 7 p.m. CT Monday through Friday, or from 7 a.m. to 6 p.m. CT Saturday, or online at www.sears.com and click on Customer Service Home then Product Recalls in the Product Information section.

About 20,000 Stepladder and Stepstool Combinations have been recalled by Wing Enterprises Inc., of Springville, Utah. When extended, the inner side rails can separate from the outer side rails causing the user to fall. The recalled products are Switch-it Type 1A Stepladder/Stepstools rated at 300 pounds. The Switch-it is an aluminum ladder that can be extended from a 2-foot stepstool to a 6-foot stepstool. It has flared C-channel outer rails that fit over inner rails. The outer rails have orange rocker-type locks on each side to hold the outer rails to the inner rails. The words “Switch-it by Little Giant” appear on the front of the top platform.

Recalled Switch-it stepladder/stepstools have the following date stamps: 106228, 106228S, 106248S, 10721S and 10722S. The date stamp is located immediately below the orange locks on the outer rails. Part Number “15124” is on the black and orange notice label attached to the back of the outer rails. Wing Enterprises has received nine reports of the ladder becoming unstable causing the user to fall and sustain injuries ranging from scrapes and contusions to a fractured collar bone.

The stepladder/stepstools were sold exclusively at The Home Depot and online at homedepot.com from August 2012 to October 2012 for about $88. Consumers should immediately stop using the recalled stepladder/stepstools and contact Wing Enterprises for a free replacement of the front outer section. Wing Enterprises Inc.; toll-free at (855) 506-2213, from 8:30 a.m. to 5:30 p.m. ET Monday through Friday, www.babyjogger.com and click on “Recall Information” at the bottom of the page, or email at recall@babyjogger.com.

GU Hardware Recalls Window Fittings Due To Injury Hazard

About 5,000 Window Fittings: Tilt-turn Stay Arms and Side-hung Sash Hinges have been recalled by G-U Yapi of Turkey. The window fittings can break. This can cause the window to fall, posing an injury hazard to consumers. G-U Hardware has received two reports of windows falling, including one report of a broken thumb. This recall involves tilt-turn stay arm and side-hung sash hinge adjustable window fittings. They are used to attach a window to a frame and primarily sold for use in commercial buildings. The fittings have clamps, locking pins and stainless steel springs. “G-U” and the component number are stamped at the ends of the fitting. The recalled G-U Hardware window fittings have the following model names, and model and component numbers:

- Side-hung sash hinge, Jet AK8, 6-31064-00-0-1, 9-31209
- Tilt-turn stay arm, Jet AK8 30, K-15805-00-0-1, 9-31209
- Tilt-turn stay arm, Jet AK8 50, K-15806-00-0-1, 9-31208
- Tilt-turn stay arm, Jet AK8 90, K-15807-00-0-1, 9-31208
The window fittings were sold by G-U Hardware sold the recalled window fittings directly to hardware wholesalers and window manufacturers nationwide from October 2002 to December 2011 for between $7 and $26. Contact G-U Hardware to arrange for the free replacement and installation of new window fittings. For additional information, contact GU Hardware toll-free at (855) 355-8810 from 7:30 a.m. to 12 p.m. and frp, 1 p.m. To 4:30 p.m. ET Monday through Thursday; and from 7:30 a.m. To 12 p.m. and from 1 p.m. To 2 p.m. ET Friday, or visit the firm’s website at www.ak-warning.com.

**GAS FIREPLACE INSERTS RECALLED BY JOTUL NORTH AMERICA**

Jotul North America, of Gorham, Maine, has recalled Jotul and Scan gas fireplace inserts. The fireplace insert’s electrical wiring can come into contact with the metal rating plate on the insert, posing electrical shock and burn hazards to consumers. The firm has received one report of an electric shock and burn injury with the recalled fireplace inserts. This recall involves four models of Jotul and Scan brand gas fireplace inserts. These inserts fit into existing vented fireplaces providing a variety of fireplace effects fueled by natural gas or liquid propane. The fireplace inserts are cast iron or steel and have a glass front, ceramic fiber logs, a gas burner and an electrical cord. They measure about 17 inches by 32 inches. The model and serial numbers are located on a metal rating plate inside the bottom front panel of the fireplace insert.

The inserts were sold at Independent specialty fireplace and stove stores nationwide and in Canada from June 2010 through September 2012 for about $2,200. Consumers should immediately stop using and unplug the recalled gas fireplace inserts before checking the unit’s model and serial numbers. Contact the store where purchased or Jotul directly to schedule a free repair. Jotul North America; at (800) 797-5912, from 8 a.m. To 5 p.m. ET Monday through Friday, or online at www.jotul.com and click on Consumer Bulletin for more information.

**HOME DEPOT RECALLS HOMER’S ALL-PURPOSE BUCKET MUG DUE TO FIRE HAZARD**

Mr. Christmas Ltd., of Hong Kong, has recalled about 3,700 Mugs. The silver-colored simulated bucket handle below the rim can spark when used in a microwave oven, posing a fire hazard. The recalled product is an orange ceramic mug about 4.5 inches tall with a large vertical cup handle on the side. The mug has the words “The Home Depot,” “Homer’s All-purpose Bucket” and a cartoon character with a utility bucket on the front. A silver-colored simulated bucket handle is just below the rim. The date “2012” and the words “© Mr. Christmas” and “Made in China” are on the underside of the mug.

The mugs were sold exclusively at Home Depot stores during October 2012 for about $5. Consumers should immediately stop using the recalled mug and return it to a Home Depot store for a full refund. Home Depot; toll-free at (877) 527-0313, then select “Other Brands” at the prompt; from 8 a.m. To 6 p.m. ET Monday through Friday, or www.homedepot.com, then click on “Product Recalls.” The U.S. Consumer Product Safety Commission (CPSC) is still interested in receiving incident or injury reports that are either directly related to this product recall or involve a different hazard with the same product. Please tell us about your experience with the product on SaferProducts.gov.

**DREAM ON ME RECALLS BATH SEATS DUE TO DROWNING HAZARD**

About 50,000 Dream On Me Bath Seats have been recalled by Dream On Me Inc., of South Plainfield, N.J. The bath seats fail to meet federal safety standards, including the requirements for stability. Specifically, the bath seats can tip over, posing a risk of drowning to babies. The recall includes all Dream On Me bath seats. Some of the seats have a Dream On Me label under or on the rear of the bath seats. Model numbers are also printed underneath the bath seats and on the product packaging and include the following product models and colors:

- Baby Bath Seat; 251B, 251O, 251P, 251Y; Green with orange tray, orange with beige tray or yellow with green tray
- Ultra 2 in 1 Infant Bath Tub & Toddler Bath Seat; 252B, 252P; Solid pink, blue or white body and a blue or pink bottom
- Niagra Baby Bath Seat; 253B, 253G, 253P, 253Y; White or blue body with a green, pink or orange insert

CPSC and Dream On Me have received five reports involving these bath seats, including a report of a near drowning involving a 12-month-old baby girl. The baby did not require medical treatment. Consumers should stop using the recalled bath seats immediately and contact Dream On Me to receive a free replacement bath tub. For more information contact Dream On Me toll-free at (877) 201-4317 or online at www.dreamonme.com and click on Recalls.

**HIGH-POWERED MAGNET SETS RECALLED BY REISS INNOVATIONS DUE TO INGESTION HAZARD**

About 500 High-Powered Magnet desk toys have been recalled by Reiss Innovations LLC, of Manchester, Conn. When two or more magnets are swallowed, they can link together inside a child’s intestines and clamp onto body tissues, causing intestinal obstructions, perforations, sepsis and death. Internal injury from magnets can pose serious lifelong health effects.

This recall involves high-powered magnet sets sold under the DynoCube.com brand name for use as a novelty item or desk toy. Each set contains 216 small, silver-colored, spherical magnets that are approximately 5 millimeters in diameter. Reiss Innovations has received no reports of incidents or injuries. CPSC has received 80 reports of incidents involving ingestion of other high powered magnets, resulting in 79 reports seeking medical intervention. Consumers should stop using the recalled magnet sets immediately and contact Reiss Innovations for instructions on returning the magnet sets for a full refund.

The sets were sold exclusively at Amazon.com/DynoCube.com from July 2011 through April 2012 for about $20. Reiss Innovations; toll-free at (866) 212-8314, from 9 a.m. To 5 p.m. ET Monday through Friday, or online at www.DynoCube.com and click on the recall button on the top right-hand side of the page for more information.
**Freshway Foods Recall Apple Slices**

Freshway Foods has recalled 6,671 pounds of sliced apples that were packaged on a machine that may have been contaminated with Listeria monocytogenes. The apples were sold in Alabama, Florida, Georgia, Kentucky, New York, North Carolina, Tennessee and Wisconsin. This recall was initiated after a random retail sample of a sliced green apple tested positive for the bacteria.

Freshway Foods is notifying retail customers and food service distributors who received the recalled product, and asking that they discard any of the apples they still have. No one has reported been sickened from the apples. Consumers with questions may call Freshway Foods’ information desk at 1-855-775-3259 (8 a.m.—5 p.m. Eastern Time, M-F) or visit the web site at www.freshwayfoods.com.

**Smoked Fish Being Recalled On Botulism Concerns**

True Taste, LLC of Kenosha, WI, has recalled vacuum packaged smoked fish products because they have the potential to be contaminated with botulism. Being recalled are: Hot Smoked Rainbow Trout, Hot Smoked Whitefish, Hot Smoked Herring, Hot Smoked Mackerel, Hot Smoked Salmon Steak, Cold Smoked Mackerel, and Cold Smoked Whitefish. The recalled product has either the True Taste label or the Lowell Foods label on the package. A sticker on the package has two sets of numbers—the first set of numbers represent the date of processing; the second set of numbers represents the best if used by date. This recall includes all production dates beginning on 01/01/2012 through today’s date. No illnesses have been reported to date in connection with this recall. Consumers with questions can call 252-697-9255, Monday—Friday 8 a.m.—5 p.m. CST.

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.

**Firm Activities**

**Employee Spotlights**

**Scott Barton**

Scott Barton has been with the firm since March of 1995. He is a Computer Operations Supervisor. In this position, Scott oversees the day-to-day IT operations and lends a helping hand to others in the Information Technology Section when possible. Scott and his wife, Emily, have been married for almost five years. They have a combined family that includes a daughter, Caitlyn (3), Scott’s daughter, Brianna (14), and Emily’s son, Max (12), and daughter, Victoria (9). We are fortunate to have Scott, a most valuable employee who does excellent work, with us.

**Jill Cawley**

Jill Cawley, who has been with the firm since 1995, is the Secretary for our six staff investigators. Her responsibilities include transcribing correspondence, maintaining the investigators’ respective case lists and the inventory of vehicles we have stored for pending litigation, posting case-related expenses for accounting purposes, and requesting reports and photographs from law-enforcement agencies as needed. She has worked as a clerical assistant, a Legal Secretary and in our Accounting office before transferring to my current position about twelve years ago. Her current position is very demanding, but Jill handles her responsibilities extremely well.

Jill and her husband, Rob, just celebrated their thirty-fourth anniversary. Rob is a professional chef teaching Culinary Arts and the co-owner of a catering business. Jill is a graduate of Valley High School in Valley, Alabama. She also holds an Associate Degree in Business from Southern Union State Junior College and another in Paralegal Studies from what is now South College. Jill is a music lover and she also enjoys needlework and sewing. Jill has also been involved with the American Heart Association since experiencing two heart attacks and undergoing quadruple by-pass surgery in February of 2002. Jill is a very good and dedicated employee. She keeps all of the investigators in line and Jill says that’s not an easy task. We are blessed to have Jill with us.

**Ricky Moore**

Ricky Moore has been an investigator with our firm since 1995. He currently works in our Personal Injury/Products Liability Division and stays very busy. Before coming to work with us, Ricky was with the Montgomery Police Department from 1978 until he retired after twenty years of service. During his time with the MPD, Ricky worked for nineteen years in the Detective Division. Ricky comes from a family with a strong background in law enforcement. After retiring from the MPD, Ricky’s father became the Chief of Police in Roanoke, Alabama. He later served as Sheriff of Randolph County.

Ricky and his wife, Kathleen, have three children, Melissa, Will, and Molly. Melissa is married to Nick Abraham and resides in Richmond, Virginia. Molly and Will are both students at the University of Alabama. Ricky and his family are active members of Coosada Baptist Church. When he is away from his work, Ricky enjoys hunting and fishing. Ricky is a very hard and dedicated worker who does excellent work for the firm. We are fortunate to have him with us.

**Beasley Allen Conference Brings More Than 1,400 Lawyers To Montgomery**

Our law firm hosted its sixth annual Legal Conference & Expo at the Renaissance Montgomery Hotel & Spa at the Convention Center last month. The two-day event provided continuing legal education credits and was open to all Alabama lawyers in private practice. The conference has grown steadily each year, from about 400 lawyers in 2007 to more than 1,400 who attended this year. Dawn Hathcock, Vice President of the Montgomery Area Chamber of Commerce Convention and Visitor Bureau, had this to say about the event:

*Nationally acclaimed law firm Beasley, Allen, Crow, Methvin, Portis and Miles, P.C. continues to support the local community while showcasing the city they so heavily invest in.*

*Each year their Legal Conference, the largest of its kind within the state of Alabama, creates a huge boost to the River Region, contributing roughly a million dollars in economic impact.*

*Events of this stature are extremely important, as we continue to market Montgomery as a true meeting destination.*

A highlight of the conference was the presentation of the Beasley Allen Pro Bono Award and Grant. Established in 2009, this award recognizes the outstanding work of volunteer lawyer programs throughout the state. Volunteer lawyers donate their time to provide legal services to those who would not otherwise be able to afford a lawyer. The award is accompanied by a grant of $10,000.
to help support and enhance volunteer lawyer programs. Past recipients are the Madison County Volunteer Lawyers Program, Birmingham Volunteer Lawyers Program and the Alabama State Bar Volunteer Lawyers Program. This year’s award and grant was presented to the Montgomery County Bar Association. MCBA President Mike Winters was on hand to accept the award.

Practice areas addressed at the conference included Product Liability, Mass Torts and Fraud. Special programs include the topic of Legal Ethics. The meeting featured speakers including Montgomery Mayor Todd Strange; Dr. David G. Bronner, Chief Executive Officer, RSA; The Honorable Joel F. Dubina, Presiding Judge of the U.S. 11th Circuit Court of Appeals; The Honorable Charles Price, Presiding Circuit Judge in Montgomery; Phillip McCallum, President, Alabama State Bar; Clay Hornsby, President, Alabama Association for Justice; and Mark Moody, Assistant General Counsel, Alabama State Bar. Bryan Kelly from Common Ground Montgomery Ministry was the guest speaker at the prayer breakfast held on Friday morning. Vaughn Stafford, an associate pastor at Saint James United Methodist Church, was the featured singer for the group that morning.

An important part of the conference was the Legal Services Expo. That’s where vendors provide demonstrations of products and answer questions about how lawyers can best enhance their practice. Event platinum sponsors this year were Jackson Thornton Valuation & Litigation Consulting Group, LexisNexis; Carr, Riggs & Ingram; and Freedom Court Reporting. Legal and community groups including the Alabama State Bar Volunteer Lawyer Program, Alabama State Bar Lawyer Referral Program, Alabama Law Foundation, Alabama Civil Justice Foundation, Alabama Association for Justice, and Jones School of Law also had booths with representatives present. A number of other vendors had booths and each had heavy traffic throughout the event. We use all of the vendors and will furnish their names and pertinent information on request.

We were extremely pleased to have been able to offer this conference as a service for lawyers throughout the state of Alabama. It’s a valuable opportunity for continuing education, as well as providing the chance for networking with other lawyers. This year’s event was the best ever.

Our firm has selected Ben Baker and Ted Meadows as the firm’s Litigators of the Year for 2012. This annual recognition is presented to the lawyer who demonstrates exceptional professional skill throughout the course of the year and best represents the firm’s ideal of “helping those who need it most.” This year Ben and Ted tied for the honor.

In addition to selecting the overall “top lawyer,” the firm recognized excellence in each of its sections, naming the Lawyer of the Year in each. Honorees for 2012 are: Dana Taunton, Personal Injury Section Lawyer of the Year; Larry Golston, Fraud Section Lawyer of the Year; Russ Abney and Frank Woodson, Mass Torts Section Lawyer of the Year; and Parker Miller, Toxic Torts Section Lawyer of the Year.

We are blessed to have lawyers in our firm who work hard for their clients and who always put their clients’ interests first. This has to be a priority for all of us. With so many lawyers worthy of being recognized it’s always difficult to make this decision. The lawyers who received the awards this year were recognized for exceptional performances in their respective areas of expertise. Each recognizes that their being honored could never have happened without lots of hard work by all of the other lawyers and support staff in their section. They also realize that being dedicated to making the lives of their clients better, and keeping their interests first, is absolutely essential. When you get down to it, that is why each of us does what we do as trial lawyers.

XX.
SPECIAL RECOGNITIONS

**Senator Vivian Davis Figures Makes History**

Senator Vivian Davis Figures from Mobile will make history for Alabama women in 2013. That’s because the Mobile senator’s fellow Democrats have chosen her to begin a two-year term in February as Minority Leader in the Senate. Vivian is the first woman to serve either as a minority or majority leader in the Senate or House. While this is quite an honor for Vivian, it’s also a distinct honor for all women in Alabama. Vivian has been a most effective Senator for the people in her district.

**Beasley Allen Law Firm Names Top Attorneys Of The Year**

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**95-Year-Old State Trooper Recognized In Pike County**

I read with interest that law enforcement officials in Pike County recently honored one of their own. The honoree, 95-year-old Curly Long, is the oldest living retired state trooper in Alabama. A large number of people came to the Pike County Courthouse in Troy to honor Trooper Long for his service to the state. Long, who joined the State Troopers in 1952, served with distinction and dedication for 22 years. He was known to be tough, but fair. Long made a long-lasting impact on everyone who worked with him. Sgt. Tommy Merritt had this to say about the man:

**Trooper Long is well-loved. He’s been around a long time, well-respected, everybody knows him and everybody’s honored to know him. He’s regarded as a legend among the State Troopers.**

Trooper Long said he enjoyed his long career serving the people of Alabama. He received awards from the Fraternal Order of Police and the Alabama State Troopers, along with an official proclamation from the state legislature in honor of his service. It’s certainly appropriate to honor law enforcement officers who put their lives on the line daily protect all of us.

“You Don’t Know Bo” Earns Highest Ratings Ever For An ESPN Documentary

ESPN’s latest installment of its 30 for 30 documentary series centered around Bo Jackson, a former Auburn University football and baseball star. As most sports fans already know, Bo was a tremendous athlete who captured the attention of America during his career. Bo played professionally at the highest levels for the Oakland Raiders in football and for the Kansas City Royals and Chicago White Sox in baseball.

It appears Bo still has the ability to keep viewers glued to their screens as “You Don’t Know Bo” became the highest-rated document ary ever to air on ESPN. This is according to the Nielsen Company’s statistics. The film, which aired immediately following the Heisman Trophy ceremony last month, earned a 2.3 metered market rating during its premiere showing, topping ESPN’s previous documentary record of 2.0. Bo Jackson was not only a tremendously talented athlete, but he is a very good man, and when you get down to it, that’s the most important thing.

Public Citizen Is A Tremendous Advocate For Consumers

Public Citizen, a consumer advocacy organization, works hard on a daily basis for the American people. The organization has been on the front lines in such ongoing battles as

www.BeasleyAllen.com
those to make automobiles safer for consumers and to make drug manufacturers put safety over profits. Public Citizen has fought corporate wrongdoing and abuse on behalf of the American people both before federal regulatory agencies and in the courts. During 2012, Public Citizen accomplished a great deal on several fronts. For example, the organization:

- Argued their 61st and 62nd cases before the U.S. Supreme Court. Through co-counseling, holding moot courts and writing amicus briefs, our attorneys were involved in roughly one-third of the cases before the Court this year.

- Made tremendous progress in the national movement for a constitutional amendment to overturn the U.S. Supreme Court’s disastrous ruling in Citizens United v. Federal Election Commission. As of December 10, 2012, more than 350 cities and towns and 11 states had passed resolutions calling on Congress to overturn Citizens United. And, more than 125 members of Congress—and President Barack Obama—are on record in support of an amendment.

- Helped block legislation in the U.S. Congress that would limit patients’ legal rights in federal and state medical negligence cases. Public Citizen worked diligently with their allies to reframe the medical malpractice debate to focus on patient safety. Their efforts inspired news stories, editorials and opinion pieces favorable to the pro-patient position.

- Played a lead role in the effort to end forced arbitration in the financial sector. Public Citizen submitted extensive comments to the Consumer Financial Protection Bureau, encouraging it to use its Dodd-Frank authority. Legislation Public Citizen helped get passed, to limit or ban forced arbitration in financial contracts.

- Lobbied Congress to strengthen regulatory oversight in the Medical Device User Fee Act (MDUFA), which was set to expire on October 1, 2012. Thanks to their work, the bill signed into law by President Obama excluded some of the most troubling proposals urged by industry and included new provisions that will improve medical device safety.

- Served as co-counsel in Genesis Healthcare v. Symchyk, a U.S. Supreme Court case that raises the issue whether an unacceptable offer of judgment to a named plaintiff moots a class action or collective action.

I don’t know of any group that has done more good work on behalf of consumers over the past 25 years than has Public Citizen. As we have mentioned previously, Public Citizen has been responsible for a great deal of improvement in automobile safety and has also been instrumental in warning the public about dangerous drugs put on the market. If you would like to know more about Public Citizen and the good work it has done, you can go to Citizen.org for more information.

Source: Public Citizen

**BRANTWOOD CHILDREN'S HOME**

Brantwood has been serving children in Montgomery and the River Region for more than 90 years, helping neglected and abused children by providing them a home and supervising their education, health and social adjustment into the community. More than just a roof over their heads, Brantwood provides a place to belong to youngsters torn from their traditional family, often through traumatic circumstances. Established in 1917, Brantwood provides a safe, stable, structured environment for dependent, neglected and/or abused children. The Brantwood staff encourages the children to help one another, rely on each other for friendship and support, and to build a true sense of camaraderie. Children at Brantwood bond in a similar way as siblings in a traditional family.

An institution like this is so vital to our community. There are so many hurting young folks out there. Our Managing Shareholder Tom Methvin, served as past president of Brantwood's board of directors. Tom says that “Through no fault of their own, many don’t have the same chance that others have. Without places like Brantwood, they’d have no place to turn.” There are a number of programs at Brantwood to serve up to 36 children in residence at the facility, ranging in age from 10 to 21. Every child at Brantwood participates in at least one program, which may include the Basic Residential Treatment Program, Transitional Living Program, Independent Living Program, and the Brantwood On-Site Educational Program. Brantwood also is designated a “Safe Place” and will provide emergency shelter for youth in need. I will explain these programs below:

- The Basic Residential Treatment Program is designed to provide treatment services to children whose needs cannot be met in their own home, traditional foster home, or therapeutic foster care home. It addresses the needs of children who may have been abused, neglected or exploited, and helps address behavioral and emotional problems that can result.

- The Transitional Living Program is designed to help older youths, between the ages of 16-19, move from dependent care to independent living situations. Young people in this program are housed in the Nolan Cottage on the Brantwood Children’s Home campus, but begin to assume responsibility for their own health and nutrition, and learn skills that will help them secure employment and housing, and to form rewarding relationships beyond the foster care system.

- The Independent Living Program provides services to older foster youth, ages 19 to 21, who are expected to “age out” of foster care either on or before their 21st birthday. Young people in this program usually live in an apartment or college housing. Brantwood may assist these young adults with financial support, independent living instruction, transportation, and supervision to help them make the complete transition out of the foster care system.

- Brantwood’s On-Site Educational Program provides services for children in grades 5-8 in its on-site school housed in the Kiwanis Club of Montgomery Education Center building. BOSEP, staffed by an Administrative Teacher, Teacher and Teacher’s Aide, primarily serves children in residence at Brantwood Children’s Home, but also may serve other children in the foster care system as space is available.

In 2012, Brantwood was excited to add a high school educational program to its already existing middle school on the Brantwood campus. Now, Brantwood can offer individualized and tailored educational experiences for each student, including grades 9-12! The new educational program began holding classes in August.

Brantwood also operates the “Be a Friend” Mentoring Program, which recruits adults to serve as mentors and friends to children at Brantwood. The program is open to adults age 23 and older, who meet with their assigned youngster at least once a month on Brantwood’s campus and maintain regular communication through phone and regular mail throughout the month. All adults participating in this program must agree to a criminal history background check to ensure the safety of Brantwood’s young people.

What a difference Brantwood makes in the lives of Montgomery area children. This year, Brantwood helped Valencia celebrate her 21st birthday. Through no fault of their own, Valencia and her siblings were unable...
to remain in their home. She lived in many
different places until she arrived at Brant-
wood, where she began to blossom with the
love and support of her new Brantwood
family. As the years passed, Valencia
obtained her driver’s license, graduated from
high school, earned a Dental Assistant Cer-
tificate, and eventually moved into her own
apartment! Now she is a happy, healthy
member of our community, and well on her
way to a highly successful life.

According to Brantwood Executive Direc-
tor Kim Herbert Valanica’s story is one repre-
sentation of the many success stories
throughout Brantwood’s history. Kim says
“the lives of hurting youth are transformed
while living at Brantwood.” The community
is the heart of Brantwood Children’s Home.
Supporting Brantwood helps the staff and
volunteers fulfill the needs and dreams of
the children who make their home there. Almost 50 percent of Brantwood’s
funding in 2012 came from individual dona-
tions. Donors provide “quality of life” for the
children, supplying more than the basic
necessities. Financial donations make it pos-
sible to say “yes” to children who want to
play basketball, go to camp and participate
in many other activities.

I urge our readers, especially those in the
River Region, to partner with Brantwood
donate to transform the life of an abused
child into one that is loved, safe and healing.
If you need more information about Brant-
wood, visit www.brantwoodchildrenshome.org.

GIBSON VANCE DELIVERS TROY UNIVERSITY-
MONTGOMERY COMMENCEMENT ADDRESS

Gibson Vance, a shareholder in our firm,
delivered the keynote address during the fall
commencement ceremony at Troy Univer-
sity-Montgomery last month. Gibson, who is
a member of the Troy University Board of
Trustees, urged the Troy graduates “to be
passionate about what they do in life.” Troy
University is a tremendous institution of
higher learning and is a leader in the field of
higher education. Not only is the school rec-
ognized for excellence in academics, it also
has the best college president in Alabama,
and one of the best in the country, in Dr.
Jack Hawkins.

XXI.
FAVORITE BIBLE VERSES

Jim Ray, Executive Director at Children’s
Harbor, sent in a verse this month. As you
may know Children’s Harbor does tremen-
dous work for children.

Ask, and it will be given to you; seek,
and you will find; knock, and it will
be opened to you.

Matthew 7:7

Ray Hawthorne sent in a verse for this
issue. Ray is married to Ali Hawthorne who
is a lawyer in our firm. Ray is an assistant
District Attorney in Autauga County.

Every good gift and every perfect gift
is from above, and comes down from
the Father of lights, with whom there
is no variation or shadow of turning.

James 1:17

John & Winnie Howard, who are long-
time members of St. James United Methodist
Church in Montgomery, sent in a verse.

The heavens declare the glory of God;
And the firmament shows His bandi-
work. Day unto day utters speech, And
night unto night reveals knowledge.

Psalms 19:1-2

Gary Massey, a very good lawyer from
Chattanooga, Tenn., also sent in a timely
verse for this issue. Gary also is a pastor,
serving Mountain Creek Church of Christ in
Tennessee. His official title at the Church is
“pulpit minister.” Folks who know Gary say
his faith defines who he is.

Wash yourselves, make yourselves
clean; Put away the evil of your doings
from before My eyes. Cease to do evil,
Learn to do good; Seek justice, Rebuke
the oppressor; Defend the fatherless,
Plead for the widow.

Isaiah 1: 16-17

Frank Woodson, a lawyer in our Mass
Torts Section, also furnished a verse. Frank
sent the verse in while he was trying a case
in a federal court in Little Rock, Arkansas
that had been going on for several weeks.

Grace to you and peace from God our
Father and the Lord Jesus Christ.

2 Thes 1:2

XXII.
CLOSING OBSERVATIONS

A MONTHLY REMINDER

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

2 Chron 7:14

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

Edmund Burke

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

Isaiah 10:1-2

The only title in our Democracy supe-
rior to that of President is the title of
Citizen.

Louis Brandeis, 1957
U.S. Supreme Court Justice

WORKING FOR THOSE WHO NEED HELP THE
MOST

Our most vulnerable neighbors in
Alabama are suffering because of decisions
made in Montgomery and Washington—and
we can do something about it. Fortunately,
there are groups working to make things
better for Alabama and specifically for low
income Alabamians. For 24 years, one such
group, Alabama Arise, has been equipping
folks to speak with a united voice against the
structural causes of poverty in Alabama. My
good friend Kimble Forrister, who is with
Arise, says that, “when legislators hear from
well-informed constituents who care about
“the least of these,” things begin to change
for the better. What Kimble didn’t say,
however, is that somebody or some group
has to take the lead and inform the public on
important issues facing our state and our
nation and then work real hard to being
about the needed changes. Arise has been
such a leader.
Such advocacy is literally a gift that keeps on giving. Consider the steady drumbeat of Arise’s long campaign to change Alabama’s worst-in-the-nation, $4,600 income tax threshold. After 18 years of hard work by Arise members, the Legislature raised the level at which a family of four owed taxes to $12,600.

As a result, in 2007 parents below the poverty line suddenly gained as much as $260 a year to support their children. It may not sound like much, but it might mean a tank of gas every two weeks to get a parent to work. And it’s a policy change that keeps on giving, year after year. Policy change also adds up when you multiply it across the state. The 2007 tax reform put $40 million into the pockets of parents who made less than $20,000 a year. Not a bad year’s work for the 150 congregations and organizations and the few hundred individuals who joined efforts under the umbrella of Alabama Arise.

Today Arise continues to tackle challenging issues. When its members chose their 2013 policy priorities, their top concern was state implementation of the Affordable Care Act (ACA). Although Gov. Robert Bentley has announced that he will not expand Medicaid to 300,000 working adults, Arise draws hope from his assertion that he won’t expand it “under the current structure.” Arise policy analyst Jim Carnes, who holds the consumer seat on the governor’s Medicaid Advisory Commission, hopes that a successful restructuring will put patients first, save tax dollars by addressing health problems earlier and give the governor a good reason to change his mind about expansion of Medicaid.

Arise takes its message across the state. During 2012, Arise staff have led 73 ACA outreach meetings, explaining to 2,000 people how the ACA will benefit Alabama. The Medicaid expansion alone would bring a $10.3 billion boost to our health care economy over the first six years, but only if the state commits to provide a state match that works out to $1 for every $22 the feds provide over the time period.

For the current year, Arise members will work on other issues as well. Those include adequate revenue for the General Fund; restrictions on payday lending; ensuring a right to education in the constitutional revision; and a moratorium on the death penalty. Such topics are not for the faint of heart. Some of these goals may take years to achieve. But if you want to plug into some of the most effective advocacy on Alabama poverty issues, Arise is the place to start.

Just go to www.arisecitizens.org and look for two buttons: Through the “Donate Now” button you can make a tax-deductible contribution and become an individual member; then you’ll start getting their excellent materials and action alerts. And the “Subscribe to Daily News Digest” link will allow you to sign up for a daily email listing of news articles of interest to Arise members—and to any person who is working to make Alabama a better place for all of us. I believe that there are thousands of people across the state who agree with Arise on the issues. If they have been able to do this much with hundreds of members, imagine what ARISE could do with thousands!

Source: Arise Citizens’ Policy Project

XXIII.
PARTING WORDS

Our prayers go out to the families of the 26 young children and adults who were murdered last month at the Sandy Hook Elementary School. Losing any family member—especially a child—during the Christmas season is as devastating a blow and as tragic an occurrence as anything that the human mind can conceive. Unless we have had the experience, I really doubt that any of us really comprehends how these families are suffering. But having seen how the community, state and nation have supported the families makes me realize that we still have lots of good folks in this country of ours. Watching the memorial service on the Sunday night following the fateful Friday also made it very clear that those with a strong faith in God will survive and be able to endure the most difficult times that any family will ever have to face.

The examples of love and compassion that have been poured out to all of the grieving families from friends and total strangers makes me proud to be an American. It also made me realize how fortunate I have been to have my three children grow up into adulthood. Sadly, there are twenty families in Connecticut who will never be able to experience that. May God continue to bless all of the families and may He provide the peace and comfort to them during these terrible times that only He is capable of supplying.

I hope all of our readers and their families have had a blessed Christmas. I also wish for all a happy, healthy and prosperous New Year and may God Bless America.

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