I.  CAPITOL OBSERVATIONS

THE SECOND TERM

President Barack Obama took the oath of office for his second term on January 21st before a crowd of hundreds of thousands. The President urged the nation to set an unwavering course toward prosperity and freedom for all its citizens and to protect the social safety net that has sheltered the poor, elderly and needy. During his remarks, President Obama said:

Our country cannot succeed when a shrinking few do very well and a growing many barely make it. We believe that America's prosperity must rest upon the broad shoulders of a rising middle class.

The President told the huge crowd that a decade of war is ending, as is the economic recession that consumed much of his first term. He previewed an ambitious second-term agenda, which I was glad to see included addressing the threat of global climate change. He correctly said that failure to confront that critical issue “would betray our children and future generations.” I have never understood how smart men and women in Congress could fail to understand the severe consequences of not dealing with this most serious problem.

President Obama was correct when he said our nation has a commitment to critically important programs such as Medicare, Medicaid and Social Security. I don’t believe Congress can afford to play political games with these programs. I hope members of the House and Senate will put aside the partisan gridlock of the past four years and get down to work. The President and Congress must focus on creating jobs and improving the nation’s economy. It’s certain that these items will be top priorities for President Obama. The President implored Washington to find common ground over his next four years in office. Seeking to build on the public support that elected him to the White House twice, the President observed during his remarks:

The public has the obligation to shape the debates of our time. Not only with the votes we cast, but with the voices we lift in defense of our most ancient values and enduring ideals.

Just prior to saying this, Obama had placed his hand on two Bibles — one used by the Rev. Martin Luther King Jr. And the other used by Abraham Lincoln — and recited the oath of office. Michelle Obama held the Bibles, one on top of the other, as daughters Malia and Sasha looked on. Vice President Joe Biden was also sworn in for his second term as the nation's second in command.

There is much to be done during the President’s second term. There can be no doubt that the American people deserved better from a divided Congress than they got over the past four years. Over the next four years we can’t afford for Congress to ignore the many serious problems facing our nation and its people. Clearly, the President must lead and offer specific programs that will deal with these problems. Hopefully, his programs will include job creation, improving education at every level, working on climate change issues, reasonable gun control measures, immigration reform and cutting government waste. Congress must get down to work, consider the President’s programs, make any needed changes, and then pass the legislation needed to solve our nation’s problems. My hope and prayer is that the next four years will be the best ever for America.

Source: Associated Press

II.  A REPORT ON THE GULF COAST DISASTER

JUDGE APPROVES MEDICAL BENEFITS SETTLEMENT

Judge Barbier recently granted final approval to the medical benefits portion of the settlement reached between BP and the Plaintiffs Steering Committee last year. Previously, Judge Barbier granted preliminary approval of the settlement in May 2012. Writing in his 91-page opinion, Judge Barbier stated that without the settlement, “Plaintiffs face significant further expenses in time, money, and resources—with no assurance of recovery.”

While the economic settlement has gathered the majority of attention, the medical benefits settlement may be the most groundbreaking. The settlement provides up-front compensation for many claimants who suffered the common conditions and symptoms from exposure to oil and dispersant. In addition, the settlement provides for a free 21-year medical consultation program designed to monitor affected residents and cleanup workers suffering from spill conditions. Participants begin with a thorough baseline test, with follow-up visits every three years. The settlement also provides for a back-end litigation option, whereby claimants are allowed to file suit for compensatory damages against BP should they discover a later manifested illness caused by the oil spill.

In addition to claimant-specific remedies, the settlement will provide millions to the Gulf Coast to fund treatment and educational programs for those affected by the oil spill. All in all, the medical benefits settlement is yet another crowning achievement for the Gulf Coast oil spill litigation. If you need additional information on this settlement, contact Parker Miller, a lawyer in our firm, at 800-898-2034 or by email at Parker.Miller@beasleyallen.com.

Source: Bloomberg

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Transocean Settles With The Federal Government For $1.4 Billion

The Justice Department has reached a $1.4 billion settlement with Transocean Ltd., the owner of the drilling rig that was involved in the deadly BP explosion. The proposed settlement, if approved, will resolve the Justice Department’s civil and criminal probes of Transocean’s role in the Deepwater Horizon rig disaster. The settlement requires the Switzerland-based company to pay $1 billion in civil penalties and $400 million in criminal penalties and to plead guilty to a misdemeanor charge of violating the Clean Water Act.

The settlement, which is subject to a federal judge’s approval, also calls for Transocean to implement a series of operational safety and emergency response improvements on its rigs. Attorney General Eric Holder had this to say about the settlement:

“This resolution of criminal allegations and civil claims against Transocean brings us one significant step closer to justice for the human, environmental and economic devastation wrought by the Deepwater Horizon disaster.”

Transocean said it believes the settlement is in the best interest of its shareholders and employees and eliminates “much of the uncertainty associated with the accident.” The company said in a statement:

This is a positive step forward, but it is also a time to reflect on the 11 men who lost their lives aboard the Deepwater Horizon. Their families continue to be in the thoughts and prayers of all of us at Transocean.

Much of the $1.4 billion will fund environmental restoration projects and spill-prevention research and training. The company has two years to pay the $1 billion civil penalty. As we have reported previously, Congress approved needed legislation that dedicates 80 percent of the civil penalty for environmental and economic recovery projects in the Gulf states.

It should be noted that the Justice Department’s settlement with BP didn’t resolve the federal government’s civil claims against the London-based oil company. But in its settlement, Transocean does settle its civil exposure. As previously reported, Transocean had reserved $2 billion for paying claims related to the Deepwater Horizon disaster.

While many believe that BP is the most culpable party in the disaster, Transocean also has responsibility for the workers’ deaths and the oil spill. Transocean also said in a September regulatory filing that it had rejected settlement offers last year from BP and from lawyers for Gulf Coast residents and businesses who were hurt by the spill and suffered economic damages.

Judge Barbier will preside over the trial designed to identify the causes of BP’s deadly well blowout and assign percentages of fault to the companies involved. The first phase of the trial is scheduled to start Feb. 25. BP reported profits of more than $25 billion in 2011, but for Transocean the year resulted in a loss of about $5.7 billion. Some of that loss is attributed to contingencies for litigation resulting from the sinking of the Deepwater Horizon rig. A series of government investigations has spread out the blame for the nation’s worst offshore oil spill among BP, Transocean and other partners on the project, including cementing contractor Halliburton.

Halliburton hasn’t settled with the Justice Department, BP or Transocean. The Deepwater Horizon was drilling in water a mile deep and about 50 miles southeast of the Louisiana coast when it exploded on the night of April 20, 2010. The Justice Department contends that Transocean’s role in the disaster was that it “acted at the direction of BP supervisors, failed to fully investigate clear signals that the well was not secure. The rig burned for about 36 hours before sinking.”

As engineers made repeated attempts to halt the flow of oil from BP’s burst well, millions of gallons of crude flowed into the open Gulf. Marshes, beaches and fishing grounds across the northern Gulf were fouled by the oil. Two BP employees who worked as well-site leaders on the rig were indicted in November on manslaughter charges stemming from the 11 workers’ deaths. The indictment accuses Robert Kaluza and Donald Vidrine of disregarding high-pressure readings that should have indicated trouble before the blowout. No criminal charges have been filed against individual Transocean employees.

SOURCES: Washington Post and WSFA

BP Oil Spill Settlement Payments Exceed $1 Billion Mark

Businesses and individuals damaged by BP’s oil spill in the Gulf of Mexico have been paid more than $1 billion through the company’s class action settlement, according to court-supervised Claims Administrator Patrick Juneau. He and his staff are doing a very good job, claimants are being treated fairly, and claims are being paid in a timely manner. The $1 billion that Juneau’s team has paid is for claims that were filed after the settlement was announced last year. They also paid an additional $404 million for claims that Juneau inherited after replacing the Gulf Coast Claims Facility led by Kenneth Feinberg.

The GCCF processed about 221,300 claims following the 2010 spill and paid out more than $6 billion before the court-supervised claims process was established in June 2012. Many believe that multiple claimants either went unpaid or did not receive full value on their claims. Juneau’s staff has handled more than 223,000 calls about the settlement, and has received more than 97,000 claims. According to Juneau, 95 percent of claimants who were offered payments by his team accepted them. He said in a statement:

“I feel that a high rate of acceptance reflects the fairness of the settlement amounts as well as the fairness of the claims process.”

Thousands of people and businesses opted out of the settlement to pursue their claims individually. BP has estimated that it will pay about $7.8 billion to resolve more than 100,000 claims through the settlement. But the settlement, which received U.S. District Judge Carl Barbier’s final approval last month, isn’t capped. That was a very important part of the settlement. BP agreed to pay $2.3 billion for seafood-related claims by commercial fishing vessel owners, captains and deckhands. Seafood claims are among the $1.4 billion that Juneau’s team has paid. I believe when all is said and done the total payout by BP in the settlement will greatly exceed $7.8 billion.

The deadline for claim forms to be filed for the settlement’s seafood program was January 22, 2013. The deadline for filing all other claims is April 22, 2014. Judge Barbier gave preliminary approval to the settlement agreement in May 2012.

The April 2010 blowout of BP’s Macondo well off the southeast Louisiana coast triggered an explosion aboard the Deepwater Horizon rig that killed 11 workers. More than 200 million gallons of oil spilled from the well before it was capped months later. If you need more information on the settlement, contact Rhon Jones, who is on the PSC, at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com.

SOURCES: Washington Post and WSFA

III. Drug Manufacturers Fraud Litigation

AWP Update

As we have periodically reported, our law firm continues to pursue litigation for the States of Alabama, Mississippi, Louisiana, Kansas, Utah, South Carolina, Hawaii and Alaska on their AWP (Average Wholesale Price) claims. Fortunately, since we have successfully tried a number of these cases, we are now settling these cases with numerous
Defendants in the individual States. We are pleased to announce that the firm has obtained over $100 million in settlements over the past several months. We are also in the process of finalizing a number of settlements for the eight States listed above. To date, we have settled cases for over $700 million in the AWP litigation for the eight States we currently represent. We also have a $31 million judgment on appeal. At the time of this writing, we are awaiting a verdict on an AWP case in Mississippi.

These recent settlements vary in amounts depending upon the State’s usage of a particular company’s drugs in its Medicaid program. These settlements involve numerous companies, but each State’s claim is negotiated separate and independent of the claims of any other State. In addition, some States require attorney’s fees and costs to be completely separate negotiations. Therefore, these settlements can sometimes become very complex and complicated.

Our firm considers it a great honor to represent the Attorneys General in each of the eight States. It is also a tremendous responsibility to insure that each State’s claim is adequately compensated by the Defendants accused of falsely reporting prices to the State’s Medicaid Program. These cases have proven to be a tremendous public service for the citizens of each of the eight States we represent and will continue to represent until each State is fully compensated for the wrongdoing by the pharmaceutical companies to the State’s Medicaid Programs.

In addition to the pharmaceutical companies reporting false prices to the Medicaid Program, our firm is also handling litigation against a pharmaceutical wholesaler, McKesson, which increased prices an additional five percent on some 1900 different types of drugs. This occurred during a given time period that was within the same timeframe that the pharmaceutical companies were reporting false prices. We have recently settled with McKesson in the States of Kansas and Louisiana, but are still litigating in the States of Alaska and Hawaii.

As is evident, the above-listed States’ Medicaid Programs were severely taken advantage of in terms of the prices being reported by the pharmaceutical industry, and some wholesalers, during the years 1991-2010. As we have previously reported, these cases are just one example of why healthcare costs are spiraling out of control in this country. We believe these cases are a huge step in the right direction towards curing the abuse of inflated costs that we all must pay for in the healthcare industry.

We have AWP trials set in March, May, June, August, October and November for 2013, and equally as many in 2014. We will keep you posted on any new developments that occur with these cases by settlement or verdicts. If you need additional information on the AWP litigation, contact Dee Miles, who is heading up the litigation for our firm, at 800-898-2034 or by email at Dee.Miles@beasleyallen.com.

IV. LEGISLATIVE HAPPENINGS

The Alabama Legislature Comes To Town

The Alabama Legislature started its Regular Session on February 5th, and from all accounts, this will be a most interesting session. Hopefully, it will also be productive. Based on reports, there will be at least three separate agendas, with one, as expected, coming from Gov. Robert Bentley. But two additional agendas, one coming from the Republican legislative leaders and the other from the Democratic legislative leaders, will also be presented. That should make for a pretty lively Session.

Normally the Governor presents his legislative programs and the leaders in both the House and Senate support the programs if they are from the same political party. It’s quite evident that since the Republicans control both the House and Senate, the Democrats will have great difficulty getting very much of their agenda enacted into law. I also have to wonder how much support the Governor will get from some of the Republicans who might be ‘gubernatorial wanna-bes.’

It will be very interesting to see how the legislators deal with the severe money shortages facing both state government and public education during the Session. The days of depending on federal funds to bail the states out and the state’s borrowing hundreds of millions of dollars from trust funds are over. The Governor and the legislature will now have to find more money from some source or essential services will have to be drastically cut. But services can only be cut so much. Gutting essential services, in my opinion, would be a major mistake. I also believe that politicians ‘heating up’ on state employees, including school teachers and law enforcement personnel, would be another big mistake. I am convinced that we have dedicated folks working for the state and also teaching school in Alabama. They deserve our support in my opinion. In any event, this Session will be one to watch very closely. If I were a betting man, which I am not, I would put my money on Gov. Bentley and his team to get his programs passed in the session since he appears to have strong support in every section of the state.

V. COURT WATCH

Changes on Alabama’s Appellate Courts

Judge Roy Moore was sworn in as Chief Justice of the Alabama Supreme Court last month. Judge Tommy Bryan, who has served with distinction on the Court of Civil Appeals, was also sworn in as a Justice on the High Court. I am confident that both Chief Justice Moore and Justice Bryan will do outstanding jobs on the Court. These two men won impressive victories in their races and did so without having to rely on any special interest group. They will be fair and will follow the law. When you get down to it, that’s all anybody or any group should expect from a judge.

There was also a change on the Alabama Court of Civil Appeals as a result of Judge Bryan’s election. Tuscaloosa County Circuit Judge Scott Donaldson was appointed last month to a seat on this Court by Gov. Robert Bentley. Judge Donaldson, who is a graduate of the University of Alabama School of Law, has served as a circuit judge in Tuscaloosa County since 2003. He practiced law for 18 years before becoming a circuit judge. His appointment has received wide-spread approval around the state. The chairman of the Alabama Civil Justice Reform Committee, Thomas R. Dart, praised the selection of Donaldson for the Appeals Court position. He had this to say:

Judge Donaldson is highly respected for legal knowledge and fairness during his tenure on the Tuscaloosa County Circuit Court. That coupled with his years of judicial experience will make him a valuable addition to the Court of Civil Appeals.

I was told years ago growing up in Clayton that when it comes to evaluating a person’s ability and character, that ‘home folks know best.’ I have found that to be very true over the years. Lawyers in Tuscaloosa all say that Gov. Bentley made an outstanding choice when he selected Judge Donaldson.

Unborn Children Protected Under Alabama’s Chemical Endangerment Law

Last month, the Alabama Supreme Court ruled that the state’s chemical endangerment of a child law also includes protection for unborn children. This was hailed as a landmark victory by Alabama Attorney General Luther Strange. The Court ruled that ‘the plain meaning of the word ‘child’ in the chemical endangerment statute includes
unborn children.” Attorney General had this to say:

The Court has ratified our argument that the public policy of our state is to protect life, both born and unborn. It is a tremendous victory that the Alabama Supreme Court has affirmed the value of all life, including those of unborn children whose lives are among the most vulnerable of all.

The Court made the ruling as it upheld the convictions in Coffee and Colbert counties of two women whose use of illegal drugs while they were pregnant caused their unborn children to suffer exposure to those drugs, according to Strange’s statement. The two women had been charged with chemically endangering their children—exposing a child to a controlled substance, a chemical substance such as precursors for manufacturing drugs, or drug paraphernalia.

One case the Court ruled on was that of Hope Ankrom and her newborn son. Both mother and child tested positive for cocaine when the child was born on January 31, 2000, according to the statement. Medical records documented Ankrom’s substance abuse during her pregnancy. She pleaded guilty and was sentenced to three years’ imprisonment, which was suspended, and she was placed on probation for one year.

The other case involved Amanda Helaine Borden Kimbrough’s son, T.K., who was born prematurely on April 29, 2008, and died 19 minutes later. An autopsy determined his death was caused by “acute methamphetamine intoxication.” Kimbrough pleaded guilty and was sentenced to ten years in prison.

The rulings in these cases are very important. It will be interesting to see how the Supreme Court deals with this issue when it is presented in civil cases. Based on an earlier ruling by the Court, I believe an unborn child’s death will be grounds for a civil action for wrongful death when there is fault on a tortfeasor involved.

Source: AL.com

SUPREME COURT CONSIDERS LIMITING CLASS ACTIONS

The U.S. Supreme Court considered last month whether class action Plaintiffs can remain in state court by stipulating that the Plaintiffs, and the class of unnamed people they hope to represent, will not accept a judgment or settlement of more than $5 million. Under the Class Action Fairness Act of 2005 (“CAFA”), a class action seeking $5 million or more must be litigated in federal court.

The Plaintiff, Greg Knowles, filed suit in Arkansas state court alleging the Defendant, Standard Fire Insurance Co., breached its contract by systematically underpaying claims of loss or property damage made under a homeowner’s insurance policy. Knowles, along with his complaint, filed a stipulation that he would limit his recovery to under $75,000, and that the unnamed class members’ recovery would be less than CAFA’s $5 million jurisdictional requirement. He also limited his proposed class to Arkansas claimants with claims going back for only two years, which is three years less than the applicable statute of limitations in Arkansas.

Standard Fire removed the case to federal court, but the case was remanded to Arkansas state court because Knowles’ stipulation complied with CAFA’s requirements. The Eighth Circuit agreed with the trial court and denied the insurance company’s appeal, but the Supreme Court granted certiorari.

At oral argument, Justice Kagan commented there are “a thousand ways” in which a Plaintiff constructs a case, including deciding which Defendants to sue, which claims to bring, and whether to seek damages, injunctive relief, or both. All of these, said Justice Kagan, have an effect on the amount sought. She worried that, if Standard Fire’s argument was accepted by the Justices, Defendants in future cases might seek to expand the Court’s holding to challenge a Plaintiff’s ability to define the claims and to name the Defendants.

Chief Justice Roberts appeared to agree, characterizing Standard Fire’s position as “a bit of a slippery slope.” But the Chief Justice, joined by Justices Breyer and Alito, also was concerned that Plaintiffs could abuse such stipulations by dividing class actions in an artificial manner to avoid federal jurisdiction. He used an example of pursuing a class action on behalf of individuals whose last names begin with the letters A through K, leaving L through Z to pursue a separate class action. Justice Breyer remarked that CAFA’s text favors Knowles, but added that CAFA’s purpose “seems to strongly cut the other way.”

It is most interesting that the State of Alabama decided to enter this fray by filing a 30-page amicus curiae brief supporting the insurance company’s position. The State’s brief argues that Knowles’ “stipulation maneuver approved by the lower courts ‘should raise a suspicious judicial eyebrow.’” The brief further brags that Alabama has implemented legislative and judicial controls “now more demanding than the requirements of...the Federal Rules of Civil Procedure itself.” Unfortunately, our State is dead wrong when it comes to its aversion to class action lawsuits, and its opposition to the Knowles case in particular.

There are many advantages to consolidating claims, particularly small claims, in a class action lawsuit. The chief advantage is efficiency, which is certainly an important concern given the fiscal challenges faced by our judicial system. The U.S. Supreme Court, in Callifano v. Yamaski (1982), noted that the class action “saves the resources of both the courts and the parties by permitting an issue potentially affecting every [class member] to be litigated in an economical fashion.” Class actions also provide legal representation for many class members who would never file a case on their own as a result of being ignorant of their rights, intimidated by the legal system, or barred by the economics of litigation.

Critics have suggested that class actions are inappropriate when individual recoveries are very small. As noted by the National Consumer Law Center, “[p]erhaps this attitude is based on the view that small consumer recoveries are too trivial to merit redress and that every wrong should not be righted....” This view misses the central importance of class actions as a deterrent to illegal conduct, according to the National Association of Consumer Advocates, “[r]ejecting class actions because individual recoveries are small, while ignoring the aggregate amounts involved, encourages wrongful conduct and largely
immunizes entities caught stealing millions in $10 increments.” We have seen good examples of this in recent years with litigation involving late and over-limit charges on credit card accounts, bank overdraft fees, small hidden fees on cable, telephone, and other bills, and the like.

The problem with the posture taken by Standard Fire (and Alabama) is that it seeks to abrogate the longstanding principle that the Plaintiff is “master of his complaint.” Additionally, Standard Fire seeks to circumvent the well-established rule that the status of the complaint at the time of removal, and not hypothetical, future events, governs the jurisdictional analysis. What we see in Knowles v. Standard Fire is another instance of the big corporations asking courts to depart from time-honored legal principles in order to achieve pro-corporate results. Or as Justice Kagan correctly remarked to Standard Fire’s counsel, “[y]ou really are asking us to blow up the whole world.”

Lawyers in our firm represent consumers and businesses as plaintiffs in class action lawsuits. Contact Archie Grubb at 1-800-898-2034 or Archie.Grubb@beasleyallen.com for more information. The Supreme Court’s decision in Knowles v. Standard Fire is expected to be released prior to the Court’s traditional July recess. As is true in other areas, we only represent Plaintiffs in this litigation since we don’t defend any type cases. It’s our belief that a firm such as ours can only represent one side and the decision was made in January of 1979 to be on the side of victims.


SUPREME COURT WON’T HEAR CHALLENGE OVER PAC DISCLOSURES

The Supreme Court last month refused to review a challenge to federal regulators’ method for determining which political groups must register as political action committees and reveal their donors. Without comment, the High Court declined to hear an appeal brought by The Real Truth About Abortion, an anti-abortion group that had sued in 2008 to challenge numerous Federal Election Commission (FEC) rules that govern disclosures of political spending. The case is one of several challenging the disclosure and reporting requirements for political groups in the wake of the infamous Citizens United case, decided by the U.S. Supreme Court in 2010 that removed limits on what companies and unions can spend to support or oppose political candidates.

Previously known as The Real Truth About Obama, the group now known as Real Truth About Abortion, said that it planned to educate voters in 2008 about the policy positions of then-U.S. Senator Barack Obama. It was alleged in the lawsuit that the non-profit group refrained, under the risk of being deemed a political action committee (PAC) by regulators and subject to a federal investigation, from engaging in political activities. The group claimed the FEC’s multi-part test to assess whether a group’s “major purpose” is to engage in federal campaign activity, qualifying it as a PAC, was too vague and chilled more political speech than necessary.

A federal judge in 2011 rejected the challenge, and a unanimous three-judge panel of the U.S. 4th Circuit Court of Appeals affirmed that decision in June. The Appeals Court called the commission’s methods “a sensible approach to determining whether an organization qualifies for PAC status.” Interestingly, James Bopp, who represents The Real Truth About Abortion, is the same lawyer who brought the Citizens United case. This case is The Real Truth About Abortion Inc. v. Federal Election Commission, U.S. Supreme Court, No. 12-311.

Source: Reuters

A REPORT ON THE FEDERAL COURT SYSTEM

Chief Justice John Roberts recently released his 2012 Year End Report on the Federal Judiciary, detailing the activity of the federal court system. Chief Justice Roberts provided statistics for the entire federal court system. I will mention some information relating to certain of those courts below:

In 2012, caseloads increased in the U.S. Appellate courts and probation offices, but decreased in the U.S. district courts, bankruptcy courts, and pretrial services system. Filings in the regional courts of appeals grew four percent to 57,501. Total case filings in the district courts, however, declined five percent to 372,563. The total number of cases filed in the Supreme Court decreased from 7,857 filings in the 2010 Term to 7,713 filings in the 2011 Term, a decrease of 1.8 percent. During the 2011 Term, 79 cases were argued and 73 were disposed of in 64 signed opinions, compared to 86 cases argued and 83 disposed of in 75 signed opinions in the 2010 Term.

Filings in the regional courts of appeals rose four percent to 57,501. Growth occurred in all types of appeals except civil appeals, which decreased one percent. Criminal appeals climbed 12 percent. Civil case filings in the U.S. district courts fell four percent to 278,442. Cases involving diversity of citizenship (i.e., cases between citizens of different states) declined 15 percent, mainly because of a drop in multidistrict litigation filings.

You might want to read the Roberts report in its entirety. Obviously, it covers much more than what I have included above. It’s quite evident that those in the federal system stay very busy. My guess, however, is that most folks really know very little about the federal courts and all that they must deal with.

Source: Alabama Law Weekly

VI.
THE NATIONAL SCENE

THE THIRD ANNIVERSARY OF CITIZENS UNITED

January 21st was the third anniversary of the Supreme Court’s infamous Citizens United v. Federal Election Commission ruling. Interestingly, the 21st was also Inauguration Day in Washington and Martin Luther King, Jr. Day nationwide. It’s most interesting that the anniversary of a terrible court ruling would land on the same day as these other two events. We saw during last year’s elections both in the presidential race and in Congressional races the very bad effects resulting from this decision.

Public Citizen is helping lead an initiative—“Money Out / Voters In”—to mark the anniversary of Citizens United with demonstrations across the country. Hopefully, we will hear a lot more from the advocacy group about this campaign. Public Citizen will join advocacy around money-in-politics and voting rights, in the coming weeks. This is a movement that should garner wide spread support.

The adverse effects on our nation, and the people of America, resulting from Citizens United must be addressed and changes made. For that to happen, either a majority of the High Court must vote to change what the Court did to the political system, or Congress must pass corrective legislation. The latter will only happen when the American people let the politicians hear from them on this important issue. The High Court will likely need new Justices appointed by President Obama—as vacancies occur—for a change to happen there. But the bottom line is that change is needed and must happen soon. When the American people learn how truly bad Citizens United really is, they will demand that Congress act. If you agree that change is needed, let your house member and senators hear from you.

Source: Public Citizen

www.BeasleyAllen.com
The Fiscal Cliff in Retrospect, and A Look Ahead

A. Introduction

The difficult negotiations that occurred prior to the fiscal cliff issues being resolved make it absolutely clear that tax and budget issues will dominate headlines for the next several months. In fact, some economists say the fiscal cliff was misnamed because we really weren’t facing a fall from a fiscal cliff. In that context, Public Citizen has taken some strong positions relating to the fiscal issues. I find myself in agreement with much of what Public Citizen has to say. For a start, let’s look at four basic premises. Public Citizen says that:

• The unseemly political process is most discouraging and will likely get worse before it gets better;
• The focus on the budget deficit is a distraction from the much more serious problems facing our country;
• High short-term deficits are actually helpful and not harmful; and
• Important and obvious sources of savings and new revenues are not receiving the attention they deserve.

You may disagree with Public Citizen on some or all of what it believes, but let’s take things a little further and consider how Public Citizen arrives at its conclusions. First, I believe we can all agree on its first premise. The political division in our Nation’s Capitol is quite obvious and unfortunately very real. In fact, it’s the worst I have ever seen and I don’t see that changing anytime soon. But then Public Citizen says the United States does not have an acute budget deficit problem. It is on that premise where many, and perhaps most, of our readers may disagree.

Public Citizen says that at a time of very high unemployment, the nation should be running large deficits. It believes those deficits are keeping the economy running and that without them, U.S. unemployment would be even higher. Public Citizen also says that the economic crisis is the direct cause of the temporarily high budget deficits of recent years. I do agree with that assessment. When you consider that two wars were fought on credit, combined with the Bush-era tax cuts, our available revenues simply couldn’t keep pace with government spending.

It’s rather elementary that when economic activity is depressed, tax receipts go down. If tax revenues were at pre-Great Recession levels, the deficit would be low. When steps are taken to kick-start the economy, people are put back to work, and revenues then rise. That results in the temporarily high deficits declining and eventually disappearing. That’s not to say there aren’t major examples of wasteful spending in government because there are. There are also many significant opportunities for increased revenues in government. But Public Citizen believes that any discussion of potential savings or revenue increases must start by recognizing that there really wasn’t an acute crisis that was wrongly labeled the “Fiscal Cliff.” Moreover, it says that currently high deficits are helpful, not harmful, to our “fiscal health.” Stated above, there will be many strong disagreements with that view. Personally, I am convinced that we need both new revenues and cuts in wasteful spending. The reduction in spending must be aimed at real waste and carried out in a reasonable and selective manner. An across-the-board approach, affecting all government programs, simply won’t work.

B. A Brief Look at the Medicare Program

The Medicare program is critically important and it must be protected from political attacks. There are certainly problems in the program. Public Citizen believes we need to fix Medicare by strengthening it, not weakening it. I totally agree with that view. Any problems in the Medicare program must be addressed and corrected. The following are Public Citizen’s views:

• Unlike Social Security, Medicare does face a medium-term fiscal problem, a direct consequence of spiraling health care costs. This is where changes must start.
• Steps need to be taken to better align Medicare costs and revenues. The way forward is to strengthen Medicare—by cutting out profiteering by drug companies, insurance companies and others. Negotiating prices with drug companies could, conservatively, save $150 billion over ten years. More aggressive measures to deal with obscenely high drug prices could save much more. The problem there is with the manufacturers and not the retail outlets.
• It’s true that raising the Medicare eligibility age or imposing other reductions in benefits would reduce Medicare costs. But it’s important to understand that—in contrast to measures to reduce drug and insurance company profiteering—this won’t do anything to cut health care costs. Instead, it will simply transfer costs from the government to individuals.
• Medicare must be strengthened by reducing private profiteering. Proposals to slash benefits for the elderly and leave older Americans at the mercy of the for-profit insurance giants must not happen.

C. Budget Savings Needed in Government

While it’s obvious that we need adequate revenues to operate our federal government, there can be no real dispute that huge budget savings in Washington are available and are needed. Aside from major health care savings that could be achieved, there are a number of things the federal government can do to save hundreds of billions of dollars over the next decade. The following are a few suggestions from Public Citizen:

• At the top of the list is reining in out-of-control military spending. The folks at Project On Government Oversight and Taxpayers for Common Sense calculate, just eliminating unneeded weapons, undoing wasteful privatization arrangements, and slowing investments in nuclear weapons could save in the neighborhood of $700 billion over ten years. This is without even challenging the fundamental over-militarization of our foreign policy or calling for making tough choices between varying budget priorities. It’s just by eliminating wasteful or needless programs and weapons. We must have a strong military and that can still be achieved. In fact, our military will be stronger once the wasteful spending cuts are made.

• There are huge savings, though not at the same scale, from eliminating subsidies for dirty fuel industries. This has been a long-running and ongoing Public Citizen priority. As Oil Change International reports, these would total at least $100 billion over the next decade, and much more by some accounts.

• According to the Green Scissors campaign, taxpayers could see savings of billions of dollars by eliminating other corporate welfare. For example, cutting timber subsidies alone could save $10 billion over the next decade.

Hopefully, Congress will see fit to work for the American people in a bi-partisan manner and tackle the budgeting issues that face our nation. We need a well-planned and carefully carried out approach when dealing with budget cuts. This will mean that nothing less than a bi-partisan approach will work.

D. New Revenues Are Badly Needed

Raising revenue is something most politicians avoid even discussing in a rational manner. All too many play the political game and take pledges never to even consider voting for a tax increase. That’s not a good thing in my opinion. The January 1st tax deal notwithstanding, there’s still far more that could and should be done to make the tax code fairer and more progressive. Public
Citizen has some meaningful suggestions on how to come up with needed revenues.

- Much more attention should be given to corporate tax payments. Corporate tax as a share of GDP is at record lows, just a quarter of the level from the 1950s. Citizens for Tax Justice has identified more than two dozen corporations that paid a total of zero in federal tax each year from 2008 to 2011. Actually, most of them received rebates. If those companies—with the addition of four others that paid very little tax from 2008 to 2011—had paid the statutory corporate tax rate of 35 percent, they would have paid more than $78 billion.

- The simple solution to the need-for-additional revenues is to close loopholes. That will take more political courage than some of our elected officials have shown.

- One vital revenue-raising step is to make Wall Street—the giant financial firms that plunged the country and actually the world into the Great Recession—pay more. A modest tax on Wall Street speculation could raise a minimum of $350 billion over the next decade, potentially far more. We will hear a lot more from Public Citizen about a speculation tax over the next year.

- As the fiscal cliff frustrations beget debt ceiling debacles, and then sequestration shenanigans, combined with the debt ceiling debate, the nation’s eyes will be on Congress.

I may be alone in my view that we need additional revenues, but I am convinced that we do. Failure to face this need by members of Congress will only cause more serious problems both immediate and long range.

**E. SUPPORT PUBLIC CITIZEN**

I encourage our readers to support Public Citizen. This group works hard for the American people and especially for all consumers. There will be more information upcoming about Public Citizen’s Money Out / Voters In organizing for the third anniversary of Public Citizen and all that it does, go to Citizen.org. I believe you will be impressed.

Source: Public Citizen News Release

**JACK ABRAMOFF SPEAKS OUT**

I was very surprised to learn from Public Citizen that Jack Abramoff had offered his support to the advocacy group in its ongoing fight on behalf of the American people. If you have forgotten who this man is, Abramoff was a “super lobbyist” who crossed the line in his work and violated criminal laws. He paid a high price for what he did. I received a copy of the note from Jack Abramoff to Public Citizen about the group’s work to “save democracy,” and his willingness to help, and found it quite engaging. I am setting the contents of his note out for your edification:

- You probably never expected to hear from me on behalf of Public Citizen. In my former career, I opposed just about everything Public Citizen stands for. But last year, when Robert Weissman invited me to speak at Public Citizen’s headquarters in Washington, D.C., it was a profound experience.

- As I told Robert, “I was involved deeply in a system of bribery—legalized bribery for the most part” that “still to a large part exists today.” Perhaps more than anybody, I truly understand the depths of K Street’s corrupting influence on Capitol Hill.

- I can’t undo the mistakes I made. But I can say this: If you want to do something about how the lobbying industry uses legalized bribery and other ways that money corrupts democracy, I encourage you to support the efforts of Public Citizen.

If Jack Abramoff, considering his insider knowledge of how powerful lobbyists in Washington operate, sees a need to reform Washington, and joins Public Citizen in its ongoing fight, that should motivate all of us to get involved. Abramoff knows full well the strong control and influence lobbyists have over Congress and how they have gotten such vast power. I have been sort of surprised that Abramoff’s note to Public Citizen has garnered very little, if any, media attention. Abramoff’s involvement with Public Citizen may well make some of the folks he has done “business” with in the past very nervous. He could surely be a threat to the sleep habits of some folks if he decides to “tell it all.” I understand that we should stay tuned for more on that subject!

Source: Public Citizen

**CONGRESS MUST CONTROL WALL STREET**

No one should be very surprised to learn that Wall Street has been working very hard in Congress to protect its turf over the past several years. Its efforts have intensified during the past year. Hopefully enough members of Congress will resist the pressure from Wall Street that is designed solely to protect the big banks. Wall Street has been pouncing Washington, fighting all attempts to rein in the too-big-to-fail banks. Lobby groups and front groups for Wall Street are hard at work trying to undo all of the progress that has been made over the years to protect investors and consumers. Unfortu-nately, they have been very successful in their efforts. For example, Wall Street got Congress to:

- Repeal Glass-Steagall;
- Prohibit the regulation of derivatives (Commodities Futures Modernization Act);
- Defeat hard caps on bank assets (Brown-Kaufman);
- Weaken the Volcker Rule; and
- Keep the revolving door well oiled.

There should be little doubt that Main Street has to be defended against the ravages of Wall Street. But it’s important to understand that the fight is against the richest, most powerful industry in the history of the world. The rules and regulations that were enacted after the Great Depression allowed regulators to prevent that devastating event from happening again. The regulatory measures worked for 70 years. But the financial industry was able to take its economic might to buy political power in their efforts to deregulate the financial industry. When Glass-Steagall was repealed in 2000, with almost no public awareness, a crescendo was reached. After about 15 to 20 years, Wall Street finally got what it wanted. This was a dagger in the heart of legitimate and badly-needed efforts to control Wall Street.

The second-worst event was when Congress passed the Commodities Futures Modernization Act. This Act, which prohibited the regulation of derivatives, was one of the worst things to have happened to a world-class financial system after 70 years of regulation. It took seven years of total deregulation to almost destroy our nation’s economy. The financial collapse crashed the global financial system and almost brought about a second Great Depression in this country.

President Obama and Congress must work together to control the financial industry. It will take a strong political will for our leaders to take on Wall Street. Never doubt that Wall Street will fight back and will be a very tough opponent. The question is, can the government take on the big-money interests and onslaught of Wall Street and win? For this to happen:

- The Securities and Exchange Commission, and especially its Division of Enforcement, and the Department of Justice must do their jobs.
- We need a sounder, and safer banking system that doesn’t require that taxpayers bail out Wall Street. The banks can still make good money and prosper under such a system.
- Rules and laws must be enacted that must be adhered to by Wall Street. We can’t continue to give super-rich Wall Streeters a
pass when it comes to them breaking the law, then paying a fine and continuing to operate.

If we let another huge financial collapse happen, I don’t believe we can bounce back like we have done this time. Poor regulations, and in some cases no regulation, almost destroyed our nation’s economy. We can’t let that sort of thing happen again. We experienced the second worst financial collapse in U.S. history since 1929, which is responsible for the worst economy since the Great Depression, and our nation survived. Hopefully, our political leaders learned their lesson from what happened, and more importantly, understand why it happened. When there is no accountability, and no penalty against the real power on Wall Street and the financial industry, our country suffers as a result. I am convinced that the American people want Wall Street controlled and properly regulated. The politicians had best listen!

Source: Corporate Crime Reporter

NEW YORK ATTORNEY GENERAL CAN’T STOP $115 MILLION AIG SETTLEMENT

A federal judge ruled last month that New York Attorney General Eric Schneiderman can’t stop a $115 million settlement between American International Group Inc. shareholders and the insurer’s former chief executive and others. Too low, New York Attorney General’s Office seems to object to the settlement, U.S. District Court Judge Deborah Batts in Manhattan wrote in her decision. Batts also denied the Attorney General’s request to intervene. The judge will decide whether to approve the settlement reached in 2009 between shareholders and former AIG Chief Executive Hank Greenberg, former Chief Executive Howard Smith, other executives and Greenberg’s companies C.V. Starr & Co. And Starr International Co.

Judge Batts set a fairness hearing for April 10th and will decide whether the settlement should be approved. If she does approve it and no one appeals, it would effectively end a high-profile civil fraud case against Greenberg and Smith brought by the Attorney General’s office in 2005. Judge Batts wrote in her ruling that the New York Attorney General’s plea for the parties to re-negotiate raises concerns of “undue delay” and demands court action based on “sheer speculation and hotly-contested expert evaluations.” In August, General Schneiderman urged Judge Batts to reject the accord, saying an expert for shareholders made a math error that caused the payout to be too low. Lawyers for the shareholders responded that the error had no significant effect. They also said it was “entirely speculative” to expect the shareholders to fare better in new talks.

Lawyers for Greenberg, Smith and the Starr entities had also urged approval of the settlement. At issue is a 2000 transaction with General Re Corp., a unit of Warren Buffett’s Berkshire Hathaway Inc, which various government investigators have said allowed AIG to inflate loss reserves by $500 million without transferring risk. Schneiderman argued a math error by the expert caused the transaction to get no weight in the calculation of damages. Projections as to the actual amount of damages range from zero to $6.5 billion. The highest number was estimated by the New York Attorney General’s expert.

The case filed in New York state court against Greenberg and Smith was brought by former New York Attorney General Eliot Spitzer under the Martin Act, New York’s powerful securities fraud law. Greenberg and Smith are awaiting an appeal in the case at the state’s highest court. If the federal settlement is approved before the state case is decided, the “broad terms of the releases” would preclude New York pursuing its case on behalf of AIG shareholders, according to General Schneiderman. The case is In re American International Group Inc. Securities Litigation, U.S. District Court, Southern District of New York, No. 04-08141.

Source: Insurance Journal

AMERICAN SLEEP MEDICINE TO PAY $15.3 MILLION TO SETTLE FALSE CLAIMS ACT CHARGE

American Sleep Medicine will pay $15,301,341 to resolve allegations that it billed Medicare, TRICARE—the health care program for Uniformed Service members, retirees and their families worldwide—and the Railroad Retirement Medicare Program, for sleep diagnostic services that were not eligible for payment. American Sleep, headquartered in Jacksonville, Fla., owns and operates 19 diagnostic sleep testing centers throughout the United States, having centers in Alabama, California, Florida, Illinois, California, Kansas, Kentucky, Maryland, Missouri, New Jersey, Tennessee, Texas and Virginia. The company’s primary business is to provide testing for patients suffering from sleep disorders such as obstructive sleep apnea.

As I understand it, the test results are used by doctors to determine the most appropriate course of treatment for patients. The most common tool used to diagnose sleep disorders, particularly sleep apnea, is a procedure called polysomnographic diagnostic sleep testing. Under federal program requirements for the reimbursement of claims submitted for sleep disorder testing, initial sleep studies must be conducted by technicians who are licensed or certified by a state or national credentialing body as sleep test technicians.

Federal officials alleged that Medicare and TRICARE claims submitted by American Sleep during this period were false because the diagnostic testing services were performed by technicians who lacked the required credentials or certifications, and that the company knew it was violating the
The allegations were made in a lawsuit filed against American Sleep under the qui tam (whistleblower) provisions of the False Claims Act. The whistleblower, Daniel Purnell, will receive $2,601,228 for bringing the case to the government’s attention and filing the lawsuit.

Source: Corporate Crime Reporter

SEC CHARGES TWO KPMG AUDITORS

The Securities and Exchange Commission has charged two auditors at KPMG for their roles in a failed audit of a Nebraska-based bank that hid millions of dollars in loan losses from investors during the financial crisis and eventually was forced to file for bankruptcy. The SEC previously charged three former TierOne Bank executives it believed were responsible for the scheme. Two executives agreed to settle the SEC’s charges. The case continues against the other.

The new charges in the SEC’s case are against KPMG partner John J. Aesoph and senior manager Darren M. Bennett. The SEC’s investigation found that the two men failed to appropriately scrutinize management’s estimates of TierOne’s allowance for loan and lease losses. Due to the financial crisis and problems in the real estate market, this was one of the highest risk areas of the audit, yet Aesoph and Bennett failed to obtain sufficient evidence supporting management’s estimates of fair value of the collateral underlying the bank’s troubled loans.

Instead, they relied on stale information and management’s representations, and they failed to heed numerous red flags when issuing unqualified opinions on TierOne’s 2008 financial statements and the bank’s internal controls over its financial reporting. Robert Khuzami, Director of the SEC’s Division of Enforcement, observed:

“Aesoph and Bennett merely rubber-stamped TierOne’s collateral value estimates and ignored the red flags surrounding the bank’s troubled real estate loans. Auditors must adhere to professional auditing standards and exercise due diligence rather than merely relying on management’s representations.”

According to the SEC’s order instituting administrative proceedings against Aesoph and Bennett, the auditors failed to comply with professional auditing standards in their substantive audit procedures over the bank’s valuation of loan losses resulting from impaired loans. They relied principally on stale appraisals and management’s uncorroborated representations of current value despite evidence that management’s estimates were biased and inconsistent with independent market data. Aesoph and Bennett failed to exercise the appropriate professional skepticism and obtain sufficient evidence that management’s collateral value and loan loss estimates were reasonable.

According to the SEC’s order, the internal controls identified and tested by the auditing engagement team did not effectively test management’s use of stale and inadequate appraisals to value the collateral underlying the bank’s troubled loan portfolio. For example, the auditors identified TierOne’s Asset Classification Committee as a key ALLL control. But there was no reference in the audit work papers to whether or how the committee assessed the value of the collateral underlying individual loans evaluated for impairment, and the committee did not generate or review written documentation to support management’s assumptions.

The SEC said that given the complete lack of documentation, Aesoph and Bennett had insufficient evidence from which to conclude that the bank’s internal controls for valuation of collateral were effective. The SEC’s order alleges that Aesoph and Bennett engaged in improper professional conduct as defined in Section 4C of the Securities Exchange Act of 1934 and Rule 102(c)(1)(ii) of the Commission’s Rules of Practice. A hearing will be scheduled before an administrative law judge to determine whether the allegations contained in the order are true and what, if any, remedial sanctions are appropriate pursuant to Rule 102(c). The administrative law judge will issue an initial decision no later than 300 days from the date of service of the order.

Source: Corporate Crime Reporter

TAXPAYERS SHOULDN’T BEAR COST OF CORPORATE SETTLEMENTS

Anybody who keeps up with daily news reports on a regular basis knows that all too many corporations commit crimes and engage in other wrongdoing on a fairly large scale. But many may be surprised to learn that the offending companies agree to financial settlements with the federal government in most of the cases brought by the Justice Department. Even fewer probably know that the companies are then allowed to claim such settlement payments as tax-deductible business expenses. A new study, released by the U.S. Public Interest Research Group (USPIRG), follows a second year of corporate settlements. Ryan Pierannunzi, tax and budget associate with USPIRG, had this to say:

“When corporations treat the financial payments they must make as a result of their wrongdoing as ordinary costs of doing business, they force taxpayers to pick up the tab. While debate rages over how to address our deficit, we can ill-afford to subsidize the misdeeds of corporations like BP and UBS.”

The correct course of action would be for the federal government to require all monetary settlements to be with after-tax dollars. It’s simply wrong to allow a corporation to violate the law, settle all charges, pay a fine, and then take a tax write-off. Hopefully, President Obama and Congress will listen to the recommendations and take the needed actions. If you agree let the President and your members of Congress know how you feel by writing them.

Source: Corporate Crime Reporter

ARE POWER WHEELCHAIR COMPANIES RIPPING OFF THE GOVERNMENT?

It has been reported that Medicare fraud costs taxpayers an estimated $60 billion...
annually. Having been involved in whistle-blower litigation, I am not surprised one bit at that number. In fact, it could be that it’s very conservative. One example of fraudulent conduct was reported last month. It appears that power wheelchairs, which cost the Medicare program hundreds of millions of dollars a year, could be a big problem. Over the course of a several month CBS This Morning investigation, numerous people who have sold and prescribed these wheelchairs told CBS News that the industry bullies doctors, and that Medicare is writing checks that should never be cashed. The SCOOTER Store is the largest supplier of power wheelchairs in the country. It was reported that most Americans have seen its TV ads which reportedly cost the company more than a $100 million each year.

Once a doctor has written a prescription, CBS News was told that Medicare rarely checks whether the chairs are actually necessary. The issue was crystallized when the Department of Health and Human Services Inspector General released a report, which found that industry-wide, 80 percent of Medicare payments for power chairs are made in error. It was also found that most of the chairs were going to folks who don’t need them or lack proof they need them. From 2009-2012, government auditors found the SCOOTER Store overbilled Medicare by as much as $108 million.

Interestingly, the company agreed to give back $19.5 million for chairs it admitted should not have been paid for. It said the amount was less than 4 percent of the Medicare payments it received in the last two years. But according to the Special Committee on Aging, the company only agreed to a repayment after the HHS Inspector General threatened to suspend it from federal health programs. And while The SCOOTER Store disputes the government’s audits, the government found the company owes as much as four times what it’s agreed to repay.

In September, the government launched a pilot program to address the issue. It requires Medicare to approve chairs before they are paid for. But it appears that the same companies—with the high error rates—were hired to run it, processing payments to suppliers from the government.

This report on one company illustrates that we need to get tougher on fraud in government programs and protect taxpayer dollars. Corporations participating in government programs must be held accountable. We can’t tolerate cheating on programs such as Medicare and Medicaid. Taxpayers must be protected when companies abuse the system.

Source: Corporate Crime Reporter

VIII. CAMPAIGN FINANCE REFORM

SECRET CORPORATE POLITICKING MUST BE CURTAILED

I don’t believe there will be any dispute when I say that our political system in this country has changed drastically over the years. We have come from a time in decades past when office seekers actually had personal contacts with the voters during their campaigns. Presidential candidates—before the advent of costly television ads—actually went out to the people and sought their votes. There were even train tours by Presidential candidates with scheduled whistle stops around the country. But those days are long gone. When television took over during the early 1960s, followed by the internet, the American political scene changed forever.

Big money from the giants in Corporate America quickly became the driving force in U.S. politics. We now are witnessing the most expensive political races ever with no real end in sight. A few multi-billionaires have become the main players in the financing of political campaigns through the use of SuperPACs and groups such as the U.S. Chamber of Commerce.

For example, during last year’s election, Karl Rove’s Crossroads GPS spent more than $70 million to influence our votes. The Koch brothers’ Americans for Prosperity spent more than $39 million. The U.S. Chamber of Commerce threw in more than $36 million. That’s a total of $159 million just from these three sources.

Unlike super PACs, the dark money groups are not required to disclose the identities of the corporations and super-rich donors that paid for the misleading ads they ran. Fortunately, the Securities and Exchange Commission has responded to the public’s demands for corporate accountability. A proposed rule requiring publicly traded corporations to disclose their political contributions is now on the SEC’s official agenda. Hopefully, it will be adopted.

As we all know, last year’s Presidential race was won by President Barack Obama and he received far more small-dollar donations and less support from corporations and billionaires than his Republican opponent. In my opinion, that was good for America. While the President survived, the problems are still with us. Left unchallenged, dark money groups will only grow stronger. Even though the 2012 election is over, these corporate propaganda machines have shown no sign of stopping or even slowing down. Crossroads GPS, for instance, blasted airwaves across the country throughout last month’s “fiscal cliff” negotiations with its propaganda. Much of what was said was untrue and largely unchallenged.

Corporate shareholders and consumers must be able to hold the corporations behind dark money groups’ misleading attacks accountable. Transparency in corporate political spending is critically important for the welfare of ordinary folks. They deserve to know where the money that fuels our political system is coming from and how much is being spent. Congress must get involved and help bring some sanity to our nation’s political system. I believe that an overwhelming majority of U.S. citizens agree that Congress must take the necessary action needed to solve the problem.

Source: Public Citizen

IX. TOYOTA LITIGATION UPDATE

TOYOTA AGREES TO PAY MORE THAN $1 BILLION TO SETTLE SUDDEN ACCELERATION CASES

Toyota Motor Corp has agreed to a $1.1 billion charge to settle hundreds of U.S. consumer claims related to Sudden Unintended Acceleration (SUA) in its vehicles. The settlement, which is pending approval by U.S. District Judge James Selna, who is overseeing the multidistrict consolidated litigation, would resolve claims of economic loss related to the defective vehicles. Dee Miles, head of our firm’s Consumer Fraud Section, served on the Plaintiffs Liaison counsel for this litigation. It should be noted that the settlement does not cover claims of wrongful death and injury in litigation against Toyota SUA. Those cases are slated for trial in February 2013.

This class settlement provides a very practical resolution for those Toyota car owners who experienced economic losses as a result of the Sudden Unintended Acceleration issue with their vehicles. It compensates them for their financial losses. For those who have experienced serious personal injuries and families who are suffering the loss of a loved one as a result of the Sudden Unintended Acceleration issue, their day in court still awaits them and is fast approaching. The MDL trial court has done a tremendous job of moving these cases through the system and adequately protecting the interests of all concerned. MDL Judge James Selna’s highly-skilled management of these cases is the reason the parties were able to announce this very good resolution of the economic loss portion of the case.

The settlement agreement would establish a reserve of about $250 million for cash payments to Toyota customers who sold certain vehicles or turned in certain leased vehicles between September 2009 and December 2010. The agreement also would require Toyota to establish a $250 million program for current Toyota vehicle owners to provide a supplemental warranty and retrofit about 3.2 million vehicles with a brake override system. More information, including a copy of the proposed settlement agreement, is available on the Toyota Settlement website at www.toyotaesettlement.com. It should be noted that the settlement must receive court approval to become final. We believe that Judge Selna will approve it after conducting a fairness hearing.

Since 2009, Toyota has recalled 14 million vehicles worldwide for Sudden Unintended Acceleration problems, paid record fines for violating recall procedures required under U.S. safety regulations, and become the subject of a Congressional investigation. Toyota has blamed the problems on faulty floor mats and stuck accelerator pedals. Many safety experts and Plaintiffs’ lawyers, however, blame Toyota’s sudden-acceleration incidents on a highly obscure electronic malfunction—a claim that Toyota disputes. Elizabeth Cabraser, Mark Robinson, Steve Berman, Marc Seltzer, and Frank Petrie, along with Dee Miles from our firm, have all worked hard on this case and did a very good job in bringing about the settlement. Other members of the steering committee for the Toyota litigation include Mike Eidson, Richard D. McCune, Hunter Shkolnik, Donald H. Slavik, Richard J. Arsenault, Jane Conroy, Benjamin L. Bailey, Michael Louis Kelly and W.B. Markovits. Each of these lawyers has done a very good job in helping bring about this settlement.

TOYOTA SETTLES WRONGFUL DEATH LAWSUIT

Toyota Motor Corp. has settled what was to be the first in a group of hundreds of pending wrongful death and injury lawsuits involving Sudden Unintended Acceleration by Toyota vehicles. Toyota reached the settlement in the case brought by the family of Paul Van Allen and Charlene Jones Lloyd. They were killed when their Toyota Camry crashed into a wall in Utah in 2010. The remaining lawsuits weren’t affected by the settlement.

In December, Toyota agreed to a settlement worth more than $1 billion to resolve hundreds of lawsuits claiming economic losses Toyota owners suffered when the Japanese automaker recalled millions of vehicles. Hundreds more lawsuits involving wrongful death and injury remain.

The Van Allen case was to be the first of those tried, and to serve as a bellwether for the rest. It had been set to go to trial in February. A second bellwether case is scheduled for May. Toyota settled a previous wrongful death lawsuit for $10 million in 2010 before the current cases were consolidated in U.S. District Court in Santa Ana. In the earlier case, a California Highway Patrol officer and three of his family members were killed in suburban San Diego in 2009 after their car, a Toyota-built Lexus, reached speeds of more than 120 mph, hit an SUV, launched off an embankment, rolled several times, and burst into flames.

Investigators determined that a wrong-size floor mat trapped the accelerator and caused the crash. That discovery, whether correct or not, spurred a series of recalls involving more than 14 million vehicles and a flood of lawsuits soon followed, with numerous complaints of accelerations in several models, and brake defects with the Prius hybrid. Toyota has blamed driver error, faulty floor mats and stuck accelerator pedals for the problems. We have always believed that this was another cause that contributed to the problem.

In the accident that resulted in the recently settled case, Van Allen was driving the Camry an Interstate highway near Wendover, Utah, on Nov. 5, 2010, when his car suddenly accelerated. Skid marks showed that Van Allen tried to stop the vehicle as it exited the interstate, according to police. The car went through a stop sign at the bottom of the ramp and through an intersection before hitting the wall. Van Allen and Ms. Lloyd, his son’s fiancée, were killed. Van Allen’s wife and son were injured. Bob Krause, a very good lawyer with the Spence law firm represented the Plaintiffs in the two cases and he did a tremendous job for his clients.

Source: NBC News

TOYOTA MODIFIES START-STOP BUTTONS IN CASE OF PANIC

It was reported recently that Toyota has quietly made a change in most of its models that could save lives if a car’s accelerator sticks open. Significantly, this doesn’t involve the actual model at the center of the litigation comprised of Toyota’s unintended acceleration lawsuits. We wrote about the $1.1 billion settlement elsewhere in this issue. Toyota has modified the start-stop buttons in most of its models so they will shut off the engine after three quick pushes, or after being continuously pushed for two seconds. There are two big changes from the old policy that required a continuous three-second push to shut down the power.

The start-stop button was cited as a factor in the crash that killed an off-duty California Highway Patrol officer and three family members outside San Diego more than three years ago. The investigation found that in a panic situation, a button required a much longer push than intuitively would be expected to turn off the engine. But, as most of our readers will likely recall, Toyota officials defended the older version at the time, saying it was important to make sure that drivers or their passengers didn’t turn off the car inadvertently by brushing against it.

A few remaining Toyota or Lexus models—at press time Toyota hadn’t specified which—are yet to get the change to a two-second push. The change to the two-second push started a year ago, according to Toyota spokesman Brian Lyons who relayed this information to USA Today. All Toyota and Lexus vehicles, starting in August 2010 will now have buttons that will shut off the engine after three quick pushes. This is a major improvement for a driver in a panic situation. Lyons told USA Today that the changes made to vehicles with the start-stop buttons resulted in part from recommendations from a committee of the SAE, once called the Society of Automotive Engineers. It’s important to note that only cars with the buttons will be affected by the change. Those models have the “electronic key” ignitions instead of the traditional kind in which you insert a metal key and twist to start the engine.

In their efforts to reach a preliminary settlement of its unintended-acceleration lawsuits, Toyota has said it would pay to have a “brake override” feature added to its pedals of many of its non-hybrid models. If a driver pushes the brake and accelerator in quick succession, as if in a panic, the engine speed will be cut to idle. All of Toyota’s hybrids already have this feature. It’s also now standard on all Toyota and Lexus models, regardless of whether they are hybrids or not. I have to wonder why it took Toyota so long to make the needed changes, considering what it had to know about the hazards and dangers caused by sudden acceleration of its cars.

Source: USA Today
gas cans were manufactured without a “flame arrester” which would keep the fumes inside the gas can while the gas is being poured. Blitz ignored its own overwhelming test results that showed its gas cans exploding because of this manufacturing defect and chose not to install flame arresters on the plastic gas cans they sold to customers. Because there is no flame arrester, these gas cans have been known to instantly transform into a flamethrower, badly burning innocent people.

Overall, there have been more than 75 known incidents of people being severely burned or killed when a Blitz gas can exploded. Fourteen people were burned to death and, sadly, six of them were children. In one such case, three-year-old Landon Beadore tipped over a plastic gas can while putting away a tricycle. The vapors from the spilled gasoline spread along the floor until they were ignited by a pilot light from a water heater. Young Landon sustained third degree burns over almost half of his body. There were numerous other cases where a Blitz gas can exploded, resulting in serious burn injuries. A flame arrester would have prevented all of these explosions.

Manufacturers know that they have a legal duty not to offer the public unsafe products without a warning. When unsafe products such as the Blitz gas cans slip through the cracks, there are laws designed to hold these companies legally and financially accountable for the injuries and deaths that result.

Several lawsuits have already been filed against Blitz for the manufacturing defect associated with the plastic gas cans. Reports have indicated that it would have cost Blitz as little as 50 cents per gas can to include a flame arrester. But Blitz put profits over safety and chose to save money rather than fix these ticking time bombs.

With millions of these gas cans still in use around the country, the injuries, deaths, and lawsuits will continue. The American Association for Justice, in a recent statement, had this to say about the Blitz lawsuits:

**This is exactly how our civil justice system is supposed to work. When companies make flawed products and knowingly sell them to unsuspecting Americans, when they fail to look out for the welfare of their customers, they must be held accountable.**

The civil justice system has been under attack, and these attacks have come from front groups for those in Corporate America who put their own financial interests over the safety of the consuming public.

*Sources: ProtectConsumerJustice.Org; FightingForJustice.Org; and TheSafetyReport.com*

### The Hidden Dangers Of Utility Golf Carts

A recent trend in the hunting and recreational vehicle market has several companies producing utility vehicles that suffer from serious design flaws. In an attempt to make a quieter recreational vehicle, companies modified the standard electric golf cart platform and transformed it into an off-road vehicle. Although the final product is far quieter than a similar gas powered recreational vehicle, the golf carts were not adequately designed for such uses. These vehicles are produced by a number of companies due to their popularity and are marketed towards outdoorsmen. Examples of some of these vehicles are the Bad Boy Buggy, HuntVe, the Stealth 4X4, The Beast, and Ruff and Tuff Carts. Many other companies are also producing similar vehicles, as well as selling kits that an individual can use to transform a standard golf cart into a utility vehicle with a higher center of gravity. All too often, little to no safety engineering was implemented in modifying the vehicles.

Before being modified, a standard golf cart sits low to the ground, has small slick tires, and has little power. Because of these features, golf carts have a low center of gravity and are not highly prone to rollovers. However, during the transformation into a recreational vehicle, the frame is lifted significantly off the ground, the tire size is increased dramatically, and the tires are more aggressive. These modifications cause the vehicle to have a far higher center of gravity, thereby increasing the vehicle’s propensity to overturn. Most of these recreational vehicles are also given more power, resulting in a higher maximum speed as compared to a regular golf cart. All of these modifications result in a vehicle that is more prone to rollovers. Moreover, these vehicles are marketed as “go anywhere,” “do anything” vehicles, creating a false sense of security for many users.

Despite the rollover hazard posed by these vehicles, it is clear that very little, if any, forethought was put into adding critical pieces of safety equipment. Many of these vehicles were produced without seatbelts and safety nets that would aid in restraining occupants and their limbs in the event of a rollover. A number of these vehicles were also produced without a roll bar or other type of rollover protection. On top of all the potential dangers resulting from a clear lack of safety engineering, certain models of the Bad Boy Buggy have been recalled for unrelated defects.

In 2009, the U.S. Consumer Product Safety Commission announced a recall of approximately 3,900 Bad Boy “Classic Buggies” for accelerating without warning. In 2010, another recall was issued for an even larger number of Bad Boy Buggies alleging similar defects. And in 2011, even more Bad Boy Buggies were recalled due to a defect in the steering assembly arm which could cause the driver to lose control of the vehicle.

As a response to mounting concerns over the compromised safety of these vehicles, many of the companies that produce recreational and off-road vehicles have begun incorporating certain safety devices such as seatbelts, safety netting, and roll bars into their design. However, there are still companies that produce these dangerous vehicles without adequate safety devices and many more that have not recalled older vehicles. Even with the addition of seatbelts, safety nets, and roll bars, the vehicles are still dangerous. The designers and manufacturers of these vehicles need to address the fundamental design flaws that cause the rollover hazards in the first place. These vehicles have injured many people and will continue to injure more until these fundamental design flaws are corrected. If you need more information please contact Evan Allen, a lawyer in our Personal Injury/Products Liability Section, at 800-898-2034 or by email at Evan.Allen@beasleyallen.com.

### XI. MASS TORTS UPDATE

Our Mass Torts Section has been very busy over the past several months. Lawyers and staff personnel are currently involved in litigation involving a number of medications and devices. Some of their cases are in the investigative stage with many others actually being in litigation with suits having been filed. The Mass Torts Section will investigate any medication or device claim involving catastrophic injury or death. The following are some of the drugs and products the section is currently working on.

**Actos®**

The FDA has approved updated warning labels for Actos, a prescription medication used to treat Type 2 diabetes. The updated label states that Actos usage for more than one year may cause bladder cancer. Actos, manufactured by Takeda, has been under FDA review since September 2010. In June 2011, the FDA issued a warning for Actos, while at the same time, drug regulators in France and Germany suspended use of the drug. We are currently investigating claims involving usage of Actos, Actoplus Met, Actoplus Met XR, Duetact and bladder cancer.

*Lawyer: Roger Smith  
Primary Staff Contact: April Worley*
**Transvaginal Mesh**

The FDA has issued an updated safety communication warning doctors, health care professionals and patients that the placement of surgical mesh through the vagina to treat pelvic organ prolapse and stress urinary incontinence may present greater risk for the patient than other non-mesh procedures. This is also called transvaginal mesh. According to the FDA, reported complications from the transvaginal placement of the mesh include erosion of the mesh into the vaginal tissue, organ perforation, pain, infection, painful intercourse and urinary and fecal incontinence. Often women require surgery to remove the mesh. In some cases, this can require multiple procedures without successful removal of all the mesh. Currently, we are investigating cases involving mesh manufactured by American Medical Systems, Bard, Boston Scientific, Caldena, Coloplast and Johnson & Johnson.

Lawyers: Chad Cook and Leigh O’Dell
Primary Staff Contacts: Tabitha Dean, Melissa Bruner and Kim Owen

**Antidepressants**

SSRI-antidepressants such as Celexa,Lexapro, Luvox, Paxil, Prozac and Zoloft are prescribed to treat depression. Studies over the last several years have shown an increased risk of heart birth defects in children born to mothers who took SSRI-antidepressants in the first trimester. Most of the cardiac defects observed in these studies were atrial or ventricular septal defects, conditions in which the wall between the right and left sides of the heart does not completely develop. We are currently investigating claims of birth defects involving children whose mother was taking an SSRI, Wellbutrin or Effexor during pregnancy.

Lawyer: Roger Smith
Primary Staff Contact: Linda Reynolds

**Metal-on-Metal Hip Replacements**

Metal-on-Metal hip replacement manufacturers have been under heavy scrutiny over the past few years regarding the dangers of their metal on metal hip devices. The main hip devices under scrutiny are:

- Johnson & Johnson / DePuy: Pinnacle metal-on-metal hip;
- Zimmer: Durom Cup hip;
- Stryker: Rejuvenate and ABG II Stems (Recalled on July 4, 2012);
- Biomet: M2a and 38 Diameter hips;
- Wright: (a) Conserve, (b) Dynasty, (c) Lineage and (d) Profemor (Femur Fracture) hips; and
- Smith and Nephew: R3 Liner hips (Recalled on June 1, 2012).

Metal-on-metal hip patients from the above manufacturers have similarly reported problems after their initial implant surgery resulting in revision surgery. All have reported a variety of symptoms, including pain, swelling and problems walking. These symptoms are normal for patients following a hip replacement, but can be a sign that something is wrong if they continue or come back frequently. Additionally, metal debris spreading in the hip area has been reported due to the metal on metal friction involved from the metal components moving together.

We will review any cases involving individuals who have had any of the above metal on metal hip devices implanted. Any person who is not sure of the type of hip device implanted, if that person has had revision surgery, or the person is experiencing hip pain, hip swilling or difficulty walking, we will look at those cases.

Lawyers: Navan Ward and Melissa Prickett
Primary Staff Contacts: Janet Pair and Donna Puckett

**Granuflo®**

Granuflo® and NaturaLyte® are products used in the dialysis process. On June 27, 2012, the FDA issued a Class 1 recall of Granuflo® and NaturaLyte®. A Class 1 recall is the most serious FDA recall, reserved for situations in which the FDA deems “there is a reasonable probability that the use of or exposure to a violative product will cause serious adverse health consequences or death.” Use of these dialysis products has been linked to an increase in the risk of cardiopulmonary arrest and sudden cardiac death. The manufacturer, Fresnuius Medical Care, was aware of the dangers and injuries associated with these products but failed to warn patients and doctors until 2012. We are currently investigating death claims as well as claims of heart attack, cardiopulmonary arrest or any other serious injury.

Lawyer: Melissa Prickett
Primary Staff Contact: Penny Davies

**Fungal Meningitis**

In October 2012, an outbreak of fungal meningitis was traced to fungal contamination in three lots of medication used for epidural steroid injections. The medication was packaged and marketed by the New England Compounding Center (NECC), a compounding pharmacy in Framingham, Mass. From these three lots were distributed to 75 medical facilities in 23 states, and doses were administered to approximately 14,000 patients after May 21 and before September 24, 2012.

Lawyer: Frank Woodson
Primary Staff Contact: Cathy Perry

**Fosamax®**

Fosamax® (alendronate sodium), manufactured by Merck, is in a class of drugs called bisphosphonates. Fosamax® is commonly used in tablet form to prevent and treat osteoporosis in post-menopausal women. Recently the Journal of Oral and Maxillofacial Surgeons reported a link between bisphosphonates and a serious bone disease called Osteonecrosis of the Jaw (ONJ). Osteonecrosis is a disfiguring and disabling condition of the jaw bone that causes infection and rotting of the jaw bone. Typical presentation of Osteonecrosis is pain, soft-tissue swelling and infection, loosening of teeth, drainage, and exposed bone. Symptoms may occur spontaneously, or at the site of previous tooth extraction. Recently, Fosamax has been linked to low-energy femur fractures in people taking Fosamax for three or more years.

**Femur Fracture Criteria:** Documented use of Fosamax® for three years or longer with diagnosed low energy femur fractures.

Lawyers: Chad Cook, Leigh O’Dell and Russ Abney
Primary Staff Contact: Tabitha Dean

**Pradaxa®**

Approved by the FDA in October 2010, Pradaxa (Dabigatran) is marketed by Boehringer Ingelheim Pharmaceuticals, Inc., to reduce the risk of strokes and blood clots in people who have atrial fibrillation, a common heart rhythm abnormality. Pradaxa is in a class of anticoagulant medications known as “blood
thinnners.” Pradaxa is a direct thrombin inhibitor. It prevents the formation of blood clots by counteracting the effects of thrombin, which is responsible for clotting. Boehringer Ingelheim Pharmaceuticals markets Pradaxa as the preferred blood thinner. According to Boehringer, it is easier to dose, requires less monitoring, and is more effective at preventing clots compared to Warfarin (Coumadin). However, unlike Warfarin, Pradaxa’s anticoagulation effect cannot be reversed with vitamin K, significantly increasing the odds that a bleeding event will turn fatal.

To date, there have been significant numbers of fatal bleeds reported to the FDA. The lack of a reversal agent is believed to be the cause of the significant number of bleeding-related adverse events. While various reports have linked 260 bleeding deaths to Pradaxa, Boehringer, in an official statement on November 2, 2011, linked about 50 bleeding deaths to Pradaxa, which Boehringer asserted is consistent with expectations from the Pradaxa clinical trials. Earlier this year, the FDA required Boehringer to modify the Pradaxa warning label to reflect the lack of a reversal agent, which, amazingly, had not been included in the original warnings. The FDA is currently evaluating the reports of bleeding deaths and investigating whether the rate of severe bleeding reports is higher than what was seen in the Pradaxa clinical trials. At this point, there is no black box warning for Pradaxa.

We are currently investigating claims of GI bleeding, hemorrhagic strokes or any other serious or fatal bleeding involving Pradaxa.

Lawyer: Roger Smith
Primary Staff Contact: Linda Reynolds

**STEVENS-JOHNSON SYNDROME**

Stevens-Johnson syndrome is an immune complex hypersensitivity reaction that can be caused from an infection or immune response to drugs. It is a severe expression of a simple rash known as erythema multiforme. SJS is also known as erythema multiforme major. It affects all ages and genders including pediatric populations. The most severe form of SJS is toxic epidermal necrolysis (TENs). SJS occurs twice as often in men as in women. Most cases of SJS appear in children and young adults under age 30. Females with SJS are twice as likely as males to develop TENs, and have an even higher chance if taking a category of drugs known as NSAIDs, non-steroidal anti-inflammatory drugs.

Lawyer: Frank Woodson
Primary Staff Contact: Cathy Perry

**ZIMMER NEXGEN KNEE REPLACEMENTS**

Since 2003, more than 150,000 Zimmer NexGen Flex-Knee implants have been sold. Several different components used as part of the Zimmer NexGen Flex-Knee replacement system have been associated with increased risk of complications, including pain, swelling, loosening of component parts, and the need for follow-up/revision surgery. Several prominent surgeons want a Zimmer NexGen knee replacement recall to be issued. At a March 2010 conference of the American Academy of Orthopedic Surgeons, two knee surgeons presented data suggesting that the Zimmer NexGen Flex-Knee failure rate could be as high as 9%, and that the actual number of complications that require revision surgery could be even higher. The lead author of the study, Dr. Richard Berger, described the failure rate of the Zimmer NexGen CR-Flex Porous Femoral Component as “unacceptably high.” We would like to review any cases involving individuals who have had a Zimmer NexGen knee device implanted, or individuals unsure of the type of knee device implanted, if that individual has had revision surgery.

Lawyers: Navan Ward and Melissa Prickett
Primary Staff Contacts: Janet Pair and Donna Puckett

**YAZ LITIGATION**

Lawyers at Beasley Allen continue to pursue Yaz/Yasmin birth control claims involving venous blood clots (pulmonary embolism or deep vein thrombosis) resulting from Yaz/Yasmin ingestion. In October 2011, the *British Medical Journal* published an article highlighting the increased risk of blood clots in users of Yaz/Yasmin. According to that study, users of Yaz/Yasmin were at twice the risk of developing a blood clot than users of second generation birth control pills. Following an FDA Advisory Committee Meeting on the safety of Yaz/Yasmin, the FDA required Bayer, the manufacturer of Yaz/Yasmin, to include additional warnings regarding the increased risk of blood clots.

We have been successful in settling numerous Yaz/Yasmin claims with Bayer. Our lawyers continue to investigate new claims involving injuries occurring prior to the revised FDA warning label. Any person who has been injured by taking Yaz or Yasmin (or the generic equivalents Ocella and Gianvi), or who needs additional information, can contact our firm for assistance.

Lawyers: Roger Smith

You can reach the lawyers and staff members listed above by calling 800-898-2034. They will be happy to work with you on any of the drugs mentioned.

**ALABAMA SUPREME COURT DECISION SAVES REGLAN PLAINTIFFS**

Plutiffs involved in Reglan litigation won a big victory against brand name drug manufacturers Wyeth, Pfizer, and Schwarz Pharma, as the result of a very good decision recently decided by the Alabama Supreme Court. A Reglan case filed in the Middle District of Alabama, (Weeks v. Wyeth), prompted the certification of a question to the Court. The Court was asked to resolve the issue of whether brand-name Defendants can be held liable in cases where the Plaintiff only ingested the generic form of the drug.

The Defendants based their argument on a federal case from the Fourth Circuit Court of Appeals, (Foster v. American Home Products), which held that a brand-name Defendant could not be held liable on such claims. The Alabama Supreme Court, however, not only held that brand Defendants may be held liable for harm caused by generic drugs, but that it would be unfair not to do so. The Court stated that the company which manufactured the drug taken by the injured Plaintiff is “irrelevant” to misrepresentation and fraud theories based on information and warning deficiencies created by the brand manufacturer as the original author of the warning labels.

The Court recognized a crucial element to these claims regarding generic drug use. The federal requirement is that generic labeling must be the same as the brand name’s labeling. This obligation of sameness makes it foreseeable that any defects or omissions in the brand labeling would necessarily be repeated in the generic labeling, and that harm would be caused to a patient ingesting the generic drug due to those brand labeling defects.

Furthermore, the Court in this case contemplated the learned intermediary doctrine, which requires drug manufacturers to adequately warn physicians about a drug’s risks and benefits. The Court held that a brand manufacturer could reasonably foresee that a physician who prescribes drugs to a patient would rely on warnings drafted by the brand, even if the patient ultimately used the generic version. That certainly is logical and makes complete sense.

For cases that were stayed pending the outcome of this decision, it is expected that the stays will be lifted so that litigation can continue. Chris Hood, a very good lawyer with The Heninger firm in Birmingham, represented the Plaintiff in the Weeks’ case. Chris and his folks did an outstanding job, not only for their client, but for all other victims. If you have questions about the status of Reglan litigation generally, contact Danielle Ward Mason, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Danielle.Mason@beasleyallen.com.

**Settlement Reached In Lawsuit Over DES**

Eli Lilly and Co. has settled a lawsuit brought by four sisters who contended their breast cancer was caused by a drug their mother took during pregnancy in the 1950s. This is believed to be a significant settlement which could result in financial settlements in scores of other claims brought by women around the country. A total of 51 women, including the Melnick sisters, filed lawsuits in Boston against more than a dozen companies that made or marketed a synthetic estrogen known as DES. The Melnick sisters’ case was the first to go to trial. The settlement was announced on January 8th. The case was in its second day of testimony.

DES, or diethylstilbestrol, was prescribed to millions of pregnant women over three decades to prevent miscarriages, premature births and other problems. It was taken off the market in the early 1970s after it was linked to a rare vaginal cancer in women whose mothers used it. Studies later showed the drug didn’t actually prevent miscarriages. The jury was told during opening statements that Eli Lilly failed to test the drug’s effect on fetuses before promoting it as a way to prevent miscarriages. Eli Lilly told the jury that there was no evidence the drug causes breast cancer in the daughters of women who took it. The company contended there were no medical records showing that the mother of the Melnick sisters took DES or that, if she did take it, it was made by Eli Lilly. DES was not patented and was made by many companies.

The Melnick sisters said they all developed breast cancer in their 40s. Their mother did not take DES while pregnant with a fifth sister and that sister has not developed breast cancer. The four Melnick sisters also had miscarriages, fertility problems or other reproductive tract problems long suspected of being caused by prenatal exposure to DES. They were diagnosed with breast cancer between 1997 and 2003 and had treatments ranging from lump-removal surgery to a full mastectomy, radiation and chemotherapy. Thousands of lawsuits have been filed alleging links between DES and vaginal cancer, cervical cancer and fertility problems.

Many of those cases have been settled. Aaron M. Levine, a very good lawyer based in Washington D.C., represented the Plaintiffs in this case. He did a very good job for his clients.

Source: *Washington Post*

**FDA Cuts Sleeping Pill Dosages In Half**

Sleeping pills are among the most widely prescribed medications in the United States. The FDA announced earlier this month that it will require the manufacturers of zolpidem, sold as Ambien and Edluar, to reduce recommended dosages because of concerns about morning drowsiness caused by the pills. The warning says the risk is especially high in women and that the recommended dosages should be halved when prescribed to women. The FDA has received 700 reports of the sleeping pill leading to “impaired driving ability and/or road traffic accidents.”

Researchers found that after eight hours, a 10mg dose of regular Ambien resulted in 15 percent of women and 3 percent of men having zolpidem levels high enough to cause next-morning impairment, which can negatively impact performance in tasks that require alertness, including driving. With extended release prescriptions, the results were similar but more staggering—33 percent of women were found to have zolpidem levels high enough to cause next-morning impairment, compared to 25 percent of men. The FDA is examining the effects of other sleeping pills and will require companies to do driving studies to determine if different dosing is needed for them as well. If you need more information contact Melissa Prickett, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Melissa.Prickett@beasleyallen.com.

Sources: *U.S. News Weekly* and *ABC News*

**Supreme Court Rules For Nike In Trademark Case**

Nike Inc. won a victory in a case before the U.S. Supreme Court that barred a smaller rival from suing to void the company’s trademark for its top-selling Air Force 1 sneakers. Chief Justice John Roberts wrote for a unanimous Court in last month’s ruling that Nike’s promise not to pursue an infringement lawsuit against Already LLC, maker of Yums sneakers, meant that the Texas company could not pursue its own trademark challenge. The Chief Justice wrote:

American International Group Inc. has filed a lawsuit against an entity created by the Federal Reserve Bank of New York to help bail out the insurer. The suit is an effort to preserve its right to sue Bank of America Corp and other issuers of mortgage debt that went sour. The complaint, filed in the New York State Supreme Court in Manhattan, seeks a declaration that AIG has not transferred billions of dollars of “litigation claims” to Maiden Lane II, including many related to the insurer’s $10 billion lawsuit against Bank of America.

Maiden Lane II was created in December 2008 to buy residential mortgage-backed securities (RMBS) from AIG and ease liquidity strains. According to the complaint, New York Fed officials in December told Bank of America that Maiden Lane II had, by agreeing to buy the securities, assumed from AIG all litigation claims relating to what it bought. AIG said this included more than $7 billion of damages claims against Bank of America. AIG is not seeking monetary payments in the lawsuit, but wants the court to clarify that the New York-based insurer still has the right to sue issuers of securities in Maiden Lane II.

The lawsuit is part of the fallout from AIG’s $182.3 billion federal bailout that began in September 2008, and which was fully paid off last year. It came after AIG provoked a firestorm in Congress and from the American people this week as it considered whether to sue the government that bailed it out by joining a $25 billion lawsuit by former Chief Executive Hank Greenberg. As we wrote this month, AIG eventually decided to stay out of that case.

When it sued Bank of America in August 2011, AIG accused the Charlotte, N.C.-based lender of misrepresenting the quality of more than $28 billion of securities it had bought from the bank and its Countrywide and Merrill Lynch units. An AIG spokesman said its lawsuit “narrowly seeks a declaration from the Court that a 2008 contract between AIG and ML II did not transfer to ML II AIG’s right to sue Bank of America and other financial institutions for the billions of dollars of damages they caused AIG and its shareholders in connection with the fraudulent sale of RMBS to AIG.” According to the complaint, Maiden Lane II paid $20.8 billion for a variety of subprime and other mortgage securities from AIG, barely half of their estimated $39.3 billion face value. The case is *American International Group Inc. et al v. Maiden Lane II LLC, New York State Supreme Court, New York County, No. 65015/2013*.

Source: *Insurance Journal*
**XIII. AN UPDATE ON SECURITIES LITIGATION**

**SECURITIES FRAUD CLASS ACTIONS DECLINED IN 2012**

It was reported recently that fewer investors took corporate wrongdoers in America to court for fraud last year. The number of new federal securities fraud lawsuits seeking class-action status fell to a seven-year low in 2012, according to a study by Stanford Law School and Cornerstone Research released on January 23th. Just 152 such lawsuits were filed last year, down 19 percent from 188 in 2011, mainly because of fewer lawsuits challenging mergers.

Last year’s total is also 20 percent below the average of 190 for the period from 1997 to 2012. Only 205, when 120 lawsuits were filed, was a quieter year for new cases. And in last year’s fourth quarter, just 25 new securities fraud lawsuits were filed, the fewest in any quarter since 1997, the first year included in the study. Big companies also were sued less in 2012 than in prior years. Seventeen companies in the Standard & Poor’s 500 index were named as Defendants in 2012, versus an average of 31 over the prior decade. According to the study, just 13 merger-related securities fraud lawsuits were filed in federal courts last year, down from 45 in 2011.

The number of lawsuits tied to initial public offerings of Chinese companies, including those with questionable accounting, also declined sharply, falling to ten from 31. Interestingly, no new lawsuits tied to the 2008 financial crisis were filed last year. There was an increase in the number of lawsuits involving more traditional securities fraud claims, such as a failure to disclose market-moving news sooner. Stanford and Cornerstone said the U.S. Securities and Exchange Commission’s whistleblower program, begun after passage of the Dodd-Frank financial reforms, could result in more lawsuits being filed.

The SEC has said in a report that it received 3,001 tips from October 2011 to September 2012. Nearly half related to corporate disclosures and financials, fraud in securities offerings or manipulation. It gave its first whistleblower award, of nearly $50,000, in August. According to Joseph Grundfest, a Stanford law professor and former SEC commissioner, a successful SEC whistleblower program could result in more private lawsuits. He stated:

*The question is how many cases the SEC brings, how strong those cases are, and how easily will private party Plaintiffs be able to ‘piggyback’ on disclosures from the commission’s complaints.*

It will be interesting to see how things develop this year. We are seeking more potential cases in this area in our firm. Most are in the investigative stage at this juncture. If you need more information on any aspect of securities litigation, or cases our firm is handling, contact Michelle Fulmer at 800-898-2034 and she will have the appropriate lawyer contact you.

*Source: Insurance Journal*

**THE SEC IS AFFORDING WHISTLEBLOWERS GREATER PROTECTION**

Lawyers in our firm are being contacted on a recurring basis by individuals reporting wrongdoing at their work place. These so-called whistleblowers often lose their jobs and are personally maligned for simply trying to do the right thing. Thankfully, the Security and Exchange Commission now seems to be taking a more protective posture toward whistleblowers. A recent article in JDSupraLawNews noted:

SEC Regional Office Director David Bergers recently emphasized the importance of a company’s whistleblower policy when deciding whether to file an enforcement action against a company. Bergers made his comments at an internal investigations panel on December 7, 2012 sponsored by the Massachusetts Lawyers Weekly. For more information about the panel, see Martha Kessler, “Bergers Tells Issuers to Preserve Data Upon Learning of Possible Investigation,” Bloomberg Securities Regulation & Law Report, 44 SRLR 2280 (Dec. 17, 2012).

Bergers noted that a company should show the SEC that it takes whistleblowers seriously, even if a particular whistleblower has issues that the company believes undermine his or her credibility. Bergers said that the SEC wants “to see that the company is taking their concerns seriously, and how they are talking about them.” The SEC wants to know, according to Bergers, that the company is “separating [the allegations] from whatever or whoever is making them.” The company that acknowledges that there has been a whistleblower complaint, but tells the SEC “first let us give you the employment file” may find itself at odds with the SEC’s approach to a whistleblower’s concerns. Although the SEC will consider information about the whistleblower, including material in an employment file, Bergers noted that the agency “is primarily interested in what the company does with the whistleblower’s allegations and how it treats the whistleblower.”

Hopefully the SEC’s position will embolden more whistleblowers to report illegal activities. If you need additional information on whistleblower litigation, contact Scarlette Tuley, a lawyer in our Consumer Fraud Section, at 800-898-2034 or by email at Scarlette.Tuley@beasleyallen.com.

*Source: JDSupraLawNews*

**NEW COMMISSIONER SAYS THERE IS NO NEED FOR DUAL REGULATION**

The new CEO of the National Association of Insurance Commissioners (NAIC) says there is a limited role for the federal government in insurance in partnership with state regulators, but he believes there is “no need for dual regulation.” Former U.S. Senator Ben Nelson is a staunch advocate for state insurance regulation. He promised to work at improving the state-based system, rather than weakening or replacing it. The NAIC repre-
sents appointed and elected insurance regulators in all states, the District of Columbia and territories.

Nelson believes state regulators should form a partnership with federal and even international officials but that state regulation itself should be preserved. He said any partnerships must recognize the “importance and value of state regulation.” The NAIC’s focus, according to Nelson, will be on how we make the insurance industry responsive to the needs back home” in the states. He said NAIC will soon be issuing a report on recommended improvements to state regulation.

There are some segments within the insurance industry and consumer circles that support giving insurers a choice of federal over state regulation, arguing that state-based regulation is not effective or efficient in dealing with large national and global insurers and issues. The Dodd-Frank Wall Street Reform Act created the Federal Insurance Office (FIO) within the Treasury, but Nelson said the law does not give a regulatory role to the FIO or to the federal government. He said further that there should not be “a regulatory role” for the federal government. NAIC President-Elect Adam Hamm, who is the North Dakota insurance commissioner, believes Nelson is the right person for the NAIC’s top staff job, saying he has the “perfect resume” for the CEO position.

Source: Insurance Journal

A LOOK AT THE RENTAL CAR INSURANCE INDUSTRY

Consumers across the nation who rent cars while on business trips or on summer vacation commonly face the same issue: whether or not to purchase rental car insurance. The National Association of Insurance Commissioners, or NAIC, conducted a survey in 2007 that revealed about 42 percent of consumers are confused or have a rough idea about insurance coverage when renting a car.

Most consumers do not realize that they may already have limited coverage for their rental car through their existing insurance policies for their personal vehicles. If you have an insurance policy on your personal vehicle then you can call your insurance agent and find out if your policy covers rental cars. Insurance carriers vary in what their policies cover, so inquire about what your particular policy specifically covers. Many insurance carriers can add rental car insurance coverage to your existing policy if you so choose.

Additionally, many credit cards provide limited car rental insurance coverage when a car is rented through that particular credit card provider. Consumers can call the 1-800 number on the back of most major credit cards and inquire whether their credit card provides them with car rental insurance and what the insurance coverage is.

Typically, there are several types of coverage in the rental car insurance world: collision damage waiver, liability, personal effects coverage, and personal injury coverage. Collision damage waiver, or loss damage waiver, usually covers damage or theft and sometimes includes towing, storing, and loss-of-use charges after an accident. Liability coverage extends to any damage you cause to other persons or property in an automobile accident. Personal effects coverage provides protection and peace of mind in the event theft or damage occurs to any personal items located in a rental car. Finally, personal injury protection will cover medical expenses for you and any passengers in your rental car in the event of an automobile accident.

It’s very important for customers to be knowledgeable when purchasing rental car insurance. Asking questions is the best way for a consumer to be absolutely certain they have the insurance protection they require while taking a trip in a rental car. Your insurance agent or a lawyer would be able to explain the nature of your existing insurance policies that cover your personal automobiles and whether those policies extend limited coverage for rental cars. Always ask about exceptions to your insurance policy. Insurance companies commonly write policies with specific exceptions that will not extend protection to a consumer. If you need more information, contact an insurance agent or a lawyer would be able to explain the nature of your existing insurance policies that cover your personal automobiles and whether those policies extend limited coverage for rental cars. Always ask about exceptions to your insurance policy. Insurance companies commonly write policies with specific exceptions that will not extend protection to a consumer. If you need more information, contact an insurance agent or a lawyer.

NEW ALABAMA LAW TARGETS DRIVERS WITHOUT INSURANCE

There is a very good chance the 900,000 Alabama vehicles without liability insurance will be caught this year. On January 1st the State began enforcing a law designed to crack down on motorists who don’t abide by Alabama’s mandatory insurance law. This is one of several laws that took effect with the New Year. A new online insurance verification system, overseen by the state Revenue Department, will check insurance companies’ records within a few seconds to see if a motorist has insurance. County license plate officials will use it when issuing or renewing a tag. Law enforcement officers will use it when issuing tickets. The Revenue Department also will do random computer checks to find motorists who have dropped their insurance. The new system is the result of a bill sponsored by Sen. Arthur Orr of Decatur, which was passed and signed into law by Governor Robert Bentley.

The insurance Research Council estimates that 22 percent of Alabama’s more than 4 million private vehicles don’t abide by the mandatory insurance law, which is the sixth-highest rate of any state. According to Revenue Commissioner Julie Magee, her goal for the new system is to get that figure below 10 percent. She says that would be a relief for staff personnel at the state Insurance Department. Chief of Staff Ragan Ingram says that the number one or number two complaint the Department gets each year relates to uninsured motorists on the road in Alabama.

Under the current law, a motorist can buy insurance when it’s time to renew a car tag and get an insurance card to show officials. Then the motorist can quit paying for the insurance after one month, but still have the insurance card to show police if stopped for speeding. With the new system, the police officer can learn the status of the driver’s insurance while checking the car tag. Then the officer can write two tickets: one for speeding and one for driving without insurance. According to Commissioner Magee, the cost of driving without insurance can be more expensive than buying insurance. A first offense can result in a fine of up to $500 and subsequent offenses can go up to $1,000. It can also result in suspension of the vehicle’s registration. Reinstating it will cost $200 for a first offense and $400 for subsequent offenses.

In closing, let me add that all Alabamians who carry liability insurance on their vehicles should check on their “uninsured motorist coverage” limits. I suspect most are woefully low. If that’s the case, those limits should be increased significantly. Check with your insurance agent to see what your situation is. Also, remember that in Alabama uninsured policies also apply when a third-party tortfeasor is “underinsured.” If you would like more information on that subject contact either Julia Beasley or Mike Crow in our firm at 800-898-2034 or by email at Andrew.Brashier@beasley-allen.com.

Source: AL.com

XV. EMPLOYMENT AND FLSA LITIGATION

2012 WAS A LANDMARK YEAR FOR WORKPLACE CLASS ACTION LITIGATION

When it comes to complex employment-related legal disputes, 2012 will be considered a landmark year, according to a new report on employment class action litigation. Many of the key rulings of 2012 in class action cases hinged on the U.S. Supreme Court’s 2011 rulings in three cases — Wal-Mart Stores, Inc. v. Dukes; AT&T Mobility LLC v. Concepcion, and Smith v. Bayer. The 9th annual
The sluggishness of the U.S. economy during 2012 fueled more class action and collective class action litigation. This trend is expected to continue in 2013 as businesses retool operations in an improving economy and the Obama Administration renews an emphasis on enforcing workplace laws.

Wage and hour litigation continued to outpace all other types of workplace class actions in 2012, led by 7,672 Fair Labor Standards Act (FLSA) lawsuits filed this past year, an increase of 893 cases from the then-record levels in 2011. These figures are expected to grow again in 2013, as well as wage and hour class action litigation.

The Plaintiffs’ class action bar has responded to Wal-Mart with new approaches to class-wide theories of certification, liability, and damages related to the Rule 23 developments.

For further details, the complete 870-page Report is available for the first time as an eBook, which is accessible from Seyfarth’s website. To learn more or request a copy, visit http://www.seyfarth.com/publications/Ninth-Annual-Workplace-Class-Action.

Source: Insurance Journal

RITE AID TO PAY $20.9 MILLION TO SETTLE 14 LAWSUITS

Rite Aid has agreed to pay $20.9 million to settle 14 lawsuits that accused the drug store chain of violating state and federal wage laws. A federal judge has approved the $20.9 million settlement, thus ending the lawsuits that alleged some salaried assistant and co-store managers were wrongly classified to avoid paying them overtime. The settlement encompasses back pay, damages and attorney fees for cases filed in federal and state courts. Under the Fair Labor Standards Act, certain salaried managerial employees in “executive, administrative or professional” roles may be exempt from overtime, but lower-level employees are entitled to increased compensation for more than 40 hours worked per week. The “executive exemption” under the FLSA allows companies to pay managers a set salary and avoid paying them overtime in the event a manager works more than forty hours. However, the exemption also mandates that managers must actually do management duties as their primary duty as opposed to the same tasks as hourly workers.

Source: Pennlive.com

BURGER KING SETTLES SEXUAL HARASSMENT CASE FOR $2.5 MILLION

One of Burger King’s largest franchisees has agreed to pay $2.5 million to settle federal claims of sexual harassment. Carrols Corp., based in Syracuse, N.Y., operates nearly 600 Burger King franchises in the United States across 13 different states. According to reports, Carrols Corp., employs more than 17,000 people.

The lawsuit claimed that as many as 89 women employed by Carrols Corp. had suffered harassment. According to media reports, the women claimed to have been the victims of a range of undignified treatment such as receiving obscene comments, as well as being exposed to unwanted physical contact, including strip searches and the exposure of genitalia. The most serious accusations even included rape. Many of the victims were young women and teenagers.

The Equal Employment Opportunity Commission says the agreement with Carrols Corp. covers 89 female employees around the country. The settlement ends a 14-year lawsuit that was one of the most extensive in the commission’s history. As is the custom in these settlements, Carrols Corp. did not admit any wrongdoing. The settlement also requires the company to improve its ability to respond to harassment charges.

Sources: Huffingtonpost.com and the Christianpost.com

CHANGES COMING IN THE HOME HEALTH-CARE INDUSTRY

In 1974, when Congress expanded the protections of the Fair Labor Standards Act of 1938 to “domestic service” workers, it also created a limited exemption from the minimum wage and overtime requirements for companions for the aged and infirm.

But since that time, a growing demand for long-term in-home care has spawned substantial growth in the in-home care service industry. These workers are no longer compassionate neighbors, but instead professional caregivers employed by third-party employers rather than family members. As a result, the Department of Labor has proposed changes to the companionship regulations that would limit the exemption’s scope and more clearly define tasks that an exempt companion could perform. The proposed changes are:

• First, the amendments would limit the exemption to workers employed by the individual, family, or household, and would disallow use of the exemption by third-party employers, such as home health-care agencies.

• The amendments would also limit a companion’s duties to fellowship and protection (e.g., playing cards, watching television together, visiting with friends and neighbors, taking walks, engaging in hobbies).

• And they would only allow for certain incidental personal care services (e.g., occasional dressing, grooming, driving to appointments) if the incidental activities did not consume more than 20% of the companion’s time.

Sources:

http://www.seyfarth.com/publications/Ninth-Annual-Workplace-Class-Action

http://www.jerebeasleyreport.com

The Department of Labor believes that the amendments will create better standards of living for companion workers, more jobs, and less turnover in the in-home care service industry that will lead to a better quality of care. For third-party employers, the amendments will mean the payment of minimum wages and overtime pay, or the threat of litigation. If you need more information on this subject, contact Brad Smelser, a lawyer in our firm, at 800-898-2034 or by email at Brad.Smelser@beasleyallen.com.

Source: www.dol.gov

XVI. PREDATORY LENDING

AGREEMENT REACHED BETWEEN TEN BANKS TO PAY $8.5 BILLION FOR FORECLOSEURE ABUSE

Ten major banks reached an agreement last month to pay a reported $8.5 billion to settle federal complaints that they wrongfully foreclosed on homeowners who should have been allowed to stay in their homes. The Office of the Comptroller of the Currency and the Federal Reserve jointly announced the settlement.

Under the terms of the settlement, the banks will pay homeowners to end a review process of foreclosure files that was required under a 2011 enforcement action. The review had been ordered because it was discovered that the banks mishandled the paperwork of persons, and also skipped required steps in the foreclosure process. The companies involved in the settlement were: JPMorgan Chase, Bank of America, Wells Fargo, Citigroup, MetLife Bank, PNC Financial Services, Sovereign, SunTrust, U.S. Bank and Aurora. The 2011 enforcement action also included GMAC Mortgage, HSBC Finance Corp. and EMC Mortgage Corp.

Under the settlement, homeowners who were subjected to a wrongful foreclosure could receive amounts ranging from $1,000 up to $125,000. According to guidelines released last summer by the OCC, a lighter offense, for example, would be failing to offer someone a loan modification; while conversely, unfairly seizing and selling someone’s home would entitle that person to the biggest payment.

It’s reported that there are up to 3.8 million folks covered under the settlement agreement who were in foreclosure in 2009 and 2010, and all of them will receive some amount of compensation. While it averages out to only $2,237 per homeowner, the payouts are expected to vary widely. According to regulators, about $3.3 billion would be direct payments to borrowers, whereas another $5.2 billion would pay for other assistance, including loan modifications. It’s difficult to know whether this is a real good settlement for the banks’ victims, considering how the settlement is structured. The true monetary value of the settlement could be much less than the reported $8.5 billion.

In any event, Comptroller of the Currency Thomas Curry says the settlement “represents a significant change in direction” from the original 2011 agreements. Banks and consumer advocates had complained that the loan-by-loan reviews required under the 2011 order were time-consuming and costly. The banks were paying large sums to consultants who were hired to review the files. Some have questioned the independence of those consultants, and that’s because they often ruled against the homeowners.

It’s being reported that some of the consultants, who considered what the banks were doing to be fraudulent, were actually fired. The new settlement, however, does meet the original objectives by ensuring that consumers actually benefit from the settlement. Hopefully, the fact that victims will benefit more quickly and in a more direct manner will prove to be a good thing. Many of the homeowners would probably receive much more actual money if they took their claims to litigation, but that’s another story.

The settlement is separate from a recent $25 billion settlement between 49 state Attorneys General, federal regulators, and five banks: Ally; formerly known as GMAC; Bank of America; Citigroup; JPMorgan Chase and Wells Fargo. While the amounts in that settlement, as well as in the current ten-bank deal, seem huge, one must remember that lots of folks were hurt badly by the banks. Putting things in perspective, in reality considering the tremendous harm they did and their legal exposure, the banks may have come out “smelling like a rose.”

If you have any questions about predatory lending or mortgage servicing fraud, contact Bill Robertson, a lawyer in the firm’s Fraud Section, at 800-898-2034 or by email at Bill.Robertson@beasleyallen.com. Bill is currently handling cases against companies involving predatory lending and/or fraudulent mortgage servicing practices.

Source: Associated Press

GOLDMAN AND MORGAN STANLEY WILL PAY $557 MILLION IN MORTGAGE CASE

Goldman Sachs and Morgan Stanley will pay a combined $557 million to settle federal complaints that they wrongfully foreclosed on homeowners who should have been allowed to stay in their homes. The agreements, announced on January 17th with the Federal Reserve, were similar to the settlements with the ten major banks and mortgage lenders mentioned above. In this settlement, Goldman will pay $330 million and Morgan Stanley will pay $227 million. The settlements could compensate hundreds of thousands of Americans whose homes were seized because of abuses such as “robo-signing.” The agreement will also help eliminate huge potential liabilities for the banks.

Several consumer advocates believe the regulators settled for too low a price by letting banks avoid full responsibility for foreclosures that victimized families. Under the settlement, Goldman and Morgan Stanley will pay a combined $232 million in cash compensation to homeowners to end an independent review of loan files required under a 2011 action by the Fed and the Office of the Comptroller of the Currency. The remaining $325 million will be used to reduce mortgage balances and to forgive outstanding principal on homeowners’ loans that generate less than borrowers owed on their mortgages.

About 220,000 people whose homes were in foreclosure in 2009 and 2010 are eligible for payments under the settlement with the two banks, according to the Fed. The payments could range from hundreds of dollars up to $125,000, depending on the type of error. The structure of the settlement is nearly identical to the $8.5 billion settlement by the ten banks mentioned above. Those banks are paying about $5.3 billion to 3.8 million homeowners to end the review of foreclosures. The rest — $5.2 billion — is going toward mortgage modifications and principal forgiveness.

Two other banks were subject to the 2011 independent reviews. HSBC and Ally Financial have been in discussions with regulators on similar settlements, but have not yet reached agreements. Banks and consumer advocates had complained that the loan-by-loan reviews required under the 2011 order were time-consuming and costly and didn’t reach many homeowners. Banks were paying large amounts to consultants to review the files. Some questioned the independence of those consultants, who often ruled against homeowners.

The settlements don’t close the book on the housing crisis, which brought more than 4 million foreclosures. Only borrowers who were in foreclosure in 2009 and 2010 are covered in the settlement. Resolving millions of claims involving multiple banks and mortgage companies is complicated and time-consuming. The settlements announced last month are separate from a $25 billion settlement agreed to last February with five major banks by the federal government and 49 states. Those banks are Ally; Bank of America, Citigroup; JPMorgan and Wells Fargo.
TAXPAYERS WILL HELP THE BANKS PAY IN MORTGAGE SETTLEMENT

A number of consumer advocates are complaining that U.S. mortgage lenders are getting off too light in the settlement to resolve charges that they wrongfully foreclosed on many homeowners. It now appears the settlements are even better for the lenders than first appeared. Taxpayers will actually subsidize the banks for the money they are paying out. The Internal Revenue Service regards the lenders’ compensation to homeowners as a cost incurred in the course of doing business. This results in the amounts being fully tax-deductible.

Critics argue that big banks that were bailed out by taxpayers during the financial crisis are again being favored over the victims of their mortgage abuses. The 12 mortgage lenders that settled with hundreds of thousands of homeowners whose homes were seized improperly, a result of abuses such as “robo-signing,” are discussed above.

Many consumer advocates argued that regulators settled for too low a price by letting banks avoid full responsibility for the wrongful foreclosures that victimized families. The price the banks will actually pay will be further eased by the tax-deductibility of their settlement costs. Companies can deduct those costs against federal taxes as long as they are compensating private individuals to remedy a wrong. By contrast, a fine or other financial penalty is not tax-deductible.

Taxpayers “should not be subsidizing or in any way paying for these corporations’ wrongdoing,” according to Phineas Baxandall, a senior tax and budget analyst at the U.S. Public Interest Research Group, a consumer advocate. In some rare cases, federal regulators that have reached financial settlements with companies have barred them from writing off any costs against their taxes, even if they might be legally entitled to do so.

When companies negotiate financial settlements, they surelly consider whether they can deduct some of their costs incurred. At least one lawmaker, Sen. Sherrod Brown, D-Ohio, wants regulators to stop the tax deductibility of the lenders’ costs. Sen. Brown made his argument in a letter to Federal Reserve Chairman Ben Bernanke, U.S. Comptroller of the Currency Thomas Curry, and other top regulators. It should be noted that the Fed and the Comptroller’s office, a Treasury Department agency, negotiated the foreclosure abuse settlements with the banks that we wrote about above. Sen. Brown wrote in his letter that “[i]t is simply unfair for taxpayers to foot the bill for Wall Street’s wrongdoing. Breaking the law should not be a business expense.”

I totally agree with Sen. Brown. If you agree with him, write and let him know. You should also write the Congressional delegate in your state and ask them to support legislation that would stop wrongdoers in the corporate world from shifting the costs of their settlements to taxpayers.

Sources: Associated Press and Corporate Crime Reporter

FAMILY FILES LAWSUIT ARISING OUT OF A SKI SLOPE DEATH

The parents of a five-year-old girl who was killed in a Hogadon Ski Area accident in 2010 have filed a lawsuit against the ski patrol and city of Casper, Wyo., for wrongful death, negligence and personal injuries. The civil lawsuit filed in Natrona County District Court says the Casper Mountain Ski Patrol and city failed to protect the girl from an intoxicated person snowboarding “recklessly” at “excessive speeds.” The Johnson family seeks payment for medical expenses and other monetary damages as allowed by state law.

The accident happened on Christmas Eve of 2010, when 23-year-old Craig Shirley was snowboarding on the “Dreadnaught run” and collided with Kelli Johnson and her daughter, Elise. Kelli Johnson suffered serious injuries in the crash and, sadly, Elise was killed. Shirley, the snowboarder, was also killed. It’s alleged in the complaint that the Dreadnaught run was slick by the afternoon of December 24th, the time when the mother and daughter were skiing. Reportedly, the black-diamond Dreadnaught run requires high skill levels and had just opened for the season at the city-owned ski area when this incident occurred.

It was reported that Kelli and Elise Johnson made it partway down Dreadnaught when Elise’s skis came off. The two were the only skiers on the run at the time. They came to a stop about the same time Shirley began the run. Shirley was estimated to have traveled at speeds of 40 to 50 mph and appeared intoxicated earlier in the day. A toxicology report later showed Shirley had a small amount of cannabinoids in his system. It appears that an investigation found that Shirley committed no criminal offense at the time of the accident.

But it was alleged in the complaint that in the past Shirley had been cited for snowboarding recklessly, sometimes at high speeds, and was known for his dangerous behavior. Despite this, Hogadon Ski Area employees allowed Shirley on the slopes. It was alleged further that ski patrol members who were nearby watching Shirley’s speedy descent did not instruct him to stop or warn the Johnsons. The lawsuit claims that as a result the ski patrol and city have responsibility for Elise Johnson’s death. The Spence Law Firm, based in Jackson, Wyo., represents the Johnson family in this case.


XVIII. WORKPLACE HAZARDS

Construction sites by their very nature are dangerous. The potential for injury and even death to workers is something that OSHA has addressed. It has been reported that falls are the leading cause of death in construction, accounting for one third of all construction-related fatalities. These falls are preventable through proper planning, the use of the right equipment, and employees appropriately and adequately training their employees. OSHA 1926.501 requires employees to be protected from falling at heights six feet or more above a lower level.

OSHA says that planning for fall protection begins at the bidding stage. The cost of furnishing appropriate equipment must be included in contractors’ budgets. Prior to construction, contractors should determine what fall protection measures should be taken so that those elements can be procured. Such things as how workers will gain vertical access throughout the project must be addressed. Temporary stairways, ladders, scaffolds, and aerial lifts must be provided for employees to use. Workers must be protected when working at leading edges. Steel members can have holes pre-punched to receive perimeter cables or horizontal lifelines. Davits can be embedded in concrete elements to serve as anchor locations for fall arrest systems.

Proper equipment must be furnished. This equipment must also be properly used and maintained. Fall protection equipment includes the stairways, ladders, scaffolds, aerial lifts and fall arrest systems mentioned above. Also, covers for floor, roof and wall openings need to be considered. Safety nets may be a potential fall protection solution. Guard rails should be provided at locations along the building perimeter and at interior openings. Aerial lifts and man-baskets need to be equipped with railings and tie-off points. Personal fall arrest systems must include lanyards which match their particular use. Ladders need to be of sufficient height that they are easily grasped at the top when ascending or descending. This equipment must be regularly inspected and repaired or replaced when parts are worn, broken, bent, frayed, or otherwise damaged.
Falls can be prevented when employees learn to recognize fall hazards and what corrective procedures to utilize to erect, inspect, and maintain fall protection systems. OSHA 1926.505 requires employers to provide training programs for each employee who might be exposed to fall hazards. Retraining may be required for employees who haven’t demonstrated the proper fall protection skills. Specific scaffold training is required for those working on scaffolds.

OSHA says that out of 4,114 worker fatalities in private industry in calendar year 2011, 721 (17.5%) were in construction. The leading causes of worker deaths on construction sites were falls, followed by electrocution, struck by object, and caught-in/between. These four causes were responsible for nearly 57% of the construction worker deaths in 2011. Eliminating them would save 410 workers’ lives in America every year. Deaths from these four causes were as follows:

- Falls caused 251 out of 721 total deaths in construction in CY 2011 (35%);
- Electrocutions caused 67 (9%);
- Struck by Object caused 73 (10%); and
- Caught-in/between caused 19 (3%).

It’s necessary to recognize what safety regulations are being violated in the workplace in order to work on stronger preventive measures. It was reported that the following are the Ten Most Frequently Cited OSHA Standards Violated in FY2011:

- Scaffolding, general requirements, construction (29 CFR 1926.451).
- Fall protection, construction (29 CFR 1926.501).
- Control of hazardous energy (lockout/tagout), general industry (29 CFR 1910.147).
- Electrical systems design, general requirements, general industry (29 CFR 1910.303).

I hope you will find the above information to be helpful. Prevention of injuries in the workplace is a shared responsibility between employees and employers with employers having the more dominant role in making sure—to the extent possible—that workplaces are safe. The government’s role is to make sure that the employers meet their responsibilities.

Source: OSHA.gov

OSHA CITES NEW YORK ROOFING COMPANY FOR FALL HAZARDS

According to The Occupational Safety and Health Administration, A.M. Stern Inc., a Rochester, N.Y., roofing contractor faces nearly $160,000 in fines for fall hazards at job sites. OSHA says it has cited the contractor for repeated and serious violations of workplace safety standards while workers installed a roof in Fairport. The agency says inspectors were at the suburban Rochester job site twice last year and observed Stern employees exposed to falls of 15 to 30 feet while working at the unprotected edges of the building’s roof. Stern was cited for a similar violation in 2008 at a Geneseco worksite. The contractor was also cited for other violations at the Fairport site, including failure to warn employees of fall hazards.

Source: OSHA

NEW YORK CITY SUSPENDS LICENSE OF OPERATOR OF FALLEN CRANE

The operator of a crane that collapsed at a New York City construction site was trying to lift a load more than twice as heavy as the crane’s capacity in a place where it shouldn’t have been, according to officials. The Department of Buildings suspended Paul Geer’s crane operator license following a preliminary investigation into the collapse that injured seven construction workers in Queens. The agency said Geer was trying to lift a load of close to 24,000 pounds when its 170-foot-long boom fell onto metal scaffolding and the wooden framework that made up the first floor of what will be a 25-story apartment building. Fortunately, none of the injuries were life-threatening.

Buildings Commissioner Robert Limandri also said Geer couldn’t see what was being lifted by the crane, and was trying to move the materials outside of an approved zone. TF Cornerstone was the project’s main contractor. At press time, the construction site remained closed. The equipment was leased from New York Crane and Equipment Corp. by a subcontractor for TF Cornerstone.

Construction cranes have been a source of safety concerns since two giant rigs collapsed in Manhattan in 2008, killing a total of nine people. One of the cranes was owned by New York Crane. Owner James Lomma was tried and acquitted on manslaughter charges arising out of that incident, which killed two workers. The Empire State Development Corp., which is overseeing the project, said work on the tower started in November.

This is the last residential building at the Queen’s West development near the East River waterfront. The building had been slated to be completed in early 2014. Engineers will examine the history of the crane involved in the collapse as part of the investigation, including the equipment’s maintenance and operation records. The 2008 accidents led to new safety measures, including hiring more inspectors and expanding training requirements and inspection checklists.

Source: Claims Journal

XIX.
TRANSPORTATION

DRIVING AND TEXTING RESULT IN THE DEATH OF AN INNOCENT VICTIM

The family of a 15-year-old boy has filed a wrongful death suit against a man who hit and killed the youngster while texting behind the wheel of his vehicle last year. Evie Lesser, the mother of Tommy LaVelle Clark, has sued the driver, Jeffery Lloyd Bascom, for damages. Meanwhile, Bascom, 28, has been charged in a criminal offense, automobile homicide involving the use of a hand-held wireless communication device while driving, as well as obstruction of justice, both being felonies.

According to police, Clark and a friend were walking on the shoulder of a street about 9 p.m. on Sept. 2 when a Dodge pickup driven by Bascom left the road and hit Clark. The police said Bascom was texting at the time. Clark was taken to a hospital and died the next day. As a matter of interest, an amendment to Utah’s texting-while-driving law took effect in May, making it illegal to be doing anything on a hand-held wireless communication device except making or receiving a call, or using GPS navigation. Before the change, a driver had to be sending a text at the instant an accident occurred. Merely looking at a text or the screen of a cell phone was not illegal.

The amendment was intended to make cases easier to prove, since prosecutors have said the narrow construction of the old law made it almost impossible to get convictions. Prosecutors believe Bascom’s case is the first time the new statute has been applied in their county. Bascom has a long history of traffic violations dating back to when he was 16. He

www.BeasleyAllen.com
was convicted in 2009 of driving more than 40 mph over the speed limit.
Source: Strib.com

TRUCKING FIRM IN NEW YORK CRASH HAD NUMEROUS VIOLATIONS

Unfortunately, a good number of trucking companies with vehicles on our nation’s highways have a record of prior violations. An example is Jewell Transportation, Inc., the trucking company involved in a deadly 35-vehicle pileup on the Long Island Expressway in late 2012. It was reported by Newsday that the company had been cited at least 25 times for unsafe driving since 2011. Federal transportation records reveal that the company’s trucks have also been involved in several accidents, including a fatal wreck last July in upstate New York.

A rig owned by the Vermont company collided with several other vehicles and caught fire in a chain-reaction on December 27, 2012. A 68-year-old woman was killed and another driver critically injured. At the time the rig was hauling debris from Superstorm Sandy. It’s critically important that trucking companies be made to correct known safety problems and to keep unsafe drivers off the highways.
Source: Claims Journal

MORE SURVIVORS JOIN SUIT IN DEADLY OREGON BUS CRASH

More people are joining the lawsuit that has been filed against the Canadian tour company whose bus crashed on an icy highway in Eastern Oregon in December, killing nine passengers and injuring almost 40 more. The lawsuit was filed originally in Tacoma, Wash., on behalf of two foreign exchange students who survived the crash. Five additional victims have now joined the lawsuit. The suit has been amended to add as a Defendant the president of Mi Joo Tour & Travel. It was alleged that Edward Kang was added because the factors it alleges to have led to the crash—driver fatigue, ignored warnings and excessive speed for the icy conditions—were triggered by management policies, “based upon cost and profit considerations rather than safety of their passengers.” The bus driver was also added as a Defendant.

Investigating officers have yet to say what caused the December 30th crash on Interstate 84 east of Pendleton, Ore. In the wake of the crash, government authorities in Canada and the U.S. banned the company from operating buses on their roads. The U.S. investigation found the driver had been on duty for 92 hours in the eight-day stretch before the crash, exceeding the 70-hour federal limit. A lawyer for the company, Mark P. Scheer, filed an answer to the complaint, saying the driver had plenty of sleep the night before the crash and black ice, not excessive speed, was a major factor in the bus losing control. Besides the suit filed in Tacoma, a Canadian husband and wife have sued the tour company in their home country. That lawsuit filed on behalf of June Won Kim and his wife Hee Eun Kim accuses the driver of speeding, failing to stop, ignoring traffic rules and knowingly driving a defective vehicle.
Source: Insurance Journal

XX. HEALTHCARE ISSUES

MISSISSIPPI PHARMACISTS TAKE ON BENEFIT MANAGERS AND MAIL ORDER DRUG FIRMS

Mississippi pharmacists want lawmakers in their state to force an end to limits on where people covered by certain insurance plans can get prescriptions filled. But, lobbyists for some pharmacy benefit managers say the state can’t legally regulate certain insurance plans because they’re covered by federal law. The opposing sides appeared at a House Insurance Committee hearing called by Chairman Gary Chism. Rep. Chism proposes allowing local pharmacies to match mail-order discounts given by benefit managers. Neither insurers nor independent pharmacists like this approach and opposed it.

Pharmacists say too many drug plans are forcing customers to use particular mail order and retail pharmacies or else pay more. They say that if their stores can meet the terms of the drug plan, they should be able to participate, too. The pharmacists say they just want an “even playing field for everybody involved.” The committee didn’t vote and it’s unclear if any proposal will have enough support to get through the legislature. Large pharmacy chains and drug plans say a 1996 law meant to aid independent drug stores is sufficient. They say pharmacists should complain to the Insurance Department if they see violations.

Allen Horn, a lobbyist for CVS Caremark, said his company is just implementing terms of contracts desired by clients. CVS has both retail pharmacies and a mail-order business. Horn said that some plans where employers self-insure under federal law are beyond the reach of Mississippi insurance officials. He told the committee that “[t]he are health plans that the Department of Insurance has no authority over.” Rep. Chism urged pharmacists to complain to the Insurance Department, which says it hasn’t heard from anyone claiming the current 1996 law is being violated. He believes that’s because the pharmacists and the consumers haven’t known where to complain.

The Mississippi Independent Pharmacies Association wants the state Board of Pharmacy to regulate drug plans. Executive Director Robert Dozier said it’s possible the board might be able to assert more authority over drug plans, citing a 2011 law that gives the board permission to regulate the benefit managers. It was reported that Mississippi is the only state with such a law. If that’s true, other states may need to look into whether a similar laws should be passed.
Source: Insurance Journal

CLASS ACTION ALLEGES DECEPTIVE MARKETING OF MONSTER ENERGY DRINKS

Monster-brand energy drinks are marketed as being conventional carbonated beverages despite containing “dangerously high” amounts of caffeine, according to a new consumer class action filed in the U.S. District Court for the Central District of California. It was alleged in the lawsuit:

Defendants knowingly or with reckless indifference, market, advertise and sell Monster Energy Drinks as completely safe via playful/seductive advertising designed to attract pre-teens and teens.

The lawsuit was filed against Monster Beverage Corporation of Corona, Calif. The lead Plaintiff in the case, Alec Fisher, is a Californian native who currently resides in Baltimore, Md. Fisher claimed he started drinking Monster Energy products five years ago when he was 16 years old. The complaint alleged that Monster Energy gets teenagers hooked on its products by handing out “freebies” at high schools.

According to the complaint, “numerous” scientific studies have shown that “the consumption of large amounts of caffeine, in combination with other active ingredients like guarana, taurine, carnitine, and sugar, among others, by youth and adolescents can have serious health consequences.” In December of last year, the Food and Drug Administration reported 40 adverse events related to Monster energy drinks, five of which resulted in death. A wrongful death suit filed in California state court last year alleged that a 14-year-old Maryland girl died after consuming two Monster Energy drinks.

It was alleged in the Fisher lawsuit that Monster’s product labeling fails to warn of health risks and that he never would have become a consumer of the company’s products had he known he was jeopardizing his health. According to the complaint, Monster Energy marketed its products as “carbonated energy drinks” in order to circumvent gov-
Primary Staff Contacts: Beth Warren and Jessica Sutherland

**AWP McKesson/First Databank**

In addition to pursuing drug manufacturers for the fraudulent pricing of prescription drugs, the States of Alaska, Hawaii, Kansas, and Louisiana have filed lawsuits against the major drug wholesaler, McKesson Corporation, for its role in the AWP scheme. These actions assert that from 2001 to 2009, McKesson associated itself with First Data Bank, Inc. To unlawfully and artificially increase the Wholesale Acquisition Cost (WAC) to Average Wholesale Price (AWP) markup factor for a multitude of brand name prescription drugs. McKesson and First DataBank’s deceptive practices resulted in the publication of false and misleading AWP prices, which the four states relied upon in making payments for brand name prescription drugs. McKesson and First DataBank’s scheme created overpayments for most brand name prescription drugs, in addition to the overpayments induced by the manufacturers’ fraudulent prices (the subject of separate but related AWP litigation filed by numerous states). Settlements have been reached in several of these cases already. The Beasley Allen attorneys litigating these cases are: Dee Miles, Roman Shaul, Clay Barnett, Chad Stewart, and Alison Hawthorne.

Lawyers: Dee Miles, Roman Shaul, Clay Barnett, Chad Stewart and Alison Hawthorne

**Class Actions**

Our firm’s class action practice is rapidly growing. We have cases filed all over the country ranging from consumer fraud, Antitrust, employment abuses, ERISA (Employment Retirement and Income Security Act) to product liability and nuisance cases. This area of the law continues to grow due to the corporate abuses occurring in the business world. Often times the class action is the most efficient legal vehicle to rectify a large scale “wrong” because while corporate abuse may have caused someone or a business harm, the harm is small, yet widespread. Some say a class is appropriate when “nobody gets ’hit’ for much, but everybody does get ’hit’.” Well, the “hits” keep coming and the class action cases continue to be filed.

While arbitration clauses have had some limited impact on class action filing, it has not proved to be the effective deterrent corporate America had hoped for. This is mainly due to the courts finally recognizing that arbitration was never intended to be utilized in consumer contracts. It was designed for complex business transactions involving sophisticated parties in specialized areas of business. However, corporations have abused the use of arbitration clauses to frustrate consumer resistance to their fraudulent practices; thus, it has resulted in a profit-making measure for corporate America.

Just because a consumer contract has an arbitration clause, that doesn’t mean a class action on the abusive corporate conduct is barred. There may be ways around the arbitration clause and a lawyer familiar with the ever-changing law on this issue can make that determination. Bill Hopkins, Archie Grubb, Chad Stewart and Andrew Brasher, lawyers in the section, are well versed in this area of the law.

We review many potential class actions daily and welcome the opportunity to review more.

Lawyers: Bill Hopkins, Archie Grubb, Chad Steward and Andrew Brasher

Primary Staff Contact: Bill Hopkins

**Mortgage Fraud Cases**

There are a large number of cases we are handling involving fraud in the mortgage loan area of lending, and misrepresentations involved with origination fees, servicing fees, unnecessary “add ons” and more. We have handled thousands of these cases and they continue to exist due to banks and other mortgage lenders relying of “fee revenue” as opposed to simply relying on the interest generated by the loan as income to the lender. This “fee generating” approach has landed many lenders in court and will continue to be a problem until the lenders clean up their practices.

Lawyers: Lance Gould, Scarlette Tuley and Bill Robertson

Primary Staff Contact: Paula Shaner

**Antitrust Cases**

Lawyers in the Section continue to investigate and litigate antitrust cases. Antitrust law is the law of competition. Society is better off if buyers and sellers act independently, not in concert. Antitrust law focuses on the promotion of competition through restraints on monopoly and cartel behavior. Typical cases involve attempts to monopolize, price fixing, exclusive distributorships,
refusals to deal, tying arrangements, and mergers and acquisitions. We believe that antitrust is a growing area, as corporations increasingly tend to “cross the line” as they seek to gain advantage in this tough economy.

Beasley Allen is currently involved in antitrust litigation involving an illegal tying arrangement whereby a major pharmaceutical company requires users of its patented method of administering a cardiac drug to also purchase the pharmaceutical company’s unpatented cardiac drug (as opposed to cheaper generic drugs offered by competitors). The result is that our client, a hospital, is forced to pay four times as much for the branded (but unpatented) drug as it could for identical generic drugs. The case is filed as a class action on behalf of all healthcare providers affected by this conduct.

We are also involved in price-fixing litigation where we represent a state’s Attorney General, on behalf of the state and its consumers, against manufacturers of LCD screens used in televisions, computer monitors, and cellular phones. The Federal Trade Commission and Department of Justice have already investigated and sanctioned a number of LCD manufacturers for blatant collusion in setting prices for LCD products. Other states are involved in separate litigation against these manufacturers, and we envision that all state Attorneys General will file similar claims to recoup excess prices paid by state agencies and consumers for LCD products.

Lawyers: Archie Grubb, Scarlette Tuley and Andrew Brasher
Primary Staff Contact: Mandy Cook

QUI TAM CASES

A qui tam action involves a private party, called a relator, who asserts claims on behalf of the government. Although the government is considered the real (named) Plaintiff, if the action is successful, the relator receives a share of the award. Most qui tam actions are brought under the federal False Claims Act (“FCA”), 31 U.S.C. § 3729, et s eq., although many States have adopted their own false claims acts. The successful results speak for themselves—over $54 billion in recoveries since 1986—and that tells us a powerful story. Our firm is currently involved in a number of these qui tam cases throughout the country.

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

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

Additionally, if a qui tam action is successful, the whistleblower receives between 10-30% of the Government’s recovery. Damages under the FCA include penalties and “3 times the amount of damages which the Government sustains” due to the fraud. 31 U.S.C. § 3729(a)(1)(G). In short, the law protects and rewards whistleblowers for their instrumental role in exposing and prosecuting fraud. Lawyers in our firm have waged war against corporate fraud for over 50 years and would welcome the opportunity to assist with any qui tam actions that any of our readers may have.

Lawyers: Larry Golston, Archie Grubb, Chad Stewart and Andrew Brasher
Primary Staff Contact: Mandy Cook

BANK OF AMERICA/MERRILL LYNCH

Financial Advisors who worked for Merrill Lynch participated in several deferred compensation plans, including plans with names like FACAAP, Growth Award, WealthBuilder, and other Long Term Compensation Incentive Programs (LTCIP’s). The Advisors worked hard to accumulate benefits in the LTCIP’s with the expectation that Merrill Lynch and its successors would honor their obligations under the plans. Unfortunately, those obligations have not been honored.

Bank of America’s acquisition of Merrill Lynch triggered what was defined as a “Change in Control” within the LTCIP’s. According to plain language in the plans, that event affected the vesting of deferred compensation so that any participating broker who resigned for “Good Reason” following the buyout was due to be paid the deferred compensation they worked so hard to build up. This, however, did not happen and resulted in thousands of former Merrill Lynch Financial Advisors being owed millions of dollars in unpaid benefits.

Lawyers in the section are investigating and have filed claims on behalf of former Merrill Lynch brokers against Bank of America. These former employees often left either because of the changes that occurred or in some cases were pressured or pushed out by the incoming management. In any case, they were wrongfully denied deferred compensation to which they were and may still be entitled. During these tough economic times, it is a sad commentary that any hard working person must fight for what is rightfully due to them. Beasley Allen is here to help those former Merrill Lynch employees win that fight against Bank of America.

Lawyers: Chad Stewart, Scarlette Tuley and Larry Golston
Primary Staff Contact: Jodi Turner

FLSA LITIGATION

We have been handling FLSA (Fair Labor Standards Act) cases for many years. FLSA cases range from mischaracterizing an employee as a “manager” to avoid having to pay overtime wages, to employers having employees “work off the clock” to save on labor cost, but both are violations of the law under the FLSA.

We recently filed a case against a company in Alabama alleging that the employees are not being compensated for all hours worked. The company has a policy of adjusting the work times of employees to reflect when the employees’ shifts start, rather than when the employees clock in. Most employees have to clock in and perform work 15 minutes prior to their shift starting but do not get paid for this time. This is commonly referred to as an off-the-clock violation. Over the course of weeks, months, and years, this 15 minutes of work without pay can add up.

We have handled similar cases in the past. Whether caused by interrupted meal periods or duties performed off-the-clock perhaps before or after a shift, we are always investigating cases where an employee has not received pay for all of their work.

Lawyers: Lance Gould, Roman Shaul and Brad Smelser
Primary Staff Contact: Holly Busler
**EQUAL PAY/RACE DISCRIMINATION/AGE DISCRIMINATION**

Several Lawyers in the Section also handle other employment cases involving discrimination due to gender, race, age, culture and other factors. We recently settled several cases involving these issues and hopefully bettered the work environment for many others.

Lawyers: Larry Golston, Lance Gould, Scarlett Tuley and Brad Smelser

Primary Staff Contact: Holly Busler

If you need to talk with any of the lawyers listed above about any of the areas discussed, contact Michelle Fulmer at 800-898-2034 or by email at Michelle.Fulmer@beasleyallen.com. She will have the appropriate lawyer contact you.

XXII. THE CONSUMER CORNER

A LOOK AT AUTO RECALLS FOR 2012

Automakers issued 586 safety recalls for more than 16.2 million vehicles last year, slightly higher than the previous year, according to a report from the National Highway Traffic Safety Administration. Most recalls start with consumer complaints, the NHTSA said in a news release. Last year, the agency received 41,912 complaints concerning potential safety defects, compared with 49,417 in 2011 and 65,765 in 2010. NHTSA Administrator David Strickland said in the release:

_The role of the consumer in influencing auto recalls cannot be underestimated. Consumers are the lifeline of the recall process and recalls are often the direct result of a government investigation into consumer complaints._

NHTSA also conducts searches and investigations to find safety defects. The agency says it “influenced” the recall of more than 9 million vehicles in 2012. The number of recalled vehicles rose slightly over 2011’s 15.5 million but was lower than the 2010 total of more than 20 million, according to NHTSA data. Consumers can get the latest government vehicle safety information and sign up for notifications about recalls online at safecar.com.

Source: NHTSA Release

**NHTSA TAKES NO ACTION IN JEEP GRAND CHEROKEE FIRE PROBE**

The National Highway Traffic Safety Administration has cleared the 2012 Jeep Grand Cherokee after an investigation into possible engine fires. The agency began investigating 107,000 of the SUVs in July after getting complaints about power steering hoses coming loose and leaking fluid onto the engines. But NHTSA closed the probe in December of last year and said the problem didn’t pose a serious safety risk. During the investigation, the agency found 24 cases in which hoses had blown off their fittings. The problem was traced to a defect inside the hose that was fixed at the factory shortly after the SUVs went into production. The agency says none of the leaks caused crashes or fires, and it’s unlikely that leaking fluid would reach any ignition sources. All the problems occurred within seven months of when the SUVs were sold, and all were fixed under warranty by Chrysler, which makes Jeeps.

All of the problems happened in Grand Cherokees made between November 22, 2011 and December 23, 2011. NHTSA said in documents posted on its website:

_There have been no reports of loss of steering control, crashes or injuries as a result of this condition. There is no indication of loss of motive power or unreasonable safety risk associated with the alleged defect._

NHTSA said that changes by the company that makes the hoses have eliminated the likelihood that the hoses will come loose. Still, the agency said it will continue to monitor the vehicles. The investigation found five reports of engine fires, but NHTSA determined that all were caused by other factors.

Source: Claims Journal

**FDA PROPOSES NEW FOOD SAFETY RULES**

U.S. regulators proposed new food safety rules last month in an attempt to make food processors and farmers more accountable for reducing foodborne illnesses that kill or sicken thousands of Americans annually. The new rules, required by the Food Safety Modernization Act (FSMA), signed into law two years ago, were announced by the U.S. Food and Drug Administration on January 4th. Caroline Smith DeWaal, Food Safety Director at the Center for Science in the Public Interest, has been a critic of the FDA. But she had this to say about the regulations:

_These proposed regulations are a sign of progress. The new law should transform the FDA from an agency that tracks down outbreaks after the fact to an agency focused on preventing food contamination in the first place._

Roughly one in six Americans suffers from a foodborne illness each year, and about 3,000 die, according to the FDA. The United States has had numerous outbreaks from foodborne illnesses tied to salmonella, E. coli and listeria. Food sickness has been linked to lettuce, cantaloupe, spinach, peppers and peanuts. Michael Taylor, FDA Deputy Commissioner for Foods and Veterinary Medicine, stated:

_We’re taking a big step for food safety by proposing the standards that will help us prevent food safety problems rather than just reacting to them._

Under the new rules, makers of food to be sold in the United States, whether produced at a foreign- or domestic-based facility, would have to develop a formal plan for preventing their products from causing foodborne illness. The rule would also require them to have plans for correcting any problems that arise. Companies will be required to document their plans and keep records to verify that they are preventing problems. Inspectors will be able to audit the program to enforce safety standards, which hopefully will “dramatically” improve the effectiveness of inspections. That is what the FDA believes. Though many food processors already have documented food safety plans, the new rule sets requirements for “all firms across all commodities.”

A second rule proposes safety standard requirements for farms that produce and harvest fruits and vegetables. Farms would be required to meet national standards for the quality of water applied to their crops, as water is often a pathway for pathogens. Implementing the new rules will add costs for some food companies and farms. Taylor says the FDA will need money to retrain inspectors and implement the rules.

The Food Safety Modernization Act was the first food safety overhaul in over 70 years in the United States and was signed into law in January 2011. The proposals followed a series of meetings between FDA officials and consumer groups, corporate interests, researchers, and others. Critics have charged FDA with dragging its feet in implementing the requirements of the new law. Last August, the Center for Food Safety filed suit against the FDA for missing several deadlines set under the law.

The standards for analyzing and documenting hazards were due last July, and the standards for safe production and harvesting of fruits and vegetables were due last January. Within the next few months, the FDA says it hopes to issue a proposed rule on preventative controls for animal feed as well as proposed regulations related to importer

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Metal-on-metal, have been especially problematic. All-metal hip devices known in the industry as ‘metal-on-metal,’ made of all metal, were introduced by Stryker in June of 2012, saying there was a risk for corrosion, which may result in local tissue damage as well as pain and swelling. It provided the new cost information on January 8th with its financial outlook for the fourth quarter and full year. The company has hired third-party claims administrator Broadsire Services to help deal with patients who need to have their recalled hip implants replaced.

The eventual total cost of the recall will depend on several variables. Stryker said, including the number of patients who require testing and follow-up procedures and the cost of lawsuits. Stryker advised all patients who have the Rejuvenate Modular or ABG II modular-neck hip implants to consult a doctor. Stryker said on its website:

*It is important that you follow-up with your surgeon, even if you are not experiencing symptoms such as pain and/or swelling at or around your hip.*

The company said blood tests and imaging tests, such as X-ray, MRI or ultrasound, may be ordered to evaluate the device. Stryker’s recall last summer followed similar action from other orthopedic device manufacturers, including Johnson & Johnson, which initiated the biggest hip recall and also subsequently hired Broadsire to help manage patient care and limit its financial exposure. Hip implants made of all metal, known in the industry as metal-on-metal, have been especially problematic. In addition to high failure rates and other pitfalls, they may release metals into the bloodstream over time. It is unclear what the long-term consequences of high levels of metal in the blood may be. Dr. Mary O’Connor, an orthopedic surgeon at the Mayo Clinic in Jacksonville, Fla., observed:

*The issue of greatest concern is the potential for elevated metal ions in the bloodstream and the damage that can be caused to the muscles, tendons, soft tissue and bone. Soft tissue damage is more critical than bone damage. If the bone is damaged, we can do something. But if the muscle is dead because it has been poisoned by metal ions, we can’t recreate it.*

Dr. O’Connor believes that it’s too early to say whether the problems will be as great as those suffered by patients who got the ASR hip implant made by J&J. She says that “it’s the same basic problem of metal ions poisoning the tissues.” As I have written on numerous occasions, our firm is heavily involved in the “hip implant” litigation. If you need more information on any aspect of this litigation, including cases against Stryker, contact Navan Ward at 800-898-2034 or by email at Navan.Ward@beasleyallen.com.

**FIRST LAWSUIT FILED OVER GAS MILEAGE CLAIMS OF 2013 FORD HYBRIDS**

A lawsuit has been filed against Ford Motor Co. over the miles per gallon (MPG) of its hybrid models. The federal lawsuit concerns the fuel economy of Ford’s most recent hybrid models, the C-Max Hybrid and Fusion Hybrid. The lawsuit contends that Ford’s marketing campaign highlighting the vehicles’ economy is “false and misleading.” Plaintiff Richard Pitkin of Roseville, Calif., wants Ford to reimburse him and other owners the purchase price, and rescind sales of vehicles purchased in California.

The lawsuit also seeks to stop what the lawsuit calls “false advertisements,” and wants Ford to carry out an informational campaign to correct what is called “misrepresentations and omissions.” Ford’s cases aren’t dissimilar to those faced by Hyundai and Kia, both of which were found to be mis-stating EPA fuel consumption figures on a wide range of models. The EPA ordered both makes to correct their advertised figures. Both companies have now set up a system to reimburse owners misled by the inaccurate figures. Both of these companies are involved in a similar lawsuit filed by disgruntled owners.

Ford has maintained that each car’s official 47 mpg is still possible with the right driving style. Despite escalating coverage of the issues with real-world fuel economy, sales for both models have remained high. It was reported in November by CSM that the new hybrids didn’t appear to be meeting their official fuel consumption figures, of 47 mpg combined. Consumer Reports then confirmed this in early December, recording figures a full 20 percent lower than EPA during its own tests. Ford has confirmed it is aware of the lawsuit.

**U.S. WARNS CONSUMERS ABOUT INFANT-SLEEPER SEATS**

The government has warned consumers to inspect Fisher-Price newborn rock ‘n play sleepers because of a risk of exposure to mold for infants who use them. According to the Consumer Product Safety Commission (CPSC), its warning applies to 800,000 infant recliner seats, called sleepers, sold at stores nationwide and online since September 2009, with prices ranging between $50 and $85. The seats, designed for babies up to 25 pounds, feature a soft plastic seat held in a tubular metal rocking frame. The product has a removable fabric cover.

Mold can develop between the removable seat cushion and the hard plastic frame if the sleeper remains wet or is infrequently cleaned, according to the CPSC. Mold is associated with respiratory illnesses and other infections, the warning said. Fisher-Price has received 600 reports of mold and 16 infants have been treated for respiratory issues, coughs and hives after they were in the Fisher-Price sleepers. The CPSC said consumers should check for dark brown, gray or black spots that can indicate the presence of mold under the removable seat cushion.

If mold is found, they are advised to immediately stop using the product and to contact Fisher-Price for cleaning instructions or further assistance. Units currently in retail stores are not affected by the warning, but mold growth can occur after use of the infant sleepers. For information, call Fisher-Price at 800-432-5437 Monday through Friday from 9 a.m. to 6 p.m. EST, or visit the company’s website: service.mattel.com.

**GOOGLE TO CHANGE ITS BUSINESS PRACTICES TO RESOLVE FTC COMPETITION CONCERNS**

Under a settlement reached with the FTC, Google Inc. will change some of its business practices to resolve Federal Trade Commission concerns that those practices could stifle competition in the markets for popular devices such as smart phones, tablets and gaming consoles, as well as the market for online search advertising. The settlement requires Google to meet its prior commitments to allow competitors access—on fair, reasonable, and non-discriminatory terms—to patents on critical standardized technologies needed to make popular devices such as smart phones, laptop and tablet computers, and gaming consoles.

In a separate letter of commitment to the Commission, Google agreed to give online
issues relating to search manipulation allegations are complex, not only with respect to pinning down a theory of antitrust liability but also with respect to determining an effective remedy once liability has been determined. While we would have preferred to see a consent order that binds Google, it is nevertheless significant that Google has made commitments that deal with many of the most important allegations. We believe the result will be more transparency for the user, more flexibility for advertisers to leave Google, and fewer complaints about screen scraping. The FTC must monitor ongoing activities to ensure that these commitments are adequate.

According to Leibowitz, the changes Google agreed to make will ensure that consumers continue to reap the benefits of competition in the online marketplace and in the market for innovative wireless devices they enjoy. He stated:

This was an incredibly thorough and careful investigation by the Commission, and the outcome is a strong and enforceable set of agreements. We are especially glad to see that Google will live up to its commitments to license its standard-essential patents, which will ensure that companies willing to license these patents can compete in the market for wireless devices. This decision strengthens the standard-setting process that is at the heart of innovation in today's technology markets.

Google, a global technology company, has more than 52,000 employees and annual revenues of nearly $38 billion. The FTC also conducted an extensive investigation into allegations that Google biased its search results to disadvantage certain vertical websites; and that Google entered into anticompetitive exclusive agreements for the distribution of Google Search on both desktop and in the mobile arena. But the agency elected not to take action in connection with these allegations. Beth Wilkinson, outside counsel to the Commission, stated:

The evidence the FTC uncovered through this intensive investigation prompted us to require significant changes in Google's business practices. However, regarding the specific allegations that the company biased its search results to hurt competition, the evidence collected to date did not justify legal action by the Commission. Undoubtedly, Google took aggressive actions to gain advantage over rival search providers. However, the FTC's mission is to protect competition, and not individual competitors. The evidence did not demonstrate that Google's actions in this area stifled competition in violation of U.S. law.

But from reports, I understand that everybody isn't real pleased with the settlement. In fact some consumer groups have been quite vocal in their criticism. Hopefully, the decisions made by the FTC were correct ones.

Source: Corporate Crime Reporter

FOLKS SHOULD STAY AWAY FROM PAYDAY LOANS ONLINE

I have said on numerous occasions, and have written in previous issues, that payday loans are bad news for working folks. A short-term payday loan may seem like the only option to get a family past a financial crisis, but such loans only add to their pain. Unfortunately, payday loans, for folks with computers, have become just a "mouse click" away. And some of the offers online are mighty tempting. For example, a "guaranteed" loan "without a credit check," may be offered. Better watch out for those—that could be a setup for a scam.

Because of the exorbitant interest rates, payday loans are never a good deal for the borrower. But using an unknown online payday loan store can be even worse for a working man or woman who needs money and quickly. According to the National Consumers League's Consumer Fraud Center, scammers are creating bogus payday loan sites to snare their victims. These sites look completely legitimate, and some even have fake video testimonials to instill confidence. According to the application is completed, the soon-to-become victim is contacted by the scammer who has good news. The scammer will say the loan can be processed as soon as the borrower wires money to collect the taxes or insurance or application fee. All of these fees are bogus and should never be paid. John Breyault, director of NCL's Fraud Center, says:

Unfortunately, the loan never appears and the consumer is left holding the bag. Even worse, the victims are asked to send more money to collect the fictitious loan. These scammers are very good at stringing you along and putting the pressure on if you refuse to pay any more.

The offer of short-term, quick-approval loans could simply be a vehicle to gather personal identifying information from desperate consumers for no other purpose than identity theft.

Even if the company isn't run by crooks and scammers, they can still use this information. Tom Feltner, director of financial services at the Consumer Federation of America, says:

We see a huge number of websites that are designed not to originate loans, but to collect personal information and sell it to the highest bidder. We call them lead-generators rather than lenders.

By giving out your personal information, you could wind up getting bombarded with more fraudulent offers. These tips from the National Consumers League will help folks spot and avoid advance-fee loan scams:

If you are asked to pay money to get money, it's probably a scam. While most legitimate payday lenders charge a hefty fee, this is generally assessed when you repay the loan. Requests for up-front fees before a loan can be granted are a sure sign that something is fishy. If you are asked to wire money or put money on a prepaid card before you can get a loan, it's a scam.

Online payday loan scammers usually ask for fictitious "fees" to be wired via Western Union or Moneygram. These are always bogus.

In a new twist, scammers are also telling victims to load funds onto a
prepaid card. Victims are then instructed to either send that card to the fake lender or provide the access code on the back of the card which gives the con artists access to all the money on that card.

Just because an online payday lender looks legitimate doesn’t mean it is. Online payday loan scammers are experts at setting up legitimate-looking websites and providing official-looking documentation.

If you are not familiar with a company, never rely on these materials. Check with your state banking regulators, the Better Business Bureau, and your state’s corporation commission to make sure the business is legit.

If you or a family member or friend have been approached by or lost money to an online payday loan scam, report it to NCL’s Fraud Center. This information will be forwarded to the appropriate law enforcement agency. A payday loan should be your last option for getting some cash. If you truly have no other alternative, visit a brick-and-mortar store in your area. Hopefully, they are at least regulated in some way by your state government. But in most states that regulate payday lenders, the regulation is fairly weak. You also know where to find them if there’s a problem with your transaction.

Brokers Getting Secret Payments Through Real Estate Software

At least one title insurance company in California has been utilizing software used by some real estate brokers to facilitate unlawful secret payments to the brokers for the referral of business to title insurers and other providers. Jacksonville, Fla.-based title insurance company Fidelity National Financial settled a case last month brought in California by the District Attorneys of San Diego, Ventura and Los Angeles counties. Fidelity National will pay $873,588 to settle the charges brought against the company.

In the civil lawsuit filed under California’s Unfair Competition Law, the District Attorneys alleged that Fidelity National operated a software platform — called Transaction Point — for real estate brokers and other settlement service providers in California. The state alleged that the system facilitated unlawful secret payments to the brokers for the referral of business to title insurers and other service providers. San Diego District Attorney Bonnie Dumanis had this to say:

Consumers deserve the benefits of competition when they buy homes and choose service providers and these secret payments in exchange for refer-

Fidelity National developed the Transaction Point software and its Web-based referral system in 2002 to assist brokers in preparing transaction documents and ordering related real estate settlement services, such as escrow, title insurance, and natural-hazard disclosure services. But the District Attorneys allege that “Transaction Point was also used by the brokers to charge and collect unlawful fees of 25 or more from providers of those services, including from service-providers affiliated with Fidelity National, which made these payments on their behalf.” It was said that Fidelity National stopped operating the Transaction Point system in late 2009 when the system was questioned by authorities.

Under the terms of the final judgment, which was agreed to by all parties, Fidelity National Financial, Inc. is prohibited from paying any real estate broker that places an order with Fidelity National for title insurance or other goods or services using Transaction Point or any substantially similar computerized order placement platform, or paying a fee to any real estate broker for the use of any substantially similar computerized system. Fidelity National also agreed to pay a total of $873,588, consisting of $123,588 in investigative and prosecution costs and $750,000 in civil penalties pursuant to the Unfair Competition Law to be divided among the three counties that prosecuted the matter. Hopefully, this was an isolated situation, but don’t “bet the farm” on it.

Source: Corporate Crime Reporter

Home Fire Deaths High This Winter Season

While the winter months always bring sharp increases in home fires, the U.S. Fire Administration (USFA) says home fire deaths reported by the news media are above those reported at this time last year. According to media reports, home fires had already claimed 148 lives in January, 24 more than reported during the same period last year. Home fire incidence is collectively highest in the three winter months of January, February and March. According to USFA. Cooking and heating are the leading causes of these fires. The risk of fire also increases with the use of electric space heaters, fireplaces and wood stoves. Older adults (50 deaths) and children (28 deaths) accounted for more than half of home fire deaths reported by the news media in January. The following are reports of some of the fire deaths reported in January, which give an indication of the toll on families affected:

• A grandmother and three young children died in a house fire in Gloucester County, Va.

• Two women died in a house fire in Scuddy, Ky. The cause of the fire is believed to be a skillet left on the stove.

• A father, mother and their two daughters, ages 13 and nine, were killed in a house fire in Mountain View, Ark.

• A grandmother and three young children died in a house fire in Haltom City, Texas. The fire started near a Christmas tree.

• A 52-year-old woman and her 28-year-old daughter died in a house fire in Akron, Ohio. Firefighters report not finding any smoke alarms in the home.

• A father and his four young children died in a Pike County, Ky. home fire. Investigators report that an electric heater likely caused the fire.

• Four young children, all under the age of seven, died in a Conyers, Ga. house fire. There were no working smoke alarms in the house.

• Four family members spanning three generations died in a fire involving a Christmas tree in Rockford, Ill.

While the results from the investigation weren’t available at press time, it appears that space heaters, candles and cooking are among the causes suspected in a number of these tragic incidents. Whatever the cause of the fires, I suspect each of these deaths was preventable.

Source: USFA

XXIII.

Recalls Update

It has become quite routine to say each month that a large number of safety-related recalls will be reported. This month will be no different. Serious safety-related recalls have unfortunately become commonplace. The following are some of the more significant recalls since those reported in the January 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.

Honda has instituted a global recall of 835,000 Odyssey minivans and Pilot SUVs, which are produced at the automaker’s Alabama factory, to repair a potential problem with the vehicles’ airbags. The recall covers 2011 to 2013 Odysseys and 2009 to 2013 Pilots, which were produced at Honda’s Talladega County plant. The plant began producing the Odyssey in 2001 and the Pilot in 2004.

The airbags may not deploy properly in a crash because some of them were assembled without some of the rivets that secure their plastic cover. No crashes or injuries due to the flaw have been reported. Honda began an investigation into the issue when a worker at the Alabama factory noticed a missing rivet on an airbag. The mass recall follows another one involving Alabama-built Odysseys and Pilots, announced in December. That recall was for a defect that could cause the vehicles to roll away after the ignition key has been removed.

Subaru has recalled nearly 634,000 cars and SUVs in the U.S. because lights beneath the doors can overheat and cause fires. The recall affects all Outback and Legacy cars from model years 2010 and 2011. Also included are Tribeca and Forester SUVs from 2009 through 2012. The Tribecas and Foresters were sold before January of 2012. Moisture can get into puddle lights beneath the doors and cause a short circuit that can melt plastic and cause fires. The National Highway Traffic Safety Administration says on its website that Subaru will install an additional fuse at no cost to the owners.

General Motors has recalled nearly 55,000 pickup trucks, SUVs and vans because they can roll away unexpectedly. The recall affects certain 2013 models of the Chevrolet Silverado, Suburban, Tahoe, Avalanche and Express. Also included are the GMC Sierra, Savana and Yukon as well as the Cadillac Escalade. GM says the vehicles may have been built with faulty park lock cables or malformed steering column lock gears. The vehicles can be shifted out of park even if the ignition key is in the off position or removed. GM says about one in 1,000 of the vehicles has the problem and most haven’t been sold yet. The company says it knows of no crashes or injuries caused by the problem. Dealers will replace the steering column free of charge if necessary.

### American Honda Expands Recall Of FourTrax ATVs

About 19,500 All-Terrain Vehicles have been recalled by American Honda Motor Co. Inc., of Torrance, Calif. A weld on the ATV’s front right and left upper suspension arms can separate, causing the driver to lose control of the vehicle, posing a crash hazard. Honda says it’s aware of ten incidents of suspension arm weld failures, including one in which a rider suffered a sprained wrist. The recalled vehicles are two-wheel drive and four-wheel drive 2012 Honda Four-Trax Rancher ATV TRX420 FA, FE, FM, FPA, FPE, FPM, TE and TM models. The ATVs are red, green or camouflage and have the word “Honda” and the Honda wing logo on both sides of the fuel tank. The word “Rancher” is on the front cowl below the handlebars and on the left rear fender. The model number is visible on the right front frame down pipe above the driver’s right-hand side front wheel. The VIN is located on the top center front of the frame and is visible looking down between the bars of the gear rack and through the middle opening of the front fairing.

The ATV’s were sold at Honda ATV dealers nationwide from September 2011 to November 2012 for between $5,100 and $7,600. Consumers should immediately stop using these ATVs and contact Honda’s Alabama factory, to repair a potential problem with the vehicles’ airbags. The recall covers 2011 to 2013 Odysseys and 2009 to 2013 Pilots, which were produced at Honda’s Talladega County plant. The plant began producing the Odyssey in 2001 and the Pilot in 2004.

### Subaru Recalls Nearly 634,000 Cars And SUVs

Subaru has recalled nearly 634,000 cars and SUVs in the U.S. because lights beneath the doors can overheat and cause fires. The recall affects all Outback and Legacy cars from model years 2010 and 2011. Also included are Tribeca and Forester SUVs from 2009 through 2012. The Tribecas and Foresters were sold before January of 2012. Moisture can get into puddle lights beneath the doors and cause a short circuit that can melt plastic and cause fires. The National Highway Traffic Safety Administration says on its website that Subaru will install an additional fuse at no cost to the owners.

General Motors has recalled nearly 55,000 pickup trucks, SUVs and vans because they can roll away unexpectedly. The recall affects certain 2013 models of the Chevrolet Silverado, Suburban, Tahoe, Avalanche and Express. Also included are the GMC Sierra, Savana and Yukon as well as the Cadillac Escalade. GM says the vehicles may have been built with faulty park lock cables or malformed steering column lock gears. The vehicles can be shifted out of park even if the ignition key is in the off position or removed. GM says about one in 1,000 of the vehicles has the problem and most haven’t been sold yet. The company says it knows of no crashes or injuries caused by the problem. Dealers will replace the steering column free of charge if necessary.

### Honda Recalling 835,000 Alabama-Made Minivans And SUVs For Airbag Issue

Honda has instituted a global recall of 835,000 Odyssey minivans and Pilot SUVs, which are produced at the automaker’s Alabama factory, to repair a potential problem with the vehicles’ airbags. The recall covers 2011 to 2013 Odysseys and 2009 to 2013 Pilots, which were produced at Honda’s Talladega County plant. The plant began producing the Odyssey in 2001 and the Pilot in 2004.

The airbags may not deploy properly in a crash because some of them were assembled without some of the rivets that secure their plastic cover. No crashes or injuries due to the flaw have been reported. Honda began an investigation into the issue when a worker at the Alabama factory noticed a missing rivet on an airbag. The mass recall follows another one involving Alabama-built Odysseys and Pilots, announced in December. That recall was for a defect that could cause the vehicles to roll away after the ignition key has been removed.

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### GM Recalls 55,000 Vehicles To Fix Shifter Problem

General Motors has recalled nearly 55,000 pickup trucks, SUVs and vans because they can roll away unexpectedly. The recall affects certain 2013 models of the Chevrolet Silverado, Suburban, Tahoe, Avalanche and Express. Also included are the GMC Sierra, Savana and Yukon as well as the Cadillac Escalade. GM says the vehicles may have been built with faulty park lock cables or malformed steering column lock gears. The vehicles can be shifted out of park even if the ignition key is in the off position or removed. GM says about one in 1,000 of the vehicles has the problem and most haven’t been sold yet. The company says it knows of no crashes or injuries caused by the problem. Dealers will replace the steering column free of charge if necessary.

### John Deere Recalls Gator Utility Vehicles Due To Fire Hazard

About 4,650 Utility Vehicles have been recalled by Deere & Co. of Moline, Ill. The fuel line can separate, posing a fire hazard. John Deere has received three reports of separated fuel lines. No injuries have been reported. This recall involves John Deere Gator™ RXS850I Base, Sport and Trail model recreational utility vehicles manufactured between May 2012 and October 2012. They have side-by-side seating for two people and were available in Realtree® Hardwoods™ HD Camo, olive and black, or traditional green and yellow. RXS850I is located on the hood. The serial number is on the rear frame above the receiver hitch. The utility vehicles were sold at John Deere dealers nationwide from August 2012 through October 2012 for between $12,900 and $15,500.

### Polaris Recalls Ranger Recreational Off-Highway Vehicles

About 327,2013 Polaris Ranger® 400 recreational-off-highway vehicles have been recalled by Polaris Industries Inc., of Medina, Minn. The recreational vehicle’s throttle can fail to operate properly, which can cause the vehicle’s rider to lose control, posing a crash hazard. This recall involves 2013 Polaris Ranger® 400 recreational-off-highway vehicles with model number R13RH45A6 and VIN numbers between 4XAR-H45A3D4726305 and 4XAR-H45A7DE648444. Not all VIN numbers in the range are included in this recall. To see a complete list of recalled VIN numbers visit the company’s website www.polarisindustries.com. ‘Polaris’ is stamped on the front of the vehicle above the front grill. A ‘400 HO’ decal is located on the right and left side of the hood and “Ranger 4x4” is printed on the side of the rear bed box. The vehicles are green and gray in color. The model number is printed in the owner’s manual.

They were sold at Polaris dealers nationwide from July 2012 through September 2012 for about $8,300. Consumers should immediately stop using the recalled Polaris Ranger vehicles and contact Polaris to schedule a free repair. Polaris is contacting its customers directly. Call Polaris toll-free at (888) 704-5290, from 8 a.m. To 5 p.m. CT Monday through Friday, or online at www.polarisindustries.com and click on “Help Center under the Services and Support tab, then Common Rider Questions, then Service bulletins/recalls to check your VIN number.

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Consumers should stop using the recalled utility vehicles and contact a John Deere dealer to schedule a free inspection and free repair. John Deere is contacting all registered owners of the recalled utility vehicles directly. Consumers can contact Deere and Company at (800) 537-8233, from 8 a.m. To 6 p.m. ET Monday through Friday, and Saturdays from 9 a.m. To 5 p.m. ET or www.johndeere.com and click on “Services & Support” for more information.
BRP RECALLS CAN-AM SIDE-BY-SIDE VEHICLES DUE TO LOSS OF STEERING CONTROL HAZARD

About 3,400 Can-Am® Commander side-by-side off-road vehicles have been recalled by BRP Mexico S.A. de C.V., of Juarez, Chihuahua, Mexico. Improper assembly of the steering column to the rack and pinion can result in the loss of steering control, posing a risk of serious injury or death to the user, passenger or bystanders. BRP has received three reports of loss of steering. No injuries have been reported.

The vehicles were sold at Can-Am dealers nationwide from April 2011 through December 2012 for between $11,700 and $21,000. Consumers should immediately stop using the recalled vehicles and contact a BRP dealer to schedule a free repair. BRP has notified registered consumers directly about this recall.

POWERTEC RECALLS WEIGHT WORKBENCHES DUE TO INJURY HAZARD

About 3,400 Can-Am® Commander side-by-side off-road vehicles have been recalled by BRP Mexico S.A. de C.V., of Juarez, Chihuahua, Mexico. Improper assembly of the steering column to the rack and pinion can result in the loss of steering control, posing a risk of serious injury or death to the user, passenger or bystanders. BRP has received three reports of loss of steering. No injuries have been reported.

The vehicles were sold at Can-Am dealers nationwide from April 2011 through December 2012 for between $11,700 and $21,000. Consumers should immediately stop using the recalled vehicles and contact a BRP dealer to schedule a free repair. BRP has notified registered consumers directly about this recall.

TARGET RECALLS HAND-HELD AIR MISTERS DUE TO INJURY HAZARD

About 168,000 Air Misters were recalled by Target Corp., of Minneapolis, Minn. The Air Misters can shatter during use, posing an injury hazard. Target has received three reports of incidents of misters shattering, including one in which a consumer received lacerations. The recall is for hand-held devices designed to spray a mist for personal cooling. The Air Misters are 8 inches tall and hold 2 ounces of water at the “Fill” line. They are clear plastic cylinders with colored tops and bases. The tops and bases come in black, blue, green and pink. A nylon carrying strap is attached to the tops. Instructions for use are written in white lettering on the outside of the clear plastic cylinder.

The air misters were sold exclusively at Target stores nationwide from February 2012 to May 2012 for approximately $2.50. Consumers should immediately stop using the recalled misters and return them to any Target store for a full refund. Target Guest Relations, at (800) 440-0680 from 7 a.m. to 8 p.m. CT Monday through Friday, or online at www.target.com, click on Product Recalls at the bottom of the page, and then select Sports, Outdoor & Recreation.

PLATINUM NEON SIGN POWER SUPPLY TRANSFORMERS MADE BY HEICO LIGHTING RECALLED

About 3,900 Power Supply Transformers have been recalled by HEICO lighting, a division of EMD Technologies, of Montreal, Quebec, Canada. The transformers do not meet the UL standard for this product and pose a fire risk. This recall involves neon power supply transformers designed to power commercial signs. They are in black metal boxes about 4.5 inches long by 3.5 inches wide with rows of vents on all sides. “HEICO LIGHTING” and the model information are printed on a plate on the transformer. The recalled models include PLATINUM-9000-30, PLATINUM-10000-30, PLATINUM-12000-30, TFT-04PL-6000-30, and TFT-06PL-9000-30.

They were sold by HEICO lighting directly to ten distributors nationwide from December 2011 through May 2012 for between $60 and $150. Consumers should stop using these recalled power supply transformers and unplug them immediately until a free replacement transformer has been professionally installed. Contact HEICO lighting to schedule the free installation of a replacement transformer. Call HEICO lighting toll-free at (800) 665-1166, from 8:30 a.m. to 5 p.m. ET Monday through Friday, or online at www.heicolighting.com and click on Products for more information.

BROWER RECALLS TOP HATCH EGG INCUBATORS DUE TO FIRE HAZARD

About 2,500 Egg Incubators have been recalled by Brower Division of Hawkeye Steel Products Inc., of Houghton, Iowa. The base that comes with the product can ignite during use, posing a fire hazard to the consumer. The product is a round, light gray plastic egg incubator with a clear plastic top used to hatch many different types of eggs. The incubator is 18 inches in diameter and 12 inches tall. The recalled Model TH120 Brower Top Hatch Incubator has two main components—a tray and a base. A crank arm and a turner motor are located in the base. The crank arm snaps into place on the turner motor. The motor turns the crank arm, which, in turn, rotates the tray. The clear plastic top has an engraving which says, “THIS SIDE UP.” The model number is located on the side of the packaging box.

The Egg Incubators were sold at Mills Fleet Farm, Stromberg’s Chick and Gamebirds, Unlimited and other farm supply retailers from January 2009 to September 2010 for about $190. Brower received three reports of fires, all of which resulted in property damage. No injuries have been reported. Consumers should immediately stop using the product and contact the company for a free replacement base. You can contact Brower at (800) 553-1791, or online at www.browerequip.com/recall.pdf.

ALMOST 2M POTS AND PANS RECALLED DUE TO FIRE AND BURN HAZARDS

About 1.7 million pots and pans, part of the Royal Prestige 9-Ply Thermal Wall Cookware line have been recalled because the cookware can collapse, crimp or severely deform when exposed to heat, posing a burn or fire hazard. According to the U.S. Consumer Product Safety Commission, the company is aware of 1,136 reports of cookware collapsing, crimping or deforming, including one report of consumers getting spattered with hot oil when the pan collapsed inward while cooking. The recall involves stainless steel 9-ply “Thermal Wall” pans sold under the “Royal Prestige” brand name imported by Hy Cite Enterprises LLC, out

of Madison, Wis., and manufactured in Italy by Meyer Europe, SRL. The product line was sold by independent distributors of Hy Cite Enterprises through door-to-door sales for between $250 to $800 for individual products and from $800 and $3,500 for sets.

The products were sold individually and in sets. Consumers should stop using the cookware immediately and contact Hy Cite for instructions on sending the cookware back for repair. Damaged pots and pans will be replaced. As we have stated in prior issues, it's illegal to resell or attempt to resell a recalled consumer product.

Recalled pots and pans have a seal including “Thermal Wall” and “9-Ply” imprinted on the bottom of the pot or pan. Consumers can contact Hy Cite Enterprises at (800) 609-9577 from 8 a.m. to 9 p.m. CT Monday through Thursday, 8 a.m. to 5 p.m. CT on Fridays, and 8 a.m. to 12:00 p.m. CT on Saturdays at www.royalprestige.com or www.hycite.com and go to the Recall Information link.

**Bugaboo Recalls Strollers Due To Fall And Choking Hazards**

Bugaboo Americas, of El Segundo, Calif. has recalled its Bugaboo Cameleon and Bugaboo Donkey Model Strollers. This includes about 46,300 in the U.S. And 4,440 in Canada. A button on the stroller’s carrycot/seat carry handle can become disengaged and cause the handle to detach, posing fall and choking hazards to young children. Bugaboo has received 58 reports of carry handles detaching. No injuries have been reported. This recall involves the carry handles on Bugaboo Cameleon and Bugaboo Donkey model strollers with detachable carrycots/seats. The strollers were sold with a base, sun canopy and other accessories in various colors. A fabric tag on the side of the sun canopy has Bugaboo and the model name. Strollers included in the recall have a serial number that falls within the range listed below. Serial numbers are printed on the stroller’s chassis, located under the carrycot/seat.

- **Bugaboo Cameleon**
  Serial Number 04011090900001 to 04031100109999
  Serial Number 08011090900001 to 08021100800386
  Serial Number 14010009360051 to 14010312350418

- **Bugaboo Donkey**
  Serial Number 1701105300001 to 17010413900050

The strollers were sold at Buy Buy Baby, Neiman Marcus, Nordstrom, Toys R Us and other baby product stores nationwide, online at Bugaboo.com and other online retailers. The Bugaboo Cameleon was sold between September 2009 and June 2012 for about $980. The Bugaboo Donkey was sold from January 2011 through December 2012 for between $1,200 and $1,600. Consumers should immediately remove the carry handle from the strollers and contact Bugaboo for a free replacement handle. Consumers can continue to use the strollers while awaiting the replacement handle. Call Bugaboo International at (800) 460-2922, from 7 a.m. To 4 p.m. PT Monday through Friday, or online at www.bugaboo.com and click on “Important Quality Initiative” for more information. Consumers can email the firm at serviceus@bugaboo.com

**Philadelphia Energy Solutions Recalls Kerosene S**

Philadelphia Energy Solutions (PES) headquartered in Philadelphia, Pa. has recalled kerosene sold to distributors in Pennsylvania and New Jersey. The recall came after the company receiving information of consumer complaints from a distributor. The kerosene being recalled was sold between December 10 and December 18. Gasoline and Diesel from these stations is not being recalled, only kerosene. It is very important that consumers immediately stop using the kerosene purchased during this time period and call 1-800-261-3707. The kerosene, if used, could create a potential safety hazard due to a low ignition temperature, which may cause fires in space heaters or other equipment. If possible, remove the kerosene and place it outdoors. The stations are:


- Pennsylvania Scotty Gas East Stroudsburg: 5128 Milford Road, East Stroudsburg, PA PA Gas Quakertown: U.S. Gas Minimart, 530 Broad Street, Quakertown, PA Riggins: 52nd Street, Philadelphia, PA

The batteries have a cell defect which can cause overheating.
posing a fire hazard. This recall involves battery packs that power heating systems in jackets. The black battery packs are 3.25 inches long by 2.3 inches wide by 0.7 inches deep and marked with “Columbia” on the top and “OMNI-HEAT™” on the bottom of the pack. Part number 054978-001 is printed on the side of the battery label. Two battery packs were included with styles from: Fall 2011 Mens: Electro Amp™ Jacket (SM7864) and Circuit Breaker™ Softshell (SM7855) Fall 2011 Womens: Circuit Breaker™ Softshell (SL7856); Snow Hottie™ Jacket (SL7866), and Snow Hottie™ Parka (SL7853). The recalled battery packs were sold with Columbia electric jackets sold by Columbia online and at Columbia Sportswear stores in the cities and states listed below between September and November 2012 for about $260.

Consumers should stop using this product, which is being recalled voluntarily, unless otherwise instructed. It is illegal to resell or attempt to resell a recalled consumer product. Consumers should immediately check the battery packs included with the electric jacket to determine if they are part of the recall. Those with affected batteries should immediately remove the affected battery pack(s) from the jacket and contact Columbia Sportswear for a free replacement. Call Columbia Sportswear Company at (800) 622-6953 from 6 a.m. To 6 p.m. PT, by email at Columbia@Recall.com, or visit its website at www.Columbia.com/Recall.

Muddy Outdoors Recalls Climbing Sticks Due To Risk Of Serious Injury Or Death

About 1,500 Muddy Outdoors tree climbing sticks have been recalled by Muddy Outdoors, of Albia, Iowa. The climbing sticks can break, posing risk of serious injury or death to users. The company says it has received four reports of the climbing sticks breaking. There have been no reported injuries. The recalled Muddy Outdoors climbing sticks are used to climb trees. They consist of a 20-inch black center stick with tree cleats and fold-out steps on each end. A black and burnt orange-colored rope fastened by a cam cleat secures the stick to the tree. The tree cleats have single metal tabs or posts. Model number 70401 or 70404 is printed on the packaging. The climbing sticks were sold individually or in packs of four.

The tree sticks were sold at Bass Pro, Cabela’s, Dick’s Sporting Goods, Scheels and other hunting and outdoor stores nationwide from July 2012 through October 2012 for about $50 when sold individually and $160 when sold in a pack of four. Consumers should immediately stop using the recalled climbing sticks and return them to Muddy Outdoors for a refund or a free replacement product. Call Muddy Outdoors toll-free at (888) 366-8539, or online at www.muddy.com and click on ‘Muddy Info-Latest News’ or ‘Products-Muddy Outdoors-Sticks’ section for more information.

Academy Sports + Outdoors Recalls Crossbow Cocking Ropes Due To Laceration Hazard

About 6,300 Game Winner® crossbow cocking ropes have been recalled by Academy Sports + Outdoors, of Katy, Texas. The hooks attaching the cocking rope to the crossbow string can break and cause it to recoil, posing a laceration hazard. This recall involves Game Winner® cocking ropes with model number FSGWAR3018 and UPC 400214726596. The cocking ropes help users get a better grip on the crossbow string and aid in pulling it back. They have an approximately 50-inch long black nylon rope, two black plastic hooks and two t-handles. The model and UPC numbers are located on the instruction card that comes with the product. The company has received four reports of the hooks on the cocking ropes breaking, causing the rope to recoil. Three of the incidents resulted in lacerations. The ropes were sold exclusively at Academy stores nationwide and on the company’s website www.academy.com between June 2012 and October 2012 for about $10.

Consumers should immediately stop using the recalled cocking ropes and return them to Academy for a full refund. Call Academy Sports + Outdoors toll-free at (888) 922-2336, or online at www.academy.com and click on Help + Support and Product Recall Info for more information.

Implus Footcare Recalls Perfect Fitness Resistance Bands Due To Injury Hazard

About 75,600 Perfect Fitness Bands have been recalled by importer Implus Footcare, LLC, of Durham, N.C. And manufacturer Dalps & Leisure Products Supply Corp, No. 5, of China. The bands can detach from the mesh cloth loops posing an injury hazard to the user and those in the vicinity. Twelve incidents were reported. None of the injuries was serious and one required medical attention. The Perfect Bands are rubber tubes connected through a hole and secured by grommets to cloth sewn into loops. The bands can be used alone or in conjunction with optional handles, which are sold separately. The bands are approximately 40 inches long and are used for exercises described on the product packaging card and in a Workout Chart available on line on the product website. “Perfect Fitness” is printed on a tag on the cloth loop. UPC codes can be found on the package. The recalled bands are: Perfect Bands Heavy 25 lb. capacity with UPC Code 096506310354, color purple Perfect Bands Very Heavy 30 lb. capacity, UPC Code 096506310561, color gray Perfect Bands Ultra Heavy 40 lb. capacity, UPC Code 096506310378, color black.

The resistance bands were sold at Walmart, and online at www.perfectonline.com for about $15 to $17. Consumers should immediately stop using the product and contact Implus Footcare for a refund or replacement product. Call Implus Footcare at (800) 446-7587 select option 2, from 8 a.m. To 5 p.m. ET Monday through Friday, email at recall@implus.com, or online at www.perfectonline.com/recalls.

Fisher-Price Recalls Its Rock ’N Play Infant Sleepers On Mold Concerns

Fisher-Price has recalled 800,000 Rock ‘N Play Infant Sleeper units over concerns that the rocking device can harbor mold between the removable seat cushion and the hard plastic frame of the sleeper. Fisher-Price has received 600 reports of mold on the product. Sixteen people have reported that their infants have been treated for respiratory issues, coughs and hives after sleeping in the product. The sleeper is designed for babies up to 25 pounds and is made of a soft plastic seat held by a metal rocking frame. The product has a removable, fabric cover that is sold in 14 patterns and colors.

The CPSC report says that while the product does not come with mold, it can grow in the area beneath the seat cushion and the hard plastic frame of the sleeper. Fisher-Price has received 600 reports of mold on the product. Sixteen people have reported that their infants have been treated for respiratory issues, coughs and hives after sleeping in the product. The sleeper is designed for babies up to 25 pounds and is made of a soft plastic seat held by a metal rocking frame. The product has a removable, fabric cover that is sold in 14 patterns and colors.

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SASSY AND CARTER’S-BRANDED HUG N’ TUG BABY TOYS RECALLED DUE TO CHOKING HAZARD

About 45,300 Sassy®-branded Hug N’ Tug Puppy and Monkey and Carter’s®-branded Hug N’ Tug Monkey Toys have been recalled by Sassy, Inc., of Kentwood, Mich. The beads inside the clear plastic sphere at the center of the toys can be released and pose a choking hazard to young children. The firm has received 12 reports of beads being released from the clear plastic sphere body on Sassy-branded toys. There have been no such reports on the Carter’s-branded toys. No injuries have been reported. The recalled toys for infants can be attached to a stroller or car seat using a ring connector on the toy’s head. They have arms and legs that can be easily pulled back and forth for play.

The toys are approximately 12 inches tall, made of multi-colored fabrics, contain rattle beads inside a clear plastic sphere body and have the face of either a puppy or monkey. Recalled styles include: Sassy Hug N’ Tug Puppy, model #80215; Sassy Hug N’ Tug Monkey model #80214 and Carter’s-branded Hug N’ Tug Monkey, models #61083 that were sold on a blue packaging card and #61540 that were sold on a grey packaging card. Sassy®-branded toys have “Sassy®” written on the sewn-in label located on the back of the character’s head. The Carter’s®-branded toys have “Carter’s®” written in red on the blue plastic ring connected to the toy’s head and also the sewn-in label located on the back of the character’s head.

The toys were sold at mass merchandisers such as Toys R Us and Target, independent specialty stores nationwide and online retailers such as Amazon.com and Carters.com between July 2012 and October 2012 for Sassy-branded models; and from August 2011 to October 2012 for the Carter’s-branded models. Carter’s-branded models were also sold in Carter’s retail stores. The Sassy®-branded models sold for approximately $8 and the Carter’s-branded models for approximately $14. Consumers should immediately take the toys from children and contact Sassy for instructions on how to return the product for a free replacement toy. Call Sassy at (800) 323-6536 or visit www.sassybaby.com and go to the Product Recall Information link.

CHILDREN’S DENIM JEANS RECALLED

Falls Creek Kids infant and toddler denim jeans imported by Meijer Distribution Inc. of Grand Rapids, Mich., have been recalled. The jeans were sold exclusively at Meijer and HEB stores nationwide from June through November 2012. The snap on the front of the jeans may come loose and separate from the fabric, posing a choking hazard to young children. Falls Creek Kids infant and toddler, boys and girls denim jeans were sold in sizes 12M-5T. “Falls Creek Kids” is printed on a tag sewn on the inside back of the waistband. The jeans are denim; some have a pink star or heart graphic design stitched on the outside front and back of the jeans. The jeans also were sold with cargo-style pockets. There is label on the inside of the jeans near the front-left pocket that includes the date and location of production. The jeans were manufactured in China. No incidents have been reported. You can contact Meijer at 800-927-8699 or visit www.meijer.com.

COMPANY RECALLS SMOKED SALMON BECAUSE OF LISTERIA

Walmart has expanded a recall of Paramount Preserve Smoked Salmon sold at Sam’s Club stores because it may be contaminated with listeria. Multiexport Foods says the bacteria were found during a routine lab test carried out on an undistributed shipment. The 12 oz Twin pack and 1.25 lb pack were distributed between November 12th to December 21, 2012 to retail outlets that could be in Alabama, Mississippi, and several other states.

The Lot-Sublot-Batch Numbers for the Twin Packs are 931-59733-2, 933-59753-1, and 890-701413-1. The UPC number is 688264867050. The Lot-Sublot-Batch Numbers for 1.25 lb packs are 870-701364-1, 873-701360-1, 873-701364-1, 900-701344-1, 873-701344-1, 873-701360-1, and 870-701560-1. The UPC number is 688264866640.

There have been no reports of illnesses. Anyone who has the products should return them to Sam’s Club for a full refund. Consumers with questions may contact Multiexport Foods, Inc. At 1-888-624-9773 during regular business hours.

RECALL OF BAGELS BY THOMAS, SARA LEE, PUBLIX AND WEIGHT WATCHERS

BBU, Inc., the parent of the Bimbo Bakeries companies, has recalled bagels, due to possible presence of fragments of metal caused by a faulty manufacturing part. Recalled products are the following fresh bagels with “Best Buy” dates (month and day) ‘JAN 18” to and including “JAN 27” found on the lock tab bag closures. The company announced the recall after discovering metal fragments in two packages. No consumer reports have been received. There are no reports of injury. All recalled products are being removed from store shelves. No other THOMAS, SARA LEE, PUBLIX or WEIGHT WATCHERS products are affected. Consumers who have purchased the product can return the product to its place of purchase for a full refund. Consumers with questions may contact the company at 1-800-984-0989 at any time 24 hours a day.

UDI’S HEALTHY FOODS, LLC ISSUES ALLERGY ALERT FOR UNDECLARED ALMONDS IN 12-OUNCE “UDI’S GLUTEN FREE AU NATUREL GRANOLA”

Udi’s Healthy Foods, LLC of Denver, Colo., has recalled its 12-ounce bags of “Udi’s Gluten Free Au Naturel Granola” with UPC 6-98997-80615-8 and “Best By 041913 12265 1” because they may contain undeclared almonds. People who are allergic to almonds run the risk of a serious or life-threatening allergic reaction if they consume these products. Recalled “Udi’s Gluten Free Au Naturel Granola” products were distributed through retail stores in California, Colorado, Idaho, Montana, Nevada, Oregon, Utah and Washington beginning on or about September 24, 2012. The product comes in a 12-ounce, clear plastic bag marked with BEST BY 041913 12265 1 on back of the bag, underneath the Nutrition Facts panel.

No illnesses or allergic reactions involving this product have been reported to date. The recall was initiated by the company after it was discovered that almonds were mixed in with the oats in the Au Naturel 12-ounce product by mistake at the end of the Au Naturel production run. The recall is limited to products with “UPC 6-98997-80615-8” and “Best By 041913 12265 1.” It does not extend to any other Udi’s products or lot codes. Consumers who have purchased 12-ounce packages of “Udi’s Gluten Free Au Naturel Granola” with the above UPC code and Best By date should return them to the place of purchase for a full refund. Consumers with questions may contact the company at 201-421-3970, Monday-Friday from 9AM to 4:30PM Eastern Time.
Somersault Snack Co., LLC has recalled all packages of Somersaults Cinnamon Crunch products with Sell By Dates of August 30, 2013, or earlier. The packaging of these products inadvertently fails to declare the allergen milk which is contained in a flavoring ingredient of these products. As a consequence, the packaging of the affected Somersaults Cinnamon Crunch products fails to list milk as an ingredient/allergen contained in the product.

Folks who have an allergy or severe sensitivity to milk run the risk of an allergic reaction if they consume these products. The product was distributed to retail stores nationwide. No allergic reactions have been reported. Somersault Snack Co. took the precautionary measure of notifying the U.S. Food and Drug Administration and has voluntarily recalled approximately 36,757 cases of the product shown. This recall affects only Somersaults Cinnamon Crunch products; no other Somersault products are affected by this recall. Somersault Snack Co. will work with retail customers to ensure that the recalled products are removed from store shelves. In the event that consumers believe they have purchased products affected by this voluntary recall, they should return the product to the store where it was purchased for a full refund. Consumers with questions may call 415-407-9172 for more information.

**PURINA RECALLS DOG TREATS**

Nestle Purina PetCare is taking Waggin’ Train and Canyon Creek Ranch brand dog treats off the market because the products may contain trace amounts of a poultry antibiotic that isn’t approved in the U.S. Purina says the chicken jerky products may contain minute amounts of antibiotic residue. The treats are made in China, and the antibiotic has been approved by regulators in that country as well as European Union nations. But it isn’t approved in the U.S.

The company, a U.S. division of Switzerland’s Nestle, says the treats are safe to feed to pets. Still, they are being taken off the market in the U.S. until further notice. The recall doesn’t apply to Canyon Creek Ranch dog and cat foods. Additional information can be found on the Waggin’ Train website.

**Milo’s Kitchen® Recalls Chicken Jerky and Chicken Grillers Home-Style Dog Treats**

Milo’s Kitchen® has recalled its Chicken Jerky and Chicken Grillers home-style dog treats from retailer shelves nationally. No other Milo’s Kitchen® products are affected. On Monday, New York State’s Department of Agriculture informed the U.S. Food and Drug Administration (FDA) and the Company that trace amounts of residual antibiotics had been found in several lots of Milo’s Kitchen® Chicken Jerky. After consultation with the New York Department of Agriculture and FDA, the company elected to voluntarily recall Milo’s Kitchen® Chicken Jerky and Chicken Grillers, which are both sourced from the same chicken suppliers.

The use of antibiotics to keep chickens healthy and disease-free while raising them is standard practice in poultry production for both human and pet food. The antibiotics found in the products were unapproved and should not be present in the final food product. Milo’s Kitchen® has a comprehensive safety testing program in place for its products from procurement through manufacturing and distribution. Part of that program involves extensive testing for a wide range of substances commonly used to ensure the health of chickens. However, Milo’s Kitchen® did not test for all of the specific antibiotics found by the New York Department of Agriculture.

Retailers should remove the products from their shelves. Consumers who discard the treats will receive a full refund. Consumers with questions about Milo’s Kitchen products can get further information at 1-877-228-6493.

Once again there have been a good number of recalls. As a result, 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.

**XXIV. FIRM ACTIVITIES**

**Employee Spotlights**

**Sloan Downes**

Sloan Downes, who is celebrating her 17th year with the firm this year, is the Section Administrator for our Personal Injury/Product Liability Section. She handles daily duties that involve the successful operation of the Section. Sloan and her husband Dan have three boys, Trey (15), Nathan (11) and Jacob (nine). Sloan graduated from the University of South Alabama in Criminal Justice and Sociology. She attends St. Bede Catholic Church and enjoy helping out at church and kids’ schools. Sloan also enjoys spending time with her family.

The boys are very active in sports and Sloan enjoys watching them play football, soccer and baseball. In the little spare time left in their life, Sloan says they enjoy spending it at the lake. Sloan is a very good, dedicated employee who has a most important role in the firm. She does an excellent job of keeping things under control in her Section. We are blessed to have her with us.

**Keith Scott**

Keith Scott, who has been with the firm for 11 years, is one of the firm’s investigators. In this position, Keith does accident investigation follow-up which includes officer and witness interviews, vehicle and scene inspections and any other specific request in a case by Personal Injury-Product Liability lawyers or Legal Assistants.

Keith has been married to his wife Marion, who is a registered nurse with Montgomery Surgical Center, for 31 years. They have two children. Meredith (24) attended Auburn University where she graduated with a BS and a Masters in Accounting. Meredith is a CPA, currently with Ernst & Young in Birmingham. Son Cy (21) is a junior at Auburn University, majoring in Mechanical Engineering. The Scotts are active members of First United Methodist Church in Prattville. Keith is retired from the Montgomery Police Department, where he worked in the Detective Division. He graduated from Autauga County High School in 1976 and from Troy State University in 1980.

Keith enjoys following Alabama Football, as well as hunting, fishing, and shooting. He also is a collector of antique fishing tackle. Keith does excellent work in his role as an investigator. He is a most valuable employee in a most active section. We are fortunate to have Keith with us.

**Wendy Thornton**

Wendy Thornton, who has been with the firm for 15 years, is a Legal Assistant, working...
with Kendall Dunson in the Personal Injury/Products Liability Section. Wendy has been married to her husband Jeff for 17 years. Wendy graduated from Jeff Davis High School and has attended courses at Huntingdon College and AUM. She enjoys shopping, going to movies with friends, and SEC football, especially the Auburn Tigers. Wendy also enjoys hunting and fishing with her husband. Wendy is a very good, dedicated employee who works hard for clients. She looks out for their best interests and cares for their well-being.

As I have written before, the role of a Legal Assistant in our firm is very important. They are actively involved in case and trial preparation and start work as soon as a file is opened on a case. Wendy does an excellent job in all phases of her work. We are most fortunate to have Wendy with us.

**BEASLEY ALLEN SUPPORTS RIVER REGION UNITED WAY**

For many years our firm has participated in the River Region United Way campaign. We know how important it is to help those in our community who are less fortunate. In fact, it’s reflected in our motto of “helping those who need it most.” At the end of the campaign, the United Way raised more than $5,000,000, exceeding the amount raised in 2011 by over $125,000. I am proud to say our firm had a hand in making that happen. The 2012 level of giving by our firm represents a 500 percent increase by the firm since 2010. Jimmy Hill, River Region United Way Director of Resource Development, had this to say:

> The generosity of the Beasley Allen Law firm has been tremendous. Their commitment to this community—not only in the dollars they contribute through the United Way, but in the time and talent they selflessly donate—impacts hundreds of people in our community.

River Region United Way advances the common good by creating opportunities for a better life for all. Its focus is on education, income and health, because these are the building blocks for a good quality of life. United Way recruits and mobilizes the people and organizations from across the community who bring the passion, expertise and resources needed to improve the lives of people in the River Region. Through its 46 affiliate agencies, River Region United Way serves more than 140,000 people in Autauga, Elmore, Lowndes, Macon and Montgomery Counties.

To give, advocate or volunteer, visit www.RiverRegionUnitedWay.org or call 334-264-7318. If you need more information, contact Helen Taylor, our Public Relations Coordinator, at 800-898-2034 or by email at Helen.Taylor@beasleyallen.com.

**XXV. SPECIAL RECOGNITIONS**

**ALABAMA WINS ITS THIRD NATIONAL CHAMPIONSHIP IN FOUR YEARS**

The Alabama Crimson Tide proved in the title game that it was the best football team in the land when it literally destroyed Notre Dame. This made it three national championships over the past four years for the Tide and that is quite an accomplishment. In fact, since Auburn won the title in 2010, that makes it four in a row for my home state. The SEC has clearly dominated over the past several years and I am not sure that string will end next year. Congratulations to Coach Nick Saban and the members of what may have been his strongest team. But being an Auburn guy, I simply have a hard time saying “Roll Tide,” but I guess I have to in this instance. So here goes—ROLL TIDE!

**CHILDREN’S HOPE MINISTRY PROVIDES A FUTURE FOR CHILDREN IN HAITI**

And the Lord said, if you had faith as a grain of mustard seed, you might say to this sycamore tree, Be thou plucked up by the root, and be you planted in the sea; and it should obey you.—Luke 17:6

The scripture set out above just seems perfect to describe what is happening with the Children’s Hope ministry in Haiti. What began as a small, simple idea has grown—through the grace and hand of God—into a work that will impact the lives of hundreds of children now, and generations in the future.

Children’s Hope is a ministry of First Baptist Church in Montgomery, Ala., that was started in September 2010. The ministry includes three components: adoption, foster care and orphan support. Andy Birchfield, a lawyer in our firm, and his wife, Tanya, began the ministry after they adopted their daughter, Cristina Hope, from the Eastern European country of Moldova three years ago. Andy says:

> As a part of the experience of adopting our daughter, we gained a deeper appreciation of God’s heart for orphans, and the understanding of the enormous need.

According to estimates there are between 143 million to 210 million orphans worldwide. The mission in Haiti came about as a work of the third aspect of the Children’s Hope plan—direct orphan care. When Haiti was rocked by a severe earthquake in January 2010, Andy and Tanya had a desire to help support an existing orphanage in that country by sending mission teams on a regular basis. However, when Andy and Tanya visited Haiti in August 2010, Andy says the Lord led them to 16 children living in a small tent in the town of Jacmel. He says that “it was pretty clear” to them that God wanted them to take care of these children.

Immediately the children and a 22 year-old Haitian caregiver were moved into a rental house and the children were enrolled in school. Land was acquired and plans for a permanent home were developed. But God had bigger plans than building one facility. Andy and Tanya, along with others working in the ministry, found themselves in the midst of building a community. According to Andy, “the Lord is expanding the mission in Haiti.”

The Children’s Hope ministry in Haiti acquired five acres of land and construction of six homes for children is underway. These homes, with the capacity of housing a total of 60 children, are expected to be finished this summer. Currently, the mission program is serving 23 children ranging in ages from four to 15. Some of the children were orphaned in the earthquake, others by poverty or disease. Some children were abandoned by parents who couldn’t afford to keep them. Child slavery—with children known as “restaveks”—is a major problem in Haiti. Children born in poverty are given to relatives or even strangers, whom they serve as domestic slaves. They experience humiliation and, often, abuse. They are left alone in a family that offers them no love. A four-year-old girl who was a restavek is the newest member of the Children’s Hope family.

There are four Children’s Hope team members who now live in Haiti full time. Tommy and Joy Schwindling oversee the mission house, help coordinate mission teams and direct the Children’s Hope evangelism and discipleship ministry. Charley and Martie Elgin direct the Children’s Home, a medical and dental clinic, a sewing center, distribute Haitian Bibles and oversee five church schools that serve about 600 children who otherwise would be unable to afford an education.

The sewing center provides vocational training primarily for single mothers as well as children at the orphanage. Also, a tilapia farm will soon be built on the Children’s Hope grounds. The tilapia farm, which is being developed with Auburn University, will teach Haitians how to farm tilapia, providing a source of income as well as provide food for the children. These programs are designed to give young people life skills for the future, as
a way to provide for themselves and their families. With 80 percent unemployment in Haiti, this is a huge need.

Mission teams made up of an average of ten people visit Haiti throughout the year, helping to build churches and working on the orphanage. Ideally, Children’s Hope needs 40 mission teams to visit the country each year. Thirty-nine teams are already committed to go in 2013. Haitian nurses staff the medical and dental clinic, supported by medical mission teams of doctors and dentists who visit to donate their services. The long-range vision for the mission is to train a Haitian staff to run the orphanage, make it self-sustaining, and then replicate the program either in another location in Jacmel, or in other areas of Haiti. Andy had this to say about what has been done:

It’s astonishing to look back and see what the Lord has done over the past two years. What has been so amazing has been to see God’s hand and His provision over the course of the last two years. It’s clearly His work, and I’m just thankful He lets us be a part of it. Our goal is to show the love of Christ to the people of Haiti and to raise children to know and love Jesus.

The mission is supported through child sponsorships and donations. More information about Children’s Hope, and how to sponsorships and donations. More information about what has been done:

JUDGE EUINICE HAGLER RETIRES AFTER 54 YEARS OF FAITHFUL SERVICE TO DALE COUNTY

Judge Eunice Hagler stepped down as Probate Judge of Dale County in January, after 54 years of dedicated service. Judge Hagler, who started her career as a probate clerk at the age of 18, was quickly promoted to chief probate clerk. In that capacity, she ably assisted four probate judges over the course of 39 years. In 1999, she was appointed by the Governor as probate judge following the death of Judge Floyd Johnston. Judge Hagler became the first female to serve as probate judge and chairman of the Dale County Commission.

You can ask any lawyer in Dale County and they will tell you that Judge Eunice Hagler was a true public servant who carried out her duties with honor, fairness, and integrity. Everybody in Dale County, and especially all of the lawyers, will miss Judge Hagler. All of us at Beasley Allen wish for Judge Hagler a happy and rewarding retirement. Her exemplary service is a good example for all who hold public office. Incidentally, Judge Hagler is the great-aunt of Chad Stewart, a lawyer in our firm.

Montgomery Lawyers Support Children’s Advocacy Center

It’s always good to see lawyers who are willing to get involved and to help folks who need help. That’s especially true during the Christmas season. Members of the Capital City Bar Association and the Alabama Lawyers Association took the opportunity at their annual Christmas party to help two most worthy organizations. Members of the two groups donated more than 100 stuffed animals and $450 to benefit Child Protect. An additional $250 was donated to Resurrection Catholic Missions.

Child Protect Children’s Advocacy Center serves more than 600 children every year who have been the victims of abuse. Resurrection Catholic Missions provides programs to help the poor, the elderly, the most profoundly disabled children, school children of Montgomery and surrounding communities, as well as children of the area who are considered at-risk.

Chuck James, President of the Capital City Bar Association, and Navan Ward, a lawyer in our firm who is the Past President of the Alabama Lawyers Association, presented the donations to Lindsey Cosker from Child Protect. All of the lawyers involved should be commended for being willing to help out on these projects.

XXVI. FAVORITE BIBLE VERSES

Lisa Harris, who is our firm’s Executive Director, gave me a verse for this issue. Lisa, who has a tremendously challenging position in our firm, does a great job for us.

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

Jeremiah 29:11

The verse set out below comes from Dr. George Mathison, the lead pastor at Auburn United Methodist Church. George is a tremendous preacher and is loved by his congregation. He is also my longtime friend.

The things which you learned and received and heard and saw in me, these do, and the God of peace will be with you. But I rejoice in the Lord greatly that now at last your care for me has flourished again; though you surely did care, but you lacked opportunity. Not that I speak in regard to need, for I have learned in whatever state I am, to be content.

Phil 4:9-11

My very good friend Cecil Spear sent in a verse this month. Cecil is with Trinity Industries and has what many of his friends believe to be the very best job in America. While Cecil has many important duties and responsibilities with Trinity, one of them is to take Trinity customers to Shoal Creek in Birmingham to play golf. Cecil says that’s a tough way to make a living, but he certainly appears to be very happy in his work.

It is written: Do everything without grumbling or arguing, so that you may become blameless and pure, children of God without fault in a warped and crooked generation. Then you will shine among them like stars in the sky as you hold firmly to the word of life. And then I will be able to boast on the day of Christ that I did not run or labor in vain.”

Philippians 2:14-16

Martha Taylor, who is the firm’s receptionist in my building, furnished two timely verses this month.

Therefore humble yourselves under the mighty hand of God, that He may exalt you in due time, casting all your care upon Him, for He cares for you.

1 Peter 5:6-7

Therefore we do not lose heart. Even though our outward man is perishing, yet the inward man is being renewed day by day. For our light affliction, which is but for a moment, is working for us a far more exceeding and eternal weight of glory, while we do not look at the things which are seen, but at the things which are not seen.

2Corinthians 4:16-18

Martha says the older she gets (and she’s not very old), and the closer her walk is with the Lord, the more real these scriptures become to her. I suspect lots of us over 50 feel the same way. Martha, who has a very demanding job, handles the pressures well and in a professional manner, and her faith has to be a major reason for that.

Theresa Perkins, who is a legal assistant with our firm, gave me three verses. Since all are so good, I am putting them in this
issue. Theresa says these verses are inspiring to her every single day. She says they were especially comforting to her and her family in dealing with the loss of her mother.

I have fought the good fight, I have finished the race, I have kept the faith.

2 Timothy 4:7

Come to Me, all you who labor and are heavy laden, and I will give you rest.

Matthew 11:28

I can do all things through Christ who strengthens me.

Philippians 4:13

Billy Irvin, Director of Ministry Relations at Faith Radio in Montgomery, sent in a verse this month.

For God so loved the world that He gave His only begotten Son, that whoever believes in Him should not perish but have everlasting life.

John 3:16

My good friend Lynn Jinks, a lawyer from Union Springs, Ala., sent in one of his favorite verses for this issue.

Therefore we also, since we are surrounded by such a cloud of witnesses, let us lay aside every weight, and the sin which so easily ensnares us, and let us run with endurance the race that is set before us, looking unto Jesus, the author and finisher of our faith, who for the joy set before Him endured the cross, despising the shame, and has sat down at the right hand of the throne of God.

Hebrews 12:1-2

Another good friend, Jimmy Knight, a lawyer with Knight & Knight in Cullman, Ala., also sent in a verse.

My little children, these things I write unto you, that ye sin not. And if any man sin, we have an advocate with the Father, Jesus Christ the righteous.

1 John 2:1

Rusty Hudson who is lead pastor of Cornestone UMC in Auburn, sent in a verse.

You are the light of the world. A city that is set on a hill cannot be hidden. Nor do they light a lamp and put it under a basket, but on a lampstand, and it gives light to all who are in the house. Let your light so shine before men, that they may see your good works and glorify your Father in heaven.

Mathew 5:14-16

XXVII. CLOSING OBSERVATIONS

COMING TO WORK EACH DAY IS A PRIVILEGE

Our firm celebrated its 34th anniversary last month, having opened our doors on January 15, 1979, with this writer as the only lawyer and with one secretary, Karen Lewis. Things have changed greatly over those 34 years. It really doesn’t seem like we have been at it for that long. There have been tremendous changes in the firm and hopefully those changes have been good for our clients.

While I consider coming to work each day to be a privilege, I also understand that with my work, comes responsibilities. Our firm represents real people who have had real problems and are in real need. Our job is to help them and we take that responsibility seriously. I have stated on numerous occasions that lawyers and support staff in our firm are committed to putting the interests of the clients we represent first in every respect. That can’t be stressed enough because it’s the way things have to be at Beasley Allen. We have had success in a number of landmark cases and strive to represent our clients in the right way. That means following the rules, treating the courts with great respect, and also being fair in our dealings with our opponents. But we also have the responsibility to fight hard for our client.

We are totally committed to fighting for justice and fair play in the corporate world. We have worked hard to represent those who have been victims of corporate wrongdoing or abuse. Our goal as a litigation firm is to achieve justice and fight all sorts of unfairness for consumers, investors, workers, business owners and others who have been victimized. While most of our clients are individual citizens, we also represent companies and businesses that have been victimized in some manner.

When I reflect back on some of the important cases we have handled that brought about safer products for folks, it gives me a very good feeling and a sense of accomplishment. We have been on the front lines in litigation to make huge pharmaceutical companies properly test their products and warn consumers about known hazards and dangers associated with taking their drugs. In addition, we have been involved with medical device litigation that hopefully will result in the FDA doing a better job of regulating that industry.

A major part of our practice over the past few years has involved representing whistleblowers in cases of corporate fraud in federal government programs. We have also devoted a tremendous amount of manpower and resources to the 2010 BP oil spill litigation which will benefit thousands of individuals and business owners.

As I have said on numerous occasions, I am very proud to be called a Trial Lawyer and I am also very proud to be a lawyer with Beasley Allen. I hope to be able to continue with the firm for a very long time. God has blessed me with good health and I enjoy being able to work and help others who need help.

MONTHLY REMINDERS

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 heal their land.

2Chron 7:14

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

Edmund Burke

Our civilization has decided, and very justly decided, that determing the guilt or innocence of men is a thing too important to be trusted to trained men. It wishes for light upon that woful matter, it asks men who know no more law than I know, but who can feel the things that I felt in the jury box. When it wants a library catalogued, or the solar system discovered, or any trifle of that kind it uses up its specialists. But when it wishes anything done which is really serious, it collects twelve of the ordinary men standing round. The same thing was done. If I remember right, by the Founder of Christianity.

G.K. Chesterton, The Twelve Men

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

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

Louis Brandeis, 1937
U.S. Supreme Court Justice

In urging Congress to pass the Fair Labor Standards Act of 1938 (FLSA), President Franklin D. Roosevelt stated, “A self-supporting and self-respecting democracy can plead...no economic reason for chiseling workers’ wages or stretching workers’ hours.” More than seven decades have gone by since the FLSA was enacted, yet violations of our nation’s wage and hour laws and other fundamental workplace protections continue to run rampant, particularly against more vulnerable populations such as immigrant and low-wage workers.

From a NELA CLE brochure.

Let us, each of us, now embrace with solemn duty and awesome joy what is our lasting birthright. With common effort and common purpose, with passion and dedication, let us answer the call of history and carry into an uncertain future that precious light of freedom.

President Barack Obama, 2013

XXVIII.
PARTING WORDS

Many Americans worry a great deal about all sorts of things, and all too many are said to worry on a constant and recurring basis. Perhaps the issues of the day are reason for concern. For example, Congress can’t seem to deal with the multitude of very serious problems facing our nation. In fact, many in the House and Senate quite often act like they don’t care about the welfare of their folks back home. Sadly, some of them don’t seem to like each other very much. Unfortunately, some may even put their own personal interests over those of their constituents. All of this, in combination, is cause for great concern.

Ordinary folks have to wonder if upcoming Congressional decisions will mean change for better or for worse. Issues such as the longest war ever in our nation’s history, the prospects of further wars on foreign soil, especially in the Middle East, the potential threat of another terrorist attack on U.S soil, senseless mass murders by individuals armed with military-style assault weapons that will fire in some cases as many as 100 rounds in just a few seconds, and the need to keep jobs and the economy at the top of the legislative agenda are definitely cause for concern.

I fear that most of these issues don’t seem to be getting the attention that Americans believe they should receive. I believe all should be top priorities on government’s problem-solving list. You can add to the list of problems such things as climate change, immigration issues and government waste. These also must be top priorities.

When Congress refuses to deal with all of these problems, and fails to work together in a bi-partisan manner to solve them, that causes concern, worry, and sometimes even anger across the land. Interestingly, the very low approval ratings of the members of Congress don’t appear to bother them very much. Along with the distrust and disapproval of Congress by the American people, comes a sense of fear and anxiety. Unfortunately, this is all the reality of our times. But worrying by the public isn’t the answer. Instead, we should all get involved and become a part of the solution-seeking army of engaged Americans.

My hope and prayer is that members of Congress will come to their senses and do the right thing. Recently, I heard one of the young men who played for Coach Gene Stallings at the University of Alabama tell about the first team meeting after Coach Stallings took over as head coach of The Crimson Tide in 1990. The former player said there had been hundreds of specific rules under their previous coach. At the meeting, one of the veteran players asked Coach Stallings if all of those old rules still applied. I am told that Coach Stallings didn’t hesitate—in keeping with his nature—and he told his players that all of them knew the difference between right and wrong and that the only rule under him would be for them to always “do the right thing!”

Perhaps Coach Stallings, if asked by a member of the House or Senate what Congress can do to solve America’s many problems, would tell that person, “you know the difference between right and wrong, so do the right thing for the American people!”

What do you think the result would be if all of the members of Congress, starting with the leadership, followed that simple rule? My hope and prayer is that they will take the Coach’s sound advice.
Jere Locke Beasley, founding shareholder of 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.