



THE
JERE BEASLEY REPORT

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I. CAPITOL OBSERVATIONS

AMERICAN GUN DEATHS TO EXCEED TRAFFIC FATALITIES BY 2015

The debate in Congress over reasonable gun control legislation is moving at a slow, but encouraging pace. There appears to be Congressional support for such legislation, certainly more than in prior years. In my opinion, that's a good thing. Guns and cars have long been leading causes of non-medical deaths in the U.S. By 2015, firearm fatalities will probably exceed traffic fatalities for the first time, based on data compiled by Bloomberg. While motor-vehicle deaths dropped 22 percent from 2005 to 2010, gun fatalities are rising again after a low point in 2000, according to the Atlanta-based Centers for Disease Control and Prevention. It's believed that shooting deaths in 2015 will rise to almost 33,000, and automobiles deaths will decline to about 32,000. That's based on the ten-year average trend.

Public opinion shifted in the right direction after the bloody massacre at Sandy Hook Elementary School. It brought to the public's attention that something must be done. Even though there had been several mass shootings over the years, with a significant increase recently, this one was different. The victims this time were mostly young children. Previously-made policy decisions have resulted in all sorts of firearms being available to the widest array of people under a very broad array of conditions. According to media reports, gun sales are soaring around the country. There was a terrific spike in sales in Alabama starting immediately after Sandy Hook.

The December 14th slaying of 20 children and six adults at the school in Newtown, Conn., reignited a debate over gun violence. About 85 Americans are shot dead daily. Sadly, 53 of them are suicides. On another very sad note, one of those killed by firearms every day is 14 or younger. Of the 53 daily gun deaths, the CDC data show that 16 involve people between the ages of 15 and 24. Most of these are homicide victims. Gun deaths by homicide, suicide or accident peaked at 37,666 in 1993 before declining to a low of 28,393 in 2000, according to the data. By 2010, the total had risen to 31,328, an increase of 2,935.

At the same time, violent crime and murder rates have fallen in the U.S., according to Daniel Webster, director of the Johns Hopkins University Center for Gun Policy and Research in Baltimore. Dr. Webster, who

has studied gun violence for 20 years, noted that homicides may be up this year, though the murder rate from 2006 to 2011 fell 19 percent, to 4.7 for every 100,000 people. While recent gun sales haven't led to an increase in crime, research indicates that over time, higher levels of gun ownership are associated with increased rates of homicide and suicide, according to Dr. Webster. He believes that the Sandy Hook killings were a "potential game changer" for gun-control laws. Dr. Webster made this observation:

We haven't had a year like 2012 for mass shootings before, with each one being more disturbing than the last. It's harder to chalk this up to random acts than to flaws in our gun laws.

The percentage of gun-owning households has fallen since 2004 to 32 percent in 2010, according to the General Social Survey by NORC at the University of Chicago. The survey indicates there are at least 1.8 firearms per household, or at least 70 million in households nationwide, according to Tom Smith, the survey's principal investigator. Dr. Webster points out that it's impossible to verify how many guns are owned legally or illegally. A survey eight years ago had the number of firearms around 300 million.

Traffic fatalities in 2011 were the lowest since 1949, according to the National Highway Traffic Safety Administration. Although drivers in the U.S. logged fewer miles than in 2010, the fatality rate was the lowest on record, 1.1 deaths for each 100 million vehicle miles driven.

There were 53,524 motor-vehicle deaths in 1979, compared with a projected 33,975 this year, according to data compiled by Bloomberg. When guns are killing more folks than automobiles, considering the number of vehicles on our nation's highways each day, it should send a strong message to Congress. They should be listening, but based on what I am hearing, the NRA may be in control of Congress. By the time this issue is received, we should know how firm that control really is.

Source: Bloomberg

WHERE DO WE START TO PROTECT THE MIDDLE CLASS?

There is an ongoing battle in this country involving the middle class. While the odds in Congress favor the rich and powerful, there are groups fighting hard to preserve and strengthen the middle class and that gives us hope. I am confident that the middle class in America will survive and ultimately be strengthened. But folks around the country

must wake up and get involved in the fight. Certain factors influence the battle that can't be denied. They include the following:

- Corporate profits have never been higher, which is very good.
- The stock market recently hit an all-time peak, which again is a good thing.
- But a typical CEO makes more in a day than an average worker makes in a year, and that is difficult to comprehend.
- All of the gains in our economy from 2009 to 2011 (the last year for which there is data) went to the richest 1 percent of Americans. For the rest of American citizens, not even the proverbial trickle. This

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is a very big problem for 99 percent of the American people.

Public Citizen, a leading consumer advocacy group, is convinced that Congress and even the White House are sinking in the quicksand of a completely false “deficit” crisis. Blind or indifferent to its impact on everything from meat inspections to airport lines to job losses, Congress drove the country into the sequester. This unnecessarily jeopardized critical public safeguards and services and the effect is just beginning to be felt. We are starting to see how bad the sequester approach was as a way to reduce government spending. While some experts say both political parties liked it, I hope that’s not true. But based on what’s happened recently in our Nation’s Capitol, one has to wonder. Regardless, the fact is the losers will be the American people.

We have a tremendous number of serious problems in this country that are unfortunately being ignored by Congress. For example, there are millions of Americans going hungry each day and millions still don’t have health care. Millions of Americans lost their homes, their savings or their pensions to Wall Street’s pathological pursuit of profits. It appears that Congress is seriously considering cuts to Social Security and Medicare, two of the most effective and vital public programs in our nation’s history. I am afraid that President Obama may even be leaning in that direction.

While the super-rich and huge corporations are doing better than ever, individual citizens are being asked to sacrifice and just do the best they can. Folks continue to scrape along. Let’s consider that millions of Americans who want and need work can’t get a job, while those with jobs have seen their wages stagnate. That’s hard to take when you consider workers in the U.S. have become more productive than ever before. When you factor in all of the above, and consider how tens of millions of citizens are hurting, it just doesn’t add up.

The United States—even with our government’s growing debt—is still a rich nation. There is a tremendous amount of prosperity in this country, but unfortunately it’s at the top levels. Instead of prosperity being shared, it’s being sucked up and socked away by the few who already have it. Many of that elite group act as if it’s their birthright and theirs alone. Their disdain and indifference regarding the problems people face in this country is truly disturbing.

Why is all of this happening? Why can’t politicians in Washington, with the picture right in front of them, “get it?” On one side, folks are suffering, while on the other side people with more money than they could ever spend are demanding still more. The

reason is quite plain. All too many of our politicians have become beholden to those with the money who can either keep them in or out of office. The problem of money in politics affects every challenge facing American society. If you have any doubts about that, all you have to do is look at what’s going on in our Nation’s Capitol.

Corporate America has played a definite role in weakening the middle-class. It has virtually run the show in Congress. The pharmaceutical industry is a prime example of how huge corporations benefit from the money they put in politics. They furnish the money, elect their candidates, have their way, and keep on putting “profits over safety.” Consider how many FDA-approved drugs have had to be pulled from the market because they were killing or badly hurting folks.

The high cost and lack of availability of healthcare in the U.S. continue to be major problems. It’s long past time that we join our peers throughout the developed world who ensure that affordable, quality health care is available to every one of their citizens. Yet the pharmaceutical and insurance industries elect members of Congress who will scream about “Obamacare,” and make false claims about “socialized medicine” and “death panels.” There are organized efforts to prevent an expanded and improved Medicare-For-All program, which would provide health care as a matter of right. The health-care law passed by Congress was a step in the right direction, but it was not as good as it could have been.

Should Congress enact some common-sense curbs on Wall Street’s basest impulses—to which it has shown a seemingly bottomless susceptibility—before the Big Banks push ahead toward the brink of disaster again? The financial giants spend practically without limit to push their agenda in Congress. My friends at Public Citizen believe the Big Bank agenda basically boils down to “Trust us.” But past history tells the American people they simply can’t trust these institutions.

Losing industrial jobs in the U.S. is a major problem and it raises a number of questions, one being “Why has Congress allowed American industries to ‘offshore’ too many good jobs?” I believe most Americans would say that’s a bad thing. But special interests with deep pockets are scheming to extend NAFTA-style trade pacts over the entire globe in a “race to the bottom for health and safety standards, environmental protections and worker’s rights.”

Why hasn’t Congress undertaken a badly-needed reform of our tax code? It’s impossible to justify huge corporations making record profits but paying no taxes. There are many examples of this and one company’s

efforts will be mentioned in this issue. While there are many other issues that the public is concerned with, and there are numerous reasons for those issues, money in politics affects every single one of them. Reforming our campaign financing laws is where the fight must start. Political money from Corporate America must be controlled. That will require alerting the public and then passing necessary and badly-needed campaign finance reform legislation in Congress.

Public Citizen is leading the fight to save and preserve the middle class in this country. But the problems discussed above are roadblocks in its path. These issues are just few of the reasons Public Citizen devotes so much of its resources to researching, exposing and fighting—in all branches of government in Washington—the ways corporate money corrupts our democracy. The on-going battle is being waged at the local, state and national levels. Public Citizen asks this question: “What can we do about it?” It believes that, “Until we take back our democracy from the billionaires and multinationals, nothing is safe from their greed.” I agree with that assessment.

Our readers are encouraged to join with groups, and specifically with Public Citizen, and help it win this important battle on a permanent basis. We must break the stranglehold that corporate money—and the money of multi-billionaires like the Koch brothers and others—holds over Congress. This is a battle that the American people cannot afford to lose.

Source: Public Citizen

II. A REPORT ON THE GULF COAST DISASTER

BP CONTINUES TO IGNORE ITS PROMISES

As BP was getting slammed in court for its conduct while operating the ill-fated *Deepwater Horizon* oil spill rig, the company has been quietly working behind the scenes to avoid paying claims under the landmark economic settlement’s terms—terms the company expressly agreed to and vouched for on numerous occasions in open court. BP has been arguing that damage claims should be calculated differently for certain industries, including farmers, construction and professional service companies, because those entities allegedly earn fluctuating profits which could yield large loss calculations.

BP argued that the settlement required that these businesses re-allocate and tie their revenues to their expenses over a four-year period, and in some circumstances, “smooth” those revenues over from month to month, effectively destroying claims for those industries in the settlement. BP’s intention is to make the claims harder on companies, and hopefully, keep many businesses that qualify under the settlement from being paid.

BP contends that failure to use an accrual method or a smoothing adjustment in calculating the claims for these industries results in “fictitious losses” and that Administrator Pat Juneau is misinterpreting the settlement. But we must remember:

- BP and its army of lawyers, accountants and economists never once requested that the settlement require any specific industry analysis on the accrual methodology or revenue “smoothing.” Instead, the settlement gives businesses the option of choosing between an accrual or cash revenue basis based on how the entity earns revenue, and the settlement makes no mention of a smoothing requirement.
- BP hailed the settlement as monumental during the fairness hearing due to the ease by which a business could determine its eligibility. All a business had to do was be in the covered economic zone, be an included business and meet the revenue test—BP acknowledged time and time again that no other requirements were necessary to establish the business’s connection to the spill.

Originally, BP took its unfounded arguments to claims administrator Pat Juneau, a neutral party, who found no evidence supporting BP’s contentions. BP then appealed Administrator Juneau’s findings to Judge Carl Barbier, and he initially sided with Juneau. Judge Barbier requested briefing and supporting documents on the matter and stayed the claims in the claims facility in order to ensure full evaluation of BP’s contentions in light of the settlement.

After careful consideration of briefings by both BP and the Plaintiffs Steering Committee (PSC)—as well as numerous declarations from experts and supporting documentation—Judge Barbier reaffirmed his initial position and found no evidence supporting BP’s arguments. Tellingly, Judge Barbier pointed to emails from BP’s own lawyers that explicitly contradicted BP’s new position before the court. BP has now filed an emergency motion before Judge Barbier requesting the court enjoin Administrator Juneau from paying the claims at issue.

At all times, BP had a limitless supply of lawyers, accountants and economists

involved in the negotiations and they carefully scrutinized the settlement during its drafting. The giant oil company never once raised the issues it’s now raising. In reality, it now appears that BP and its army of experts and lawyers completely underestimated the implications of the settlement’s terms. Each portion of the settlement was the result of hours of intense negotiations between the parties. Perhaps BP didn’t believe many businesses would meet the settlement’s causation tests, or, even upon meeting the causation tests, that those businesses would either fail to support their claims or would show no loss at all.

BP has also realized that it cannot strong-arm Administrator Juneau into getting what it wants. That’s a definite change from how the original claims facility operated. Nobody should be surprised anymore by BP’s conduct. Consider the following:

- While the well was spewing tens of thousands of gallons of oil, BP was trying to convince the world the spill was a fraction of its actual size.
- When businesses were in shambles due to the spill’s blow on the Gulf Coast tourism industry, BP was spending millions on advertising trying to convince the large media markets everything was fine instead of paying those businesses.
- When BP testified to Congress that it conducted a full investigation of the root causes of the spill, BP failed to inform Congress that it intentionally ignored a key root cause as required by its own investigation protocol—a review of the company’s management.
- In the early days of the spill, BP went on a “release campaign” in fishing towns like Bayou La Batre in an attempt to sign up desperate fishermen in the cleanup program for pennies in exchange for a full release of their claims. Thankfully, BP’s actions with the fishermen came to light and BP was forced to rescind those agreements.

BP has proven that it cannot be trusted. The company will smile for the camera and say all the right words to create a positive perception, but behind the scenes, it will work tirelessly to keep from having to do the right thing. For these reasons, the efforts by the lawyers on the PSC are nothing short of exceptional. In fact, they are a gold standard in modern litigation. People will never know how hard the PSC had to work to keep BP in check on its responsibilities at every level of this case. The company’s efforts to avoid responsibility, backtrack on its promises, and thwart overall progress are only matched and exceeded by its conduct aboard

the rig that killed 11 workers and set off the largest environmental disaster the nation has ever seen.

CLAIMS AGAINST BP CONTRACTOR AND CAMERON INTERNATIONAL DISMISSED AT TRIAL

Judge Carl Barbier has dismissed claims against M-I LLC, a BP contractor, and Cameron International, the company that made a safety device on the rig that exploded, triggering the oil spill. The judge’s ruling involved only the claim against Cameron for punitive damages. Judge Barbier ruled, after the Plaintiffs rested their case on March 20th, there was no evidence that BP’s drilling fluids contractor M-I LLC made any decision that led to the blowout of BP’s Macondo well. All claims against M-I were dismissed. Judge Barbier also ruled that punitive damages could not be recovered against Cameron International, the manufacturer of the blowout preventer on the rig. The judge stated in open court that he had “not heard or seen evidence that would in any way support a finding of gross negligence or willful misconduct on the part of Cameron.”

Judge Barbier didn’t agree with similar requests from the lawyers representing BP and Halliburton and Transocean, the giant oil company’s main partners in the Macondo operation. The Plaintiffs will be allowed to go forward with all claims against those Defendants, including the request for punitive damages. That’s great news for the Plaintiffs in this very important case. The Defendants are putting on their cases now.

Source: AL.com

BP WARNS OF RISING COSTS FOR OIL SPILL SETTLEMENT

BP warned investors last month that the price tag will be “significantly higher” than it initially estimated for its multibillion-dollar settlement with businesses and residents who were damaged by the 2010 oil spill in the Gulf of Mexico. The London-based oil giant claimed last year that it would spend roughly \$7.8 billion to resolve tens of thousands of claims covered by the settlement agreement. But in a regulatory filing last month, BP PLC said businesses’ claims have been paid at much higher average amounts than it had anticipated.

The company claims it can’t reliably estimate how much it will pay for unresolved business claims following the ruling referred to above by Judge Carl Barbier, who is supervising the uncapped settlement that BP agreed to. It should be noted that BP had

revised its estimate for the total cost of the settlement before Judge Barbier's ruling, saying earlier this year that it expected to pay \$8.5 billion instead of the \$7.8 billion it estimated when it first agreed to the settlement.

In BP's regulatory filing, the company said it has been analyzing the processing of recent claims to determine if they can be used to predict future claims, but concluded it can't. Excluding business claims that Juneau hasn't received or processed yet, the company now estimates it will pay \$7.7 billion to resolve the rest of the claims covered by the settlement. Business economic loss claims not yet received or processed are not reflected in BP's current estimate. The average payments per claim determined so far are higher than BP says it anticipated.

Source: *Montgomery Advertiser*

AN UPDATE ON THE OIL SPILL ECONOMIC CLAIM FACILITY'S PROGRESS

The *Deepwater Horizon* Economic Claims Facility continues to process and pay claims to individuals and businesses throughout the Gulf region. As of the writing of this article, a total of 155,000 claims had been submitted to the claims facility (11,000 which were in the process of beginning). Statistics indicate that Florida leads the way with 50,000 claims filed, followed by Louisiana (42,000), Alabama (27,600), Mississippi (17,600) and Texas (7,100).

Of the claims filed, business economic loss claims have taken the lead with 26% of the filings (40,000). In second place, individual economic loss claims account for 22% of the filings (34,000), followed by seafood at 15% (23,996), coastal real property at 14% (21,159) and subsistence claims at 10% (14,789).

Payments also continue to rise at a rapid pace. A total of 31,898 claims have received payment offers totaling \$2.504 billion. Claimants have accepted offers on 27,762 claims for a total worth of \$2.214 billion. Of the accepted offers, business economic loss claims account for \$1.092 billion in value followed by seafood claims at \$681 million. In total, 24,844 claims have been paid for a value of \$1.734 billion. All of these numbers represent sharp increases in claims processed and payments made as compared to previous months.

TRIAL FOR BP SHAREHOLDERS' SUIT OVER GULF SPILL CLAIMS SET FOR 2014

A trial has been set for August 25, 2014, regarding accusations that BP committed fraud by misleading shareholders before and after the 2010 Gulf of Mexico oil spill about its ability to respond to the accident. The jury trial was scheduled by U.S. District Judge Keith Ellison in Houston. Shareholders led by the New York State Common Retirement Fund and four Ohio pension funds claimed that they lost up to 40 percent of their investments within six weeks of the April 20, 2010, explosion of the *Deepwater Horizon* drilling rig.

In February 2012, Judge Ellison limited the lawsuit to claims by investors who bought BP's American depository receipts on U.S. exchanges. As expected, BP has denied fraud. The lawsuit also names as Defendants former BP Chief Executive Anthony Hayward and former Chief Operating Officer for Exploration and Production Douglas Suttles. Claims against current Chief Executive Robert Dudley were dismissed.

Source: *Insurance Journal*

III. DRUG MANUFACTURERS FRAUD LITIGATION

PAR WILL PAY \$45 MILLION TO END INVESTIGATION OVER AIDS APPETITE DRUG

Par Pharmaceutical Companies Inc. pled guilty in federal court in Newark, N.J., and will pay \$45 million to resolve its criminal and civil liability in the company's promotion of its prescription drug Megace ES for uses not approved as safe and effective by the Food and Drug Administration and not covered by federal health care programs. Par, based in Woodcliff Lake, N.J., was purchased in September by private equity firm TPG Capital LP for \$1.9 billion. Chief Executive Officer Paul V. Campanelli pled guilty on behalf of Par before U.S. Magistrate Judge Madeline Cox Arleo in Newark federal court. Judge Arleo fined Par \$18 million and ordered \$4.5 million in criminal forfeiture. In addition, Par will pay \$22.5 million to settle its civil liability. U.S. Attorney Paul J. Fishman had this to say about Par's wrongdoing:

The FDA requires drug makers to go through a stringent approval process before new drugs—or new uses for existing drugs—are made available to

doctors and their patients. Today, Par admitted that it chose to ignore that process in pursuit of more sales and greater profits. It is paying the price for its choice.

Daniel R. Levinson, Inspector General of the U.S. Department of Health and Human Services, had this to say about how Par executives are affected:

Individual accountability of Par's board and executives is required under the comprehensive five-year integrity agreement OIG has with the company. For example, company executives may have to forfeit annual bonuses if they or their subordinates engage in significant misconduct, and sales representatives may not be paid incentive compensation for the drug involved in the case, or successor branded versions of that drug.

Par was charged with misbranding Megace[®] ES in violation of the Federal Food, Drug, and Cosmetic Act (FDCA). Megace ES, a megestrol acetate drug product, was approved by the FDA to treat anorexia, cachexia, or other significant weight loss suffered by patients with AIDS. The Megace ES, distributed nationwide by Par, was criminally misbranded because its FDA-approved labeling lacked adequate directions for use in the treatment of non-AIDS-related geriatric wasting. This was a use that was intended by Par, but one that was never approved by the FDA. The FDCA requires companies such as Par to specify the intended uses of a product in an application to the FDA. Once approved, a drug may not be distributed in interstate commerce for unapproved or "off-label" uses until the company receives FDA approval for the new intended uses.

In addition to the criminal fine and forfeiture, the plea agreement mandates that Par implement several compliance measures and annually provide the U.S. Attorney's Office with a sworn certification from its chief executive officer that the company has not unlawfully marketed any of its pharmaceutical products. The civil settlement agreement requires Par to pay \$22.5 million to the federal government and various states to resolve claims arising from its off-label marketing. The civil settlement resolves allegations that Par, by promoting the sale and use of Megace ES for uses that were not FDA-approved and not covered by federal health care programs, caused false claims to be submitted to these programs.

Federal officials alleged that Par deliberately and improperly targeted sales to elderly nursing home residents with weight loss, whether or not these patients suffered from AIDS, and launched a long-term care sales

force to market to this population. During this marketing campaign, Par was aware of adverse side effects associated with the use of megestrol acetate in elderly patients, including an increased risk of deep vein thrombosis, toxic reactions in elderly patients with impaired renal function, and mortality. According to the Justice Department, Par made unsubstantiated and misleading representations about the superiority of Megace ES over generic megestrol acetate for elderly patients to encourage providers to switch patients from generic megestrol acetate to Megace ES, despite having conducted no well-controlled studies to support a claim of greater efficacy for Megace ES.

The plea agreement and Corporate Integrity Agreement (CIA) include provisions that require Par to implement changes to the way it does business. The plea agreement and CIA prohibit Par from providing compensation to sales representatives or their managers based on the volume of sales of Megace ES, and in the CIA, based on the volume of Megace ES and any branded successor megestrol acetate drug. Under the CIA, Par is also required to change its executive compensation program to permit the company to recoup annual bonuses from covered executives if they, or their subordinates, engage in significant misconduct.

Hopefully, the bosses at Par will make sure that the corporate culture does in fact change within the company. But Big Pharma has a history of committing fraud, cheating the government, paying fines and never really changing the way the companies do business. As stated above, the settlement resolves three lawsuits filed under the whistleblower provisions of the False Claims Act. As part of the settlement, the relators will receive \$4.4 million. Timothy McInnis, who is with McInnis Law, a firm in New York City, represented the whistleblowers. He did a very good job in this case, which is just another example of why the False Claims Act is so important in fighting corporate corruption.

Source: Reuters

FDA SAYS IT CAVED IN TO POLITICS IN APPROVING REGEN IMPLANT

The U.S. Food and Drug Administration said last month it had acted within its authority when it rescinded marketing clearance for a ReGen Biologics Inc. knee implant—an action the company claims drove it into bankruptcy—because the device had gotten initial approval only due to “severe political pressure.” FDA lawyers claimed during a summary judgment hearing on March 14th that the agency was under “one of the most severe political pressures” it had ever experi-

enced when it first approved ReGen’s collagen meniscus implant, Menaflex, as a Class II device under the Federal Food, Drug and Cosmetic Act in December 2008. FDA counsel Adrienne Elise Fowler said that “ReGen spent over ten years attempting to persuade FDA to allow it to market this device.”

U.S. District Judge Robert L. Wilkins cautioned the agency against making claims of political pressure, noting the company could allege the approval was only reopened due to Congressional pressure in the other direction. But Ms. Fowler didn’t back down and remained adamant that the reclassification was a “science-driven process” and was necessary to rectify the prior mistakes. ReGen blasted the FDA’s allegations of improper political conduct in its favor, claiming the only Congressional communication the FDA had received on the Menaflex issue prior to the approval was a letter from four New Jersey congressmen who requested a “fair and equitable process.”

ReGen initially sued the FDA in May 2011 over the rescission. It filed for Chapter 11 bankruptcy in Delaware on April 8, 2011, a decision the company called a direct result of the FDA’s actions. Its assets were later picked up by Ivy Sports Medicine LLC. ReGen began to distribute the Menaflex device in the U.S. in April 2009, following the FDA’s Class II designation of the device under its 510(k) approval process, despite ReGen’s alleged concerns that the FDA “was applying an incorrect review standard to its premarket notification submission.” Part of the approval process included the convening of an orthopedic advisory panel, a step ReGen’s complaint noted had not been applied to the “more than 400 surgical meshes classified under the FDA’s 510(k) premarket notification classification procedure, including those with new indications for use.” Following positive feedback from the panel and the device’s subsequent approval in December 2008, senior members of the House Energy and Commerce Committee sent a letter to the FDA requesting a probe into the Menaflex clearance history.

The re-evaluation concluded that the approval of the Menaflex device included multiple departures from the FDA’s standard processes for the approval of a device, including succumbing to the pressure to approve the device by the four Congressmen as well as the agency’s failure to recognize the Menaflex device was intended to be used for different purposes and was technologically dissimilar from other devices already on the market, according to the report. ReGen maintained that the FDA failed to go through a necessary formal review process

of the device’s classification in favor of the probe.

Source: Law360.com

IV. LEGISLATIVE HAPPENINGS

BILL HIGHTOWER WINS SPECIAL ELECTION FOR SENATE SEAT

Bill Hightower, a Mobile businessman, won the special election for Alabama State Senate District 35. He defeated Jim Barton, his opponent in the Republican Primary runoff. Hightower took 64 percent of the votes to Barton’s 36 percent. There will be a general election on the 23rd of this month, but that is a mere formality since Hightower will face only write-in opponents. Barton, who is a state representative, will retain his House seat.

Hightower nearly won without the need for a runoff in the first round of voting, taking 46.5 percent of the votes. Rep. Barton had endorsements from Nick Matranga, who ran third in the first vote, and Speaker of the House Mike Hubbard, and was also well financed in the race. But none of this was enough to overtake Hightower.

Source: AL.com

LEGISLATURE CONSIDERS NEW REGULATIONS ON PAYDAY LOAN STORES

A coalition of groups in Alabama is pushing legislation to place tighter regulations on payday and title loans, including limiting interest to 36 percent annually. The groups, including the Southern Poverty Law Center, Arise Citizens’ Policy Project, and AARP, say payday loans and title loans are “a paradise for predatory lenders.” At a news conference last month, representatives of the groups said interest rates can hit 456 percent annually for payday loans and 300 percent for title loans. In addition to limiting interest rates, the groups are proposing bills that limit the number of loans a borrower can get each year.

The president of the loan industry group, Max Wood of Birmingham, says 36 percent would close down businesses because that wouldn’t cover costs. He says customers would be left to deal with unregulated Internet lenders. Hopefully, the Republican-controlled Alabama Legislature will give this legislation fair hearings and will allow a vote

on this bill. If that happens, the legislation will pass and the public will be the winners.

Source: CBS 8 News

V. COURT WATCH

SEQUESTER AND ITS EFFECT ON THE COURT SYSTEM

Now that it has happened, nobody seems to know exactly how bad the fallout from the sequester will be. It's really too early to tell how things will shake out. But, I am afraid lots of folks will be hurt and our nation's economy will suffer. The gridlock in Washington, D.C. has three groups of lawyers agreeing on one thing. That is, the third wing of government—the Courts—will be affected in a negative manner. The respective leaders of the American Association for Justice (AAJ), the American Bar Association (ABA) and DRI—the voice of the Defense Bar, warned in a joint statement released in early March that imminent budget cuts through sequestration will impinge access to justice at the state and federal levels and put court petitioners, staff and judges in harm's way. The presidents of the three justice organizations stated:

The federal judiciary and every individual and business that depends on our courts will bear the burden for Congressional deadlock through costly delays. Sequestration is doubly troubling for state courts, which have endured years of withering cuts despite overwhelming caseloads.

Recent gun violence on court grounds across the country—including Alabama, Delaware, Oklahoma, South Carolina and Texas—is a chilling reminder of the life-and-death importance of courthouse safety. "Yet sequestration will leave federal court security positions unfunded and also reduce the pool of available resources at the state level," according to the legal organizations.

The three presidents urged policymakers to provide adequate funding for federal and state judiciaries. They were correct when they said: "Access to justice is a promise that would be too costly for our country to deny." Our leaders, in structuring a resolution of sequestration, must find a way to keep the doors to the Courthouse open. The American people cannot afford to have the court system shut down.

Source: Statement from AAJ

COMPLETE IMMUNITY FOR GENERIC MANUFACTURERS WOULD HURT PEOPLE

Two years ago, the Supreme Court limited the conditions under which consumers of generic drugs could sue the manufacturers. In the case, *Pliva v. Mensing* the Court said the generic company did not have control over the warning labels insofar as what they said and therefore could not be sued for not warning patients about the risks of taking their drugs. Now another Plaintiff, who developed a rare but severe reaction to the anti-inflammatory drug Sulindac after a doctor prescribed it to treat shoulder pain in 2004, will have the Supreme Court decide whether her case will survive. Within weeks of taking the drug, the Plaintiff in that case had her skin begin to slough off. That continued until nearly two-thirds of her skin was gone. The Plaintiff spent almost two months in a burn unit, and months more in a medically induced coma. The reaction permanently damaged her lungs and esophagus and rendered her legally blind.

The Plaintiff sued Mutual Pharmaceutical Company, which made the drug she took, a generic pill, alleging that the drug's design was dangerous and defective. The case was tried in 2010 in Federal District Court in Concord, N.H. During the trial, the Plaintiff's burn surgeon described the woman's experience as "hell on earth." A jury awarded her \$21 million and an appeals court upheld the verdict. The U.S. Supreme Court recently heard arguments on whether Mutual can be held responsible for the injuries.

Generic drugs now account for 80 percent of all prescriptions in the United States. This case is different because the Plaintiff did not claim that the drug's warning label was inadequate. Instead, she contended that the drug itself was defective. But Mutual argues the rationale is the same. Like the label, the company says it has no control over the drug's design. That argument should be very hard to justify since the company makes the drug even though it's a generic.

Under federal law, generic companies are not allowed to deviate from the brand-name drug they are copying. Sulindac is the scientific name for Clinoril, a drug similar to ibuprofen that was approved by the Food and Drug Administration in 1978 and is sold by Merck. Like ibuprofen, Sulindac is in a class of drugs known as nonsteroidal anti-inflammatory drugs or NSAIDs, which are in widespread use.

Mutual is appealing the First Circuit Court of Appeals ruling that upheld the jury verdict. Even if Mutual could not have changed the drug's design, it had no obligation to continue selling a defective product and could have taken the drug off the market. It's hard to figure out what the

federal government is thinking. It has sided with the generic drug makers in this case even though it opposed the industry in the *Mensing* case. Keith M. Jensen, a lawyer from Ft. Worth, Texas, with Jensen & Associates, who represents the Plaintiff, presented evidence at trial that patients taking the drug were more at risk of developing toxic epidermal necrolysis which is the condition that the Plaintiff contracted. The condition is a severe form of a related condition called Stevens-Johnson Syndrome.

Like all NSAIDs, Sulindac carried a notice on its label that patients could develop Stevens-Johnson Syndrome. But in 2005, after the Plaintiff's reaction, the FDA required that all manufacturers of NSAIDs strengthen their labels by specifically listing the risk of developing the skin reactions in the "Warnings" section of the label. That same year, Pfizer removed the pain drug Bextra from the market after the FDA warned that patients were at a heightened risk for developing Stevens-Johnson Syndrome and other skin reactions.

The Alabama Supreme Court recently held that the brand name manufacturer could be held responsible for failing to warn in a case against a generic manufacturer. The Court reasoned that the brand name manufacturer's duty to warn continues since they know the generics must rely on them to change the warning label. We will soon find out if generic manufacturers can sell a product for which they have no legal responsibility even though the product is defective and the warnings of risk inadequate. If justice is done, the public will be winners.

An editorial on generic drug manufacturers appeared in the *New York Times* on March 10, 2013. The writer of the editorial obviously understands the issue currently before the U.S. Supreme Court. In my opinion, the editorial hits the nail squarely on the head. Accountability in the drug industry is badly needed, and that shouldn't come as much of a surprise. It has to include the generic drug industry. This editorial is set out below.

HOLD GENERIC DRUG MAKERS ACCOUNTABLE

A New Hampshire woman who was severely injured by a generic drug in 2004 is still struggling to hold the manufacturer liable. Her case will be argued this month before the Supreme Court, which has already severely limited the ability of consumers to sue generic manufacturers and may well limit it further. If so, some way must be found to compensate this Plaintiff, Karen Bartlett, and others who have been hurt by generic drugs, which

account for 80 percent of all prescriptions in this country.

Ms. Bartlett suffered a rare but severe reaction to an anti-inflammatory drug, sulindac, a generic form of the drug a doctor prescribed to treat shoulder pain. The reaction permanently damaged her lungs and esophagus, disfigured her face and body, and left her legally blind. She sued the manufacturer, the Mutual Pharmaceutical Company, a subsidiary of an Indian drug maker, and was awarded \$21 million by a Federal District Court jury in 2010. That amount included \$16.5 million for pain and suffering, which Mutual challenged as excessive. A federal appeals court in Boston, however, upheld the verdict.

Mutual appealed to the Supreme Court, which ruled in 2011 that patients could not sue generic manufacturers for failing to warn them adequately about drug risks because, under existing laws and regulations, the generic makers cannot unilaterally change warning labels. In this case, Ms. Bartlett is not arguing that there was a failure to warn but that the drug's design is defective. Mutual contends that it has no more control over the design, which must mimic the brand-name drug being copied, than over the warning labels. The appeals court noted that Mutual could have taken a dangerous product off the market.

Manufacturers should bear responsibility for making sure their drugs are safe and effective. The Food and Drug Administration plays an important role by approving drugs based on limited clinical trials and then monitoring what happens when the drugs are widely used. But lawsuits are important, too, as deterrents to negligence or wrongdoing. If the Supreme Court shields the makers of generic drugs from consumer suits, Congress ought to amend the laws.

It's impossible to justify a court ruling—from either a legal or safety perspective—that would give virtual immunity to the manufacturers of generic drugs. This industry has an obligation to manufacture and sell drugs that are safe for use. The public also has a right to be warned when the drug is defective and dangerous. Hopefully, a majority of the U.S. Supreme Court will agree.

Source: *New York Times*

AN IMPORTANT U.S. SUPREME COURT DECISION

The U.S. Supreme Court has ruled that the anti-lien provision of the federal Medicaid Act preempts a state's right to take any portion of a Medicaid beneficiary's tort judgment or settlement not specifically designated as payment for medical care. The Court's ruling in the case styled *Wos v. EMA*, effectively blocks North Carolina's efforts to recover up to one-third of any damages a Medicaid beneficiary recovered from a third party, as reimbursement for the state's Medicaid coverage of the beneficiary's medical treatment.

The case involves a child—EMA—who was born with serious birth defects which will prevent her from being able to work or live independently. North Carolina's Medicaid program funds part of the child's medical care. Her parents settled a medical malpractice lawsuit related to the child's birth for \$2.8 million dollars. It should be noted that expert witnesses at trial estimated total damages in the case would exceed \$42 million. I understand the amount of the final settlement was determined in part by the treating physician and hospital's insurance policy limits.

Notably, the settlement agreement itself did not specify whether portions of the \$2.8 million proceeds were allocated for medical or non-medical damages. The trial court approved the settlement, but placed one-third of the recovery into escrow pending a determination of how much the child's parents were required to reimburse North Carolina's Medicaid program for the cost of her treatment, under state law. The state had informed the parents that it had spent \$1.9 million on the child's medical care, and that it would seek to recover that amount, or up to one-third of the total recovery of any settlement or judgment of the malpractice claim, in accordance with state law.

The child's parents then brought suit in federal court, claiming that the state's law pertaining to its reimbursement rights violated the federal Medicaid statute. In the decision, the Supreme Court ruled that North Carolina's law is pre-empted to the extent that it permits the state to "take a portion of a Medicaid beneficiary's tort judgment or settlement not designated for medical care." The Court held that North Carolina's law directly conflicts with the federal statute and "must give way" to it. The Court's opinion states that North Carolina's law was pre-empted because the state law lacks any limiting principle, and provides no mechanism for determining whether its allocation of up to one-third of the total recovery is reasonable. Justice Kennedy wrote the Court's opinion.

Source: Associated Press

A MOST SIGNIFICANT COURT RULING

In a sweeping ruling, the 10th U.S. Circuit Court of Appeals ruled that there is no Second Amendment right to carry a concealed firearm in public. The broad wording of the decision in *Peterson v. Martinez* creates a far-reaching national precedent against carrying a loaded handgun outside the home. To bullet-proof the ruling against an appeal to the U.S. Supreme Court, the 10th Circuit recounted numerous court rulings and state laws dating back to 1813, and based its ruling on prior U.S. Supreme Court cases. Quoting the U.S. Supreme Court, the 10th Circuit added, "like most rights, the right secured by the Second Amendment is not unlimited." This is a most significant court ruling. It carries a very strong message.

A federal judge in 2011 tossed out the lawsuit filed by Greg Peterson, a Washington state resident, against Denver and Colorado's Department of Public Safety. He claimed that being denied a concealed-weapons permit because he was not a Colorado resident violated his Second Amendment rights to bear firearms. According to gun rights groups, Colorado is one of about two dozen states that do not honor concealed weapons permits from Washington State. Colorado recognizes weapons permits issued by other states, but only for states that recognize Colorado permits. Washington State does not recognize Colorado permits. The Colorado Attorney General's office, through a spokeswoman, Carolyn Tyler, said it was "gratified that the 10th Circuit Court has upheld Colorado state law."

In its ruling, the three-judge panel cited a Supreme Court ruling that "the right of the people to keep and bear arms is not infringed by laws prohibiting the carrying of concealed weapons." In the opinion the Court ruled:

In light of our nation's extensive practice of restricting citizen's freedom to carry firearms in a concealed manner, we hold that this activity does not fall within the scope of the Second Amendment's protections.

It was reported that Mr. Peterson had permits from Florida and Washington. Mr. Peterson said he was a frequent visitor to Denver and needed to carry a firearm during his visits. I agree that the Appeals Court, as well as the trial court, made the right decision in this case. The decision will likely go to the U.S. Supreme Court.

Source: Associated Press

CIRCUIT CLERKS' OFFICES IN ALABAMA WILL CLOSE ON WEDNESDAYS

Circuit clerks' offices in Alabama will be closed to the public on Wednesdays beginning March 20. Chief Justice Roy Moore sent out an email on March 7th to the clerks spelling out the policy. Scott Hoyem, spokesman for the Administrative Office of Courts, has confirmed the move. Staff in the offices will report to work and won't see any pay decreases, according to Hoyem. He added:

Closing for one day a week gives the clerks' offices in the various counties the time to handle the necessary paperwork to keep the court system operating. The offices will be operating. They will just be closed to the public. By making the closing mandatory for one day it gives us a unified court system. Some clerks' offices are closed now at various times. With this order, a lawyer knows that on Wednesday all clerks' offices in the state will be closed.

Former Chief Justice Sue Bell Cobb granted clerks the option of closing during the week to help offset layoffs in the court system. It's quite apparent that the budget problems have been increasing in the court system. Now they have become "chronic," according to Hoyem. He added:

The chief justice's order does allow for vital and emergency court filings to take place on Wednesdays. Warrants for arrests and protection from abuse orders are specifically mentioned in the order as things that will be taken care of.

The court system simply can't operate on a four-day work week. Funding the system adequately, which includes the circuit clerks' offices, is a constitutional requirement, as we wrote last month. In my opinion, the Legislature can't refuse to do its mandated job, which means the court system must receive additional funds.

Source: MontgomeryAdvertiser.com

VI. THE NATIONAL SCENE

ANZALONE LISZT RESEARCH NATIONAL POLLING SUMMARY

My good friend John Anzalone, who is not only a good friend, but also is a very good

pollster, sent me some interesting information recently. It included some real good polling information, covering a broad range of issues. President Obama discussed these issues when he laid out his agenda for the next four years in his fifth State of the Union address. The President expanded on many of the issues he had discussed in his inaugural address. The issues included immigration, climate change, the economy, education, worker's pay and gun control. And it appears those who were watching the President speak liked what they heard. An instant poll by CNN/ORC found that 77 percent of viewers had either a somewhat or a very positive view of the address. There was much more very good polling information in the report, but due to space limitations, I can't include all of it this month.

Source: Anzalone Liszt Research Report

POLLS SHOW CLINTON AND CHRISTIE FARE BEST IN POSSIBLE 2016 SHOWDOWNS

While the next Presidential race won't take place until 2016, folks are already handicapping the field. Pollsters are also very busy trying to figure out how the group of potential candidates stack up. There are a number of potential candidates who reportedly are already putting their "ducks in a row," getting ready to run. A race between Hillary Clinton and Gov. Chris Christie of New Jersey would be an intriguing 2016 Presidential showdown. According to a new national poll, Hillary would come out on top in such a hypothetical matchup. That's one of the findings from a survey released last month from Quinnipiac University. American voters were asked about nine possible general election matchups in the next race for the White House.

According to the poll, the former first lady, Democratic Senator from New York and Secretary of State, leads the Republican New Jersey governor 45%-37%. The survey also indicates Hillary would beat Republican Sen. Marco Rubio of Florida 50%-34% and would lead Rep. Paul Ryan of Wisconsin, the House budget committee chairman and last year's GOP vice presidential nominee, 50%-38%. Peter A. Brown, assistant director of the Quinnipiac University Polling Institute, observed:

Former Secretary of State Hillary Clinton would start a 2016 presidential campaign with enormous advantages. She obviously is by far the best known and her more than 20 years in the public spotlight allows her to create a very favorable impression on the American people. But it is worth

noting that she had very good poll numbers in 2006 looking toward the 2008 election, before she faced a relative unknown in Barack Obama.

If Vice President Joe Biden became the 2016 Democratic Presidential nominee, the poll suggests a much closer general election contest. The Vice President would trail Gov. Christie 43%-40%, but would top Rep. Ryan 45%-42%. The three point margins in both matchups are within the survey's sampling error. According to the poll, Biden would beat Rubio 45%-38%.

According to the poll, Gov. Christie would lead New York Democratic Gov. Andrew Cuomo 45%-28%, with Rep. Ryan ahead of Gov. Cuomo 42%-37% and the New York Governor and Senator Rubio deadlocked at 37%. It was pointed out that some Republicans don't believe Gov. Christie is conservative enough. But I believe that he is the best of the three Republicans tested. In any event, Gov. Christie would be a tough opponent against the Democratic nominee. Another likely candidate Jeb Bush, was not included in the poll. He would likely be a formidable candidate if he decides to run. The former Florida Governor, known as "the smart brother," is beginning to sound like a man who wants to live in the White House.

Since the next presidential election is still over three years away, lots can happen to change the political landscape. Polls this early in a campaign cycle are often heavily influenced by name recognition. But it's pretty clear that Hillary Clinton will be the person to beat if she runs. I believe she will run and will be the next President. The Quinnipiac University poll was conducted February 27-March 4, with 1,944 registered voters nationwide questioned by telephone. The survey's overall sampling error is plus or minus 2.2 percentage points.

Source: politicalticker.blogspot.com

HILLARY CLINTON WAS AN OUTSTANDING SECRETARY OF STATE

Hillary Clinton was an outstanding Secretary of State and has now retired to "private life." Kim Ghattas, a BBC foreign correspondent, traveled with Secretary Clinton throughout her term as America's top diplomat. He is the author of a new book on Hillary and it will be interesting reading. He had this to say:

She is going to get some rest and study the lay of the land over the course of the next two years, see how President [Barack] Obama's second term unfolds, whether Americans will want to elect a Democrat for the third time

in a row to the White House. She'll size up the competition in the Republican Party. Of course, there's talk that perhaps the vice president, Joe Biden, will want to run. I don't think that they will run against each other in the primaries.

In *The Secretary: A Journey with Hillary Clinton, from Beirut to the Heart of American Power*, Ghattas chronicles following Clinton across 300,000 miles and 40 countries. "It was 'exhausting'—in one word," Ghattas says. "You will see the detail of what that actually involves, the exhaustion that comes with trailing behind the American Secretary of State, how she does her job as the representative of America around the world...at a time of challenge." Hillary Clinton is very smart, a hard worker, and understands what folks in the U.S. have to deal with on a daily basis. She, without any doubt, did an outstanding job as Secretary of State.

Source: newsmax.com

VII. THE CORPORATE WORLD

PRESERVING WHISTLE BLOWER CLAIMS

The Federal False Claims Act authorizes private citizens, called relators or "whistle-blowers," to file claims on behalf of the United States. In these cases, known as *qui tam* actions, the whistleblower may receive up to 30% of the proceeds recovered by the government, plus other damages in certain circumstances. The proceeds are offered by Congress to provide incentives for whistleblowers to come forward and expose fraud against the government. In 2012 alone, approximately \$5 billion was recovered in cases brought under the False Claims Act. The whistleblowers' share of those recoveries was \$431 million.

While the most common whistleblower suits arise from the healthcare and defense contracting industries, violations occur in virtually every field in which government funds play a role. The False Claim Act is violated any time a company or individual misrepresents facts which cause the government to spend more money than it would have otherwise. Violations range from overcharging for a service or charging for a non-existent service, to schools falsifying the number of employed graduates in order to receive more funding from the government.

If you have information about a potential *qui tam* claim, it is important that you contact a lawyer immediately. It is also crucial that you allow a lawyer to review any waiver or release that your employer asks you to sign *before you sign it*. In many cases, signing such documents will negatively impact or bar your claim.

Recently, several courts have dismissed *qui tam* lawsuits due to preventable errors of this nature. The courts based those dismissals on a lack of standing because the whistleblowers signed broad releases waiving rights to assert claims against their employers. Standing is a legal concept addressing "whether the litigant is entitled to have the court decide the merits of the dispute." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). This is a fundamental question courts must answer because without it, there is no jurisdiction to hear the dispute. If a party lacks standing, the case will be dismissed. Therefore, the common and preventable error of signing a broad release could destroy standing and keep the relator from pursuing a *qui tam* action. This result may be avoided by consulting with a lawyer before signing away your rights.

Lawyers at Beasley Allen have been prosecuting this type of fraud for over 30 years and would welcome the opportunity to assist any person to preserve and assert legitimate *qui tam* claims. If any person believes they have such a claim, our lawyers will be glad to assist. If any of our readers either have claims or need more information on this subject, contact Chad Stewart, Archie Grubb or Andrew Brashier, lawyers in our firm, at 800-898-2034 or email Chad.Stewart@beasleyallen.com Archie.Grubb@beasleyallen.com or Andrew.Brashier@beasleyallen.com.

Sources: <http://www.carltonfields.com>
<http://www.falseclaimsactlawblog.com>
<http://www.simmonsfirm.com>
<http://www.justice.gov>

GENERAL ELECTRIC AVOIDS TAXES BY KEEPING \$108 BILLION OVERSEAS

Over the past few months, much has been written about how a number of huge corporations in the U.S. pay no taxes. Some of them even use off-shore addresses to avoid taxes in this country. While it doesn't come as a total surprise, many of these companies put their money overseas. It was reported last month that the company with the most profits parked overseas is General Electric. This is according to a new Bloomberg analysis of 83 corporations. GE said in a Feb. 26 regulatory filing that it was holding \$108 billion in profits overseas as of the end of last year. That is up from \$102 billion a year

before. GE said in the filing that it reinvested most of these profits in foreign business operations and does not intend to bring those profits back to the U.S.

The practice of holding profits overseas has been highlighted as a strategy to avoid paying taxes. GE paid no U.S. taxes at all in 2010, according to the *New York Times*. GE spokesman Seth Martin called that assertion "untrue" in an email to *The Huffington Post*. But, it's significant that GE made no comment on the \$108 billion in profits overseas.

Sixty big U.S. companies analyzed by the Wall Street Journal kept on average more than 40 percent of their annual profits overseas last year. The companies have attributed a growing amount of their revenue to foreign sales, and they have assigned patents and licenses to foreign subsidiaries. Thanks to these practices, the U.S. is not only losing out on tax revenue, but it is also missing money kept overseas that will not be used to invest in the U.S. or pay dividends to shareholders.

It has become increasingly common for companies to move or keep their profits overseas. The biggest U.S. companies boosted their offshore cash hoards by 14 percent last year, according to a separate Bloomberg report. Apple, Microsoft and Google have in combination more than doubled their overseas holdings over the past two years. The drugmakers Merck and Johnson & Johnson, according to Bloomberg, each saved about \$2 billion last year by shifting profits overseas. Bloomberg reported that some Congressmen, including Sen. Charles Grassley (R-Iowa), want to crack down on corporate tax avoidance. In an attempt to justify what GE is doing, Martin wrote in an email to *HuffPost*:

GE did not get a tax refund in 2010, and in fact paid U.S. federal income tax and more than \$1 billion in other federal, state and local taxes in the U.S. for 2010. GE's overall tax rate for 2010 was low because we lost \$32 billion in our financial business during the global financial crisis.

But GE, with justification, has come under fire for its light tax burden. Though it has been earning billions in profits, the company paid an average tax rate of just 1.8 percent between 2002 and 2011, according to Citizens for Tax Justice. GE CEO Jeff Immelt has said that the U.S. tax system is "old, complex and uncompetitive" and has had a "hugely negative impact" on the economy. But it appears to be pretty good for corporate giants such as GE. Few individuals can get by without paying any taxes and most every person and small business pay at a substan-

tially higher tax rate. It's past time to bring some reform to this area of concern.

Source: *Huffington Post*

ALLSTATE SUES TWO MEDICAL CORPORATIONS FOR FRAUD

Allstate Insurance Company has filed suit against two New York area defendants. In its second insurance fraud lawsuit of 2013, Allstate seeks to recover \$1.7 million. Since 2003, Allstate has filed 46 fraud lawsuits in New York State seeking more than \$233 million in damages. The suit, against Gerald Surya, M.D., Sun Medical Care of Nassau, P.C., and Sky Medical, P.C., was filed in the U.S. District Court, Eastern District of New York.

Allstate alleges that Sun and Sky defrauded Allstate by creating and submitting false, fraudulent and inflated invoices containing excessive charges for unwarranted, unnecessary and undelivered medical treatment and testing. As a result of the Defendants' allegedly fraudulent billing scheme, the P.C.'s were not entitled to collect no-fault insurance benefit payments under New York law, according to Allstate. The Insurance Information Institute says no-fault fraud is costing New Yorkers hundreds of millions of dollars year after year. Allison McMahon, Allstate spokesperson said:

In essence, honest hardworking New Yorkers are paying a 'fraud tax'. We need lawmakers to enact meaningful insurance reform that puts the citizens of New York first.

Allstate said it is one of a number of insurers pursuing comprehensive reform of the no-fault system in New York. Ms. McMahon, on behalf of Allstate, had this to say about the current state of affairs:

The no-fault system is being exploited and responsible citizens are the victims. Without the support of lawmakers, incidents of fraud will continue to increase. We need to work together this legislative session to fix the broken no-fault system.

Now in its 80th year as an insurer, the Allstate Corporation is the nation's largest publicly-held personal lines insurer. Incidentally, the giant insurer may be leading the "corporate league" in suing folks and asking for punitive damages.

Source: *Insurance Journal*

EC FINES MICROSOFT \$732 MILLION

The European Commission (EC) has fined Microsoft \$732 million for failing to comply with its commitments to offer users a browser choice screen enabling them to easily choose their preferred web browser. In 2009, the Commission had made these commitments legally binding on Microsoft until 2014. According to the EC, Microsoft failed to roll out the browser choice screen with its Windows 7 Service Pack 1 from May 2011 until July 2012, and as a result, 15 million Windows users in the EU did not see the choice screen during this period. Microsoft has acknowledged that the choice screen was not displayed during that time. Joaquin Almunia, the EC's competition Vice President, had this to say:

In 2009, we closed our investigation about a suspected abuse of dominant position by Microsoft due to the tying of Internet Explorer to Windows by accepting commitments offered by the company. Legally binding commitments reached in antitrust decisions play a very important role in our enforcement policy because they allow for rapid solutions to competition problems. Of course, such decisions require strict compliance. A failure to comply is a very serious infringement that must be sanctioned accordingly.

In December 2009, the Commission had made legally binding on Microsoft commitments offered by the US software company to address competition concerns related to the tying of Microsoft's web browser, Internet Explorer, to its dominant client PC operating system Windows. Microsoft committed to make available for five years—until 2014—in the European Economic Area a "choice screen" enabling users of the Windows operating system to choose in an informed and unbiased manner which web browsers they wanted to install in addition to, or instead of, Microsoft's web browser.

The choice screen was provided as of March 2010 to European Windows users who have Internet Explorer set as their default web browser. While it was implemented, the choice screen was very successful with users; for example, through November 2010, 84 million browsers were downloaded through it. When the failure to comply was detected and documented in July 2012, the Commission opened an investigation and before making a decision notified Microsoft of its formal objections in October 2012.

This is the first time that the Commission has had to fine a company for non-compliance with a commitments decision. In the calculation of the fine the Commission took

into account the gravity and duration of the infringement, the need to ensure a deterrent effect of the fine and, as a mitigating circumstance, the fact that Microsoft cooperated with the Commission and provided information which helped the Commission to investigate the matter efficiently.

Source: *Corporate Crime Reporter*

CITIGROUP TO PAY \$730 MILLION IN BOND-LAWSUIT SETTLEMENT

Citigroup Inc., the third-largest U.S. bank by assets, has agreed to pay \$730 million to settle claims it misled debt investors about its condition during the financial crisis. The deal would resolve a lawsuit by investors who bought Citigroup bonds and preferred stock from May 2006 through November 2008, the New York-based lender said in a recent statement. The settlement requires court approval and, according to Citigroup, it would be covered by existing litigation reserves.

Citigroup is among the Wall Street firms still dealing with the fallout from the crisis, when the bank almost collapsed amid losses tied to subprime mortgages and took a \$45 billion bailout. The company has repaid the rescue. Last year, the firm agreed to pay \$590 million to settle a lawsuit brought by stock investors who said they had been misled. Steven Singer, a partner at Bernstein Litowitz Berger & Grossmann, who represented the debt investors, told *Bloomberg News* that the company was being presented "to be in substantially stronger financial position" than it really was.

The lawsuit was filed in federal court in Manhattan in 2008, with investors claiming Citigroup misled purchasers of 48 issues of its corporate bonds. Plaintiffs in the case include the Louisiana Sheriffs' Pension and Relief Fund, Minneapolis Firefighters' Relief Association and the City of Philadelphia Board of Pensions and Retirement. Citigroup's bonds dropped as losses piled up during the collapse of the U.S. mortgage market. Its \$4 billion of ten-year notes, issued in November 2007, slid as low as 79.7 cents on the dollar in 2008, according to data compiled by Bloomberg. The firm lost more than \$29 billion in 2008 and 2009.

In 2010, U.S. District Judge Sidney Stein denied part of a motion by Citigroup to dismiss the case. Judge Stein threw out claims that involved alleged lack of disclosure about auction-rate securities and part of the Plaintiffs' case related to structured investment vehicles. The Plaintiffs filed a memorandum of law with the court that they said "have concluded that the terms and conditions" of the accord "are fair and reasonable and in their best interest." The case

is in *Re Citigroup Bond Litigation*, 08-cv-09522, U.S. District Court, Southern District of New York (Manhattan).

Source: *Bloomberg*

SAC AFFILIATES TO PAY \$614 MILLION TO SETTLE INSIDER TRADING CHARGES

Two affiliates of S.A.C. Capital Advisors—CR Intrinsic Investors and Sigma Capital—will pay \$614 million to settle insider trading charges brought by the Securities and Exchange Commission. CR Intrinsic Investors will pay more than \$600 million to settle SEC charges that it participated in an insider trading scheme involving a clinical trial for an Alzheimer's drug being jointly developed by two pharmaceutical companies. The settlement requires CR Intrinsic Investors to pay more than \$600 million—\$274,972,541 in disgorgement, \$51,802,381.22 in prejudgment interest, and a \$274,972,541 penalty.

It should be noted that the SEC charged CR Intrinsic with insider trading in November 2012, alleging that one of the firm's portfolio managers—Mathew Martoma—illegally obtained confidential details about the clinical trial from Dr. Sidney Gilman, who was selected by the pharmaceutical companies Elan Corporation and Wyeth to present the final drug trial results to the public. The SEC's complaint against CR Intrinsic, Martoma, and Dr. Gilman alleged that during phone calls arranged by a New York-based expert network firm for which Dr. Gilman moonlighted as a medical consultant, he tipped Martoma with safety data and eventually details about negative results in the trial about two weeks before they were made public in July 2008. Martoma and CR Intrinsic then caused several hedge funds to sell more than \$960 million in Elan and Wyeth securities in a little more than a week.

In an amended complaint filed on March 15th, the SEC added S.A.C. Capital Advisors and four hedge funds managed by CR Intrinsic and S.A.C. Capital as relief Defendants because they each received ill-gotten gains from the insider trading scheme. These ill-gotten gains are comprised of profits and avoided losses resulting from trades placed in the hedge fund portfolios that CR Intrinsic and S.A.C. Capital managed, and include fees that S.A.C. Capital received as a result of these ill-gotten gains.

The settlement does not resolve the charges against Martoma, whose case is still pending in court. The court previously entered a consent judgment against Dr. Gilman, requiring him to pay disgorgement and prejudgment interest. He was also permanently enjoined from further violations of the anti-fraud provisions of the federal secu-

rities laws. Sigma Capital Management will pay nearly \$14 million to settle charges that the firm engaged in insider trading based on nonpublic information obtained through one of its analysts about the quarterly earnings of Dell and Nvidia Corporation.

The SEC's case, which arose out of its ongoing investigation into expert networks and the trading activities of hedge funds, began last year with charges against several hedge fund managers and analysts including Jon Horvath, a former analyst at Sigma Capital. Horvath previously agreed to a settlement in which he admitted liability. The SEC additionally charged Sigma Capital in the insider trading scheme and named two affiliated hedge funds—Sigma Capital Associates and S.A.C. Select Fund—as relief Defendants that unjustly benefited from Sigma Capital's violations. S.A.C. Select Fund is an affiliate of S.A.C. Capital.

The SEC's complaint alleges that Horvath provided Sigma Capital portfolio managers with nonpublic details about quarterly earnings at Dell and Nvidia after he learned them through a group of hedge fund analysts with whom he regularly communicated. Based on the confidential information, Sigma Capital traded Dell and Nvidia securities in advance of earnings announcements in 2008 and 2009 for \$6.425 million in gains for its hedge fund affiliates. Sigma Capital agreed to pay disgorgement of \$6.425 million plus prejudgment interest of \$1,094,161.92 and a penalty of \$6.425 million. As has become the norm, while neither firm admitted fault and each denied the charges, they paid a huge sum in settlement.

Source: *Corporate Crime Reporter*

OPPENHEIMER TO PAY \$2.8 MILLION TO SETTLE SEC CHARGES

Oppenheimer & Co. will pay \$2.8 million to settle allegations brought by the Securities and Exchange Commission. The SEC alleged that two investment advisers at Oppenheimer & Co. misled investors about the valuation policies and performance of a private equity fund they manage. An SEC investigation found that Oppenheimer Asset Management and Oppenheimer Alternative Investment Management disseminated misleading quarterly reports and marketing materials stating that the fund's holdings of other private equity funds were valued "based on the underlying managers' estimated values."

The portfolio manager of the Oppenheimer fund actually valued the fund's largest investment at a significant markup to the underlying manager's estimated value, a change that made the fund's performance appear significantly better as measured by

its internal rate of return. The fund was marketed primarily to pensions, foundations, and endowments as well as high net worth individuals and families.

While this type of fraud is complicated, and it's not the sort that gets a great deal of media attention, it's still fraud. Investors must be protected by the federal government and the companies that cheat and commit fraud should be held accountable.

Source: *Corporate Crime Reporter*

GOOGLE TO PAY \$7 MILLION TO SETTLE STREET VIEW DATA COLLECTION CASE

Internet giant Google Inc. will pay \$7 million to settle claims of collecting data from unsecured wireless networks nationwide while taking photographs for its Street View service between 2008 and March 2010. Thirty eight states and the District of Columbia charged that Google's Street View cars were equipped with antennae and open-source software that the company acknowledged collected WiFi network identification information for use in future geolocation services. At the same time, Google collected and stored data frames and other "payload data" being transmitted over those unsecured business and personal wireless networks.

While Google claimed it was unaware the payload data was being collected, the company admits that the information may have included URLs of requested Web pages, partial or complete email communications, and any confidential or private information being transmitted to or from the network user while the Street View cars were driving down streets. Massachusetts Attorney General Martha Coakley had this to say:

This hard-fought settlement recognizes and protects the privacy rights of people whose information was collected without their permission. Google will now strengthen its privacy protocols and further educate consumers about securing their personal information while online.

It should be noted that Google has since disabled or removed the equipment and software used to collect the payload data from its Street View vehicles. The company also agreed not to collect any additional information without consumer notice and consent. It was reported that the information collected was segregated and secured, and under terms of the agreement, will be destroyed as soon as legally practicable. Google also agreed that the payload data was not used, and will not be used, in any product or service, and that the information collected

in the United States was not disclosed to a third party.

Google will also be required to run—for at least ten years—a training program for employees about privacy and confidentiality of user data, and will conduct a public service advertising campaign aimed at educating consumers about steps they may take to better secure their personal information while using wireless networks. Attorney General Coakley's Office served on the executive committee that negotiated the settlement, along with the Attorneys General of Connecticut, Arizona, Florida, Illinois, Kentucky, Missouri and Texas.

Source: *Corporate Crime Reporter*

DEFERRED PROSECUTION AGREEMENTS

I seriously doubt that many folks really know what a deferred prosecution agreement (DPA) is. That's understandable since many have never even heard the term. But I am equally confident that chief executive officers and in-house corporate counsel are very much familiar with these agreements and exactly how they work. The U.S. Department of Justice obviously likes them since their prosecutors use them quite often. A deferred prosecution agreement is:

A voluntary alternative to adjudication in which a prosecutor agrees to grant amnesty in exchange for the defendant agreeing to fulfill certain requirements. A case of corporate fraud, for instance, might be settled by means of a deferred-prosecution agreement in which the Defendant agrees to pay fines, implement corporate reforms, and fully cooperate with the investigation. Fulfillment of the specified requirements will then result in dismissal of the charges.

Since 1999, the United States Department of Justice has set forth guidelines concerning the prosecution of business organizations and corporations. The United States Attorneys' Manual (USAM) of the Department allows consideration of non-prosecution or deferred prosecution of corporate criminal offenses because of collateral consequences and discusses plea agreements, deferred prosecution agreements, and non-prosecution agreements in general.

As I understand it, under the U.S. Sentencing Guidelines, a deferred prosecution in the past will not count toward a Defendant's criminal history if there was no finding of guilt by a court and the Defendant did not plead guilty or otherwise admit guilt in open court. This is in contrast to a deferred dispo-

sition, which typically does involve such a finding or admission.

This question is being asked by many who are familiar with the process, "Do deferred and non-prosecution agreements deter criminal wrongdoing?" Many knowledgeable people say no. But, in the past, the Justice Department has answered that query with a resounding yes. In December 2012, the Department claimed:

One of the best sources of anecdotal evidence demonstrating that deferred and non-prosecution agreements have a deterrent effect comes from the companies themselves. The companies against which DPAs and NPAs have been brought have often undergone dramatic changes. For instance, prior to or following the entry of DPAs or NPAs, many companies have terminated personnel, including senior managers, established new codes of conduct and compliance policies and procedures, pledged not to use third-party agents, withdrawn from bids tainted by corruption, provided new and substantial resources to compliance and audit functions within their organizations, and instituted new training regimes.

These companies, through their remediation efforts under DPAs and NPAs, have often fundamentally changed how they conduct business. In addition, just like with individuals on parole or probation, the monitor provisions or self-reporting requirements of DPAs and NPAs are designed to deter future misconduct and, at the same time, ensure that companies meet their obligations. In meetings with board members, chief executive officers, chief financial officers, general counsel, and chief compliance officers, DOJ and SEC have heard directly from these senior leaders about the impact DPAs and NPAs have had on their companies for the better.

There are numerous examples where corporations were caught and were guilty of breaking a criminal law, and those corporations would enter into a DPA, would not admit guilt, pay a fine and agree to certain conditions designed to prohibit future problems. Many of these very same corporations subsequently violate the conditions, violate criminal laws, and are caught again. Professor Mike Koehler, a law professor, gives two examples to counter the Justice Department's argument. The first involves the following:

In 2008, the Department of Justice announced that Aibel Group Ltd. pled guilty to violating the anti-bribery provisions of the Foreign Corrupt Practices Act (FCPA). Aibel Group admitted that it was not in compliance with a deferred prosecution agreement it had entered into with the Justice Department in February 2007 regarding the same underlying conduct. This is the third time since July 2004 that entities affiliated with Aibel Group have pleaded guilty to violating the FCPA.

Example two is the case of Ingersoll-Rand. Fresh off its exit of a deferred prosecution in 2011, the company soon disclosed that it found other potential violations of the FCPA. In a 2011 filing, the company stated as follows:

We have reported to the DOJ and SEC certain matters which raise potential issues under the FCPA and other applicable anti-corruption laws, including matters which were reported during the past year. We have conducted, and continue to conduct, investigations and have had preliminary discussions with respect to these matters with the SEC and DOJ, which are ongoing.

So the question remains, do deferred and non-prosecution agreements actually deter criminal activity in Corporate America? Have those arguments really slowed such activity down? What do you think?

Source: *Corporate Crime Reporter*

VIII. PRODUCT LIABILITY UPDATE

HONDA SETTLES AIRBAG LAWSUIT

Honda has settled a wrongful death lawsuit involving an airbag that exploded after a minor automobile accident. The public believes that airbags are supposed to save lives, so when airbag injuries result in serious harm, or death, to vehicle occupants, folks are always shocked and greatly surprised. The settlement in this case was for the family of a woman who died when her airbag exploded. The victim, Guddi Rathore, bled to death when her airbag exploded after what was described as a minor fender bender. The explosion sent metal debris into the vehicle the woman was driving, cutting her neck and severing her arteries.

Mrs. Rathore's family settled with Honda for \$3 million. Although the settlement is with Honda, a company called Takata - which supplies airbags and seatbelts—actually will pay the amount of the settlement. Each of Mrs. Rathore's three children, who were in the car at the time of the accident, will receive \$567,000 when they reach 18 years of age.

As lawyers in our firm know all too well, airbag recalls continue to affect automobile manufacturers. In January 2013, Toyota recalled more than 850,000 vehicles for airbag defects. Affected by the recall were 2003-2004 Pontiac Vibe models, and 2003-2004 Toyota Corolla and Toyota Matrix models. According to the company, there was a defect in some of the airbags that could cause the airbag to deploy without any impact, exposing vehicle occupants to a risk of injury. In January, Honda recalled approximately 750,000 vehicles because the airbags were missing rivets, which could potentially cause injury to the driver. Fortunately, there were no injuries reported related to the two recalls. But in some cases, recalls have been announced after injuries occurred.

USA Today reported that to date in 2013 more than 1.5 million Honda and Toyota vehicles have been recalled due to airbag-related problems. In 2012, there were 22 separate recalls announced. The increase in recalls has been blamed on more airbags being put into cars and more sophisticated systems being used to operate the airbags. Among the problems with defective airbags are:

- airbags that deploy unnecessarily;
- airbags that do not deploy when needed; and
- airbags that send debris flying into the cabin of the vehicle.

Any one of these situations exposes the driver and passengers in vehicles to additional risk of injury and even death. Obviously, this is a most serious problem and one that must be dealt with by both NHTSA and the automobile industry.

Source: *USA Today*

**JURY AWARDS \$4.2 MILLION AGAINST NISSAN
MARCH 21, 2013—THE STAR LEDGER

A jury in New Jersey has awarded \$4.2 Million to the Plaintiff in a defective roof lawsuit. Larry Clanton had been driving to meet friends at the Jersey Shore in July 2006 when a 73-pound runaway tire bounced toward his car. The tire, which had fallen off a pickup truck headed in the opposite direction, bounced onto the roof of Clanton's

Nissan Altima, cracking the roof. Clanton's head was pushed forward by the roof, fracturing his neck as his chin pressed into his chest.

It was contended in the lawsuit that the roof's header panel was defective in that it was improperly attached to the rest of the roof's structure. Nissan denied the Plaintiff's allegations of defective roof design. The 52-year-old Clanton, who survived the accident, suffered debilitating injuries. He has taught himself to walk again at Jersey City Medical Center and at the Kessler Institute for Rehabilitation in West Orange.

Clanton now walks a mile a day and does exercises to keep his muscles from contracting. He suffers constant spasms, including prolonged shaking every morning when he wakes up. His fingers are now curled, which prevents him from playing sports or doing simple things with his hands. It was contended by the plaintiff that his injuries could have been prevented if the header, which forms the front of the roof, had been affixed to the sides of the roof's steel skeleton. It was proved by experts for the Plaintiff that the header panel is usually attached to the side rails of the roof. In this design, it was not.

Clanton settled with the driver of the pickup truck, whose wheel hit him, for the driver's policy limits of \$500,000. The judgment against Nissan will be reduced by 15 percent, to reflect the amount of fault the jury allocated to the pickup driver. It was proved at trial that Nissan had not done a single test to test the roof design to see how it would perform before the automaker started mass marketing it. The same roof design was used by Nissan in all Altima models made in 2002 through 2006. Cynthia A. Walters, a lawyer with Budd Larner, represented the plaintiff. She did a very good job for him. The firm has offices in New Jersey and New York.

Source: *The Star Ledger*

IX. MASS TORTS UPDATE

**\$11.1 MILLION AWARDED IN VAGINAL MESH CASE
AGAINST JOHNSON & JOHNSON**

As predicted in the March issue, the jury in the Gross case returned a \$7.76 million punitive damages award against the Ethicon Endo-Surgery Inc. subsidiary of Johnson & Johnson. The award came in the second phase of the trial in the case. This amount is in addition to the \$3.35 million awarded in the first phase as compensatory damages. As

we reported in the March issue, this is the first pelvic mesh trial in the New Jersey court and it had been labeled a "bellwether trial."

Mrs. Gross suffered extraordinary injuries as a result of the implanted mesh, ultimately undergoing 18 revision surgeries in an effort to remove the mesh after it began to erode and break down in her body. Mrs. Gross has experienced and continues to suffer from chronic pelvic pain, permanent incontinence, and permanent dyspareunia (painful intercourse) as a result of the implant. Mrs. Gross will continue to suffer from these conditions for the remainder of her life.

The jurors found that Johnson & Johnson failed to provide adequate warnings of the dangers of the Prolift to Mrs. Gross's physician and misrepresented the product in product brochures. The jury awarded Mrs. Gross and her husband \$3.35 million to compensate her for her past and future pain and suffering.

At the time the Prolift was implanted in Mrs. Gross, Johnson & Johnson was marketing the product without FDA approval or testing in patients. Even though Johnson & Johnson was aware of the problems caused by the Prolift, the company deliberately failed to provide adequate warnings and fraudulently misrepresented the risks of the product. After hearing evidence of Johnson & Johnson's deliberate disregard of patient safety, the jury awarded Mrs. Gross and her husband punitive damages in the second phase. Punitive damages are awarded to punish the conduct of Defendants who intentionally disregard the safety of others and to deter them from such conduct in the future.

Johnson & Johnson removed the Prolift from the market in 2012. The company has assets of \$121.3 billion and a net worth of \$64.8 billion. Johnson & Johnson spent more than \$20 billion last year in advertising alone, approximately \$57 million per day. Approximately every 45 minutes, Johnson & Johnson spends the equivalent of the \$3.35 million dollar verdict awarded to Mrs. Gross on advertising for its products.

There are more than 1,800 cases pending in New Jersey state court against Johnson & Johnson. Approximately 2,200 cases are pending against Johnson & Johnson in the federal multidistrict litigation in the United States District Court for the Southern District of West Virginia. In addition to cases filed against Johnson & Johnson, cases involving similarly defective transvaginal mesh products have been filed against American Medical Systems, Bard, Boston Scientific, Coloplast, Caldera, and Cook Medical. More than 14,000 claims are currently pending throughout the country in state and federal courts. The next trial will take place

in July in the multidistrict litigation in West Virginia against Bard.

JURY TELLS JOHNSON & JOHNSON TO PAY \$8.3 MILLION OVER DEFECTIVE HIP REPLACEMENT

A California jury awarded \$8.3 million last month to a former prison guard who accused Johnson & Johnson's DePuy Orthopaedics subsidiary of knowingly marketing a faulty hip implant that was later recalled. Jurors found that the ASR XL implant was defectively designed and caused metal poisoning and other health problems suffered by Loren Kransky after he underwent surgery in 2007. But the jurors rejected the 65-year-old Plaintiff's claim that DePuy failed to adequately warn of the risks associated with the implant, and it didn't find the company acted with malice, prohibiting him from collecting any punitive damages.

The fraud and negligence suit is the first of nearly 11,000 similar cases involving an all-metal ball-and-socket hip joint that was pulled from the market two years ago to reach trial in the United States. Others, like the Plaintiff Kransky case, contended the implants have left them with crippling injuries or in need of other replacement surgeries. Johnson & Johnson has set aside about \$1 billion to cover costs of the recall and lawsuits. The injuries in these cases are real and very serious. The companies selling these products, Johnson & Johnson and DePuy, will have to pay significant money for their mistakes. Johnson & Johnson plans to appeal the verdict in this case.

During the trial, jurors were told that black pieces of metal flaked off the implant and caused a type of poisoning that could have killed the Plaintiff if the material had not been removed. One of Plaintiff's lawyers told the jurors during closing arguments that the company "knew this hip was defective long before Mr. Kransky got it" and that "they (Johnson & Johnson) wanted to play Russian roulette with patients. This Defendant didn't care about patient safety." The Defense lawyers denied the Plaintiff's claims and argued that he had a host of pre-existing health ailments and that the hip implant didn't make him worse.

As we have reported, the hip joint was sold for eight years to more than 90,000 people worldwide. Johnson & Johnson stopped making the product in 2009 and recalled it the next year. The artificial part is meant to replace deteriorated joints causing severe pain and limiting mobility, and is generally expected to last ten to 20 years. With the DePuy hip implant, one in eight patients needed theirs replaced within five years. That's a very bad track record by any standards.

The implant, the Articular Surface Replacement, known as the A.S.R., is a metal-on-metal device that was recalled by the Defendants in 2010. It was first sold in 2003 outside of the U.S. and began being sold here in 2005. The design of the A.S.R. causes the metal ball to strike the metal cup causing fretting or the shedding of metal debris as the two metal surfaces rub against the other. The metal debris could then contaminate local tissue and bone and, eventually, enter the blood stream causing metallosis, or heavy metal poisoning. The jury found that the design of the A.S.R. was, in fact, defective.

While J&J knew about the problems in 2008, the company has denied it. It should be noted that Johnson & Johnson, the world's biggest provider of health care products, has issued more than 30 product recalls since 2009. Most have involved non-prescription medicines such as adult and children's Tylenol and Motrin, but other recalls were for prescription drugs for conditions such as epilepsy or for contact lenses. John Gomez, Brian Parrish and Mike Kelly were the lead lawyers in this case for the Plaintiff. They had tremendous help from their support staff. All did a very good job for their client in the case.

Source: mycentraljersey.com

A LOOK AT OUR FIRM'S INVOLVEMENT IN HIP REPLACEMENT CASES

As we have previously reported, lawyers in our firm are heavily involved in the hip replacement litigation. We represent a large number of persons who suffered from complications or hip replacement failure after receiving a metal hip replacement. We have filed lawsuits against various metal-on-metal hip manufacturers seeking compensation for their injuries. Our lawyers currently represent clients with the following hip and knee implant devices: DePuy ASR; DePuy Pinnacle (metal liners); Wright ProfFemur and Conserve; Biomet Magnum and M2a; Stryker Rejuvenate and ABG II; Smith & Nephew R3; Zimmer Durom cup; Zimmer NexGen knees.

If you need information on the above, please contact Navan Ward, a lawyer in our Mass Torts Section, at 1-800-898-2034 or Navan.Ward@beasleyallen.com, if you have any questions or need additional information on this subject.

FRESENIUS SUED AGAIN IN CARDIAC DEATH LAWSUIT

A wrongful death lawsuit has been filed against the manufacturer of GranuFlo[®], Fre-

senius Medical Care North America. The lawsuit was filed in federal court in Boston on February 27, 2013, by Bettye Alexander, whose late husband Gary Alexander suffered a heart attack and died following hemodialysis treatment using GranuFlo[®]. Mrs. Alexander alleges that Fresenius failed to warn that GranuFlo[®], which has been used as part of a dialysate prescription at thousands of dialysis clinics over the last decade, puts patients at a substantially higher risk of cardiac arrest, stroke, and sudden cardiac death. Thousands of people alleged to have suffered cardiac arrest, stroke, or sudden cardiac death following the use of GranuFlo[®] or a similar Fresenius dialysate product, NaturaLyte[®].

It's alleged in the lawsuit that Fresenius was aware of the risk for years, long before Mr. Alexander underwent his hemodialysis treatment. An internal memo written by Fresenius in November 2011 warned that the use of GranuFlo[®] was associated with a six- to eight-fold greater increase of cardiopulmonary arrest and sudden cardiac death in the dialysis facility. That internal memo, which covered only a single year and a third of Fresenius's clinics, identified 947 cardiac deaths. Fresenius sent that internal memo to its own network of dialysis clinics.

But Fresenius sells GranuFlo[®] to thousands of other dialysis clinics as well. It did not share this information with any of them until almost five months later. The internal memo was leaked anonymously to the FDA in March, 2012. A recall of GranuFlo[®] and a similar product, NaturaLyte[®], was issued later that month. For more information on the recall, you can visit <http://www.fda.gov/MedicalDevices/Safety/ListofRecalls/ucm309990.htm>.

Fresenius Medical Care North America recently received a warning letter from the FDA over its artificial kidneys, also known as dialyzers, which are used in dialysis machines to filter a patient's blood. The FDA's March 14th warning letter claims that Fresenius failed to do adequate studies to make sure the dialyzers match their design. The FDA stated in the letter that "the organization did not conduct adequate design verification studies of its electron beam sterilized polysulfone dialyzers manufactured" and that "the process for design validation of these dialyzers has been incomplete."

The lawsuit seeks compensatory and punitive damages for the unnecessary and unfortunate death of Mrs. Alexander's husband. Plaintiffs with cases against Fresenius have filed with the Judicial Panel of Multidistrict Litigation (JPML), seeking to consolidate all GranuFlo[®] lawsuits in a single federal court in order to coordinate pretrial proceedings and efficiently manage the litigation. Fre-

nus has joined in that request. If you need help or information on the subject, contact Frank Woodson, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Frank.Woodson@beasleyallen.com.

Sources: *PR Newswire* and *Law360.com*

APPROXIMATELY 800 ZIMMER NEXGEN LAWSUITS HAVE BEEN FILED

When patients were told they were receiving a Zimmer knee replacement, many believed the Zimmer NexGen Knee Replacement would last a long time and would solve their knee problems. Unfortunately, certain Zimmer knee implants have been linked to serious problems, including failure of the knee requiring revision surgery. This has resulted in hundreds of lawsuits being filed. Joint replacements are expected by both patients and doctors to last years after the implant surgery takes place. But according to some reports, certain Zimmer knee implants are not lasting nearly as long as they should, and that early failure rate has resulted in pain, lost wages and revision surgery for some patients.

The Zimmer NexGen CR-Flex was marketed as being superior to other knee implants because it was designed to give patients a larger range of motion than the original NexGen. The NexGen CR-Flex comes in both a cemented and uncemented version (the uncemented version fuses to the bone without the aid of a bonding agent). The implants were supposed to last around 15 years, but, in some patients, failed in a year or less, after the implant failed to fuse properly to the bone. In other cases - those involving the cemented version - the problem has been blamed on isolated debonding, in which the implant comes loose from the adhesive and bone.

The lawsuits filed against Zimmer allege the patients suffered severe pain and in some cases were forced to undergo revision surgery to replace the implant. Plaintiffs accuse Zimmer of manufacturing a defectively-designed knee implant and failing to warn consumers about the risks associated with the NexGen. Patients who have pain in their knee or feel their implant may have failed can request a bone scan, which will show signs of loosening if there are problems with the device. An x-ray is not equipped to show replacement device failure.

At last count, Zimmer was facing approximately 800 lawsuits that have been consolidated in multidistrict litigation. Initially, 18 lawsuits were transferred to the Northern District of Illinois. But by December 26, 2010, another 775 lawsuits were added to the multidistrict litigation—and more law-

suits are still being filed. In addition to undergoing revision surgery, patients say they have missed work - and lost income - because of the pain from the knee, and because of the time required to recover from the surgery. Zimmer multidistrict litigation is MDL No. 2272. If you need more information on this subject, contact Navan Ward, a lawyer in our Mass Torts Section, who is handling Zimmer cases, at 800-898-2034 or by email at Navan.Ward@beasleyallen.com.

Source: *lawyersandsettlementsusa.com*

MORE ZOLOFT LAWSUITS BEING FILED

More Zoloft-related lawsuits are being filed against Pfizer, alleging Zoloft birth defects affected infants born with congenital birth defects and other serious health problems. The Zoloft birth defects lawsuits contend that pregnant mothers took the antidepressant while pregnant, and that by doing so, exposed their unborn babies to Zoloft defects. The defects include ventricular septal defect, craniosynostosis and cleft palate.

Pfizer knew, or reasonably should have known, that its antidepressant was linked to an increased risk of birth defects and included inadequate warnings on the label. Zoloft, known generically as sertraline, is in a class of antidepressants known as selective serotonin reuptake inhibitors (SSRIs). Various studies have linked the drugs to side effects including congenital heart defects, cleft palate, craniosynostosis, persistent pulmonary hypertension of the newborn (PPHN) and developmental delays. Other studies have not found a link between the antidepressants and birth defects.

The risks vary depending on the drug used. For example, a study published in the *New England Journal of Medicine* in 2007 found the risk of a heart defect was double in women who took Zoloft during the first few months of pregnancy but triple in women who used Paxil. Among the birth defects that increased with Zoloft use were omphalocele and septal defects. Women who have depression and are pregnant face a decision in whether or not to take antidepressants while pregnant. While there are risks to taking antidepressants while pregnant, there are also risks to having untreated depression during pregnancy.

If you have any questions about the Zoloft litigation, contact Roger Smith, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Roger.Smith@beasleyallen.com.

2013 YAZ AND YASMIN SETTLEMENT PROJECTIONS BY BAYER

Bayer AG's 2012 year-end annual report contains some interesting information on the litigation involving Yaz and Yasmin. The company's released numbers have made it clear that the German AG is both ready and willing to continue settling claims in the six-figure range. It also is indicated that Bayer wants to do so at a faster pace. Bayer has serious exposure to Yaz and Yasmin victims that have claims relating to blood clot injuries.

Bayer AG's Yaz and Yasmin birth control products have, according to the company's recently released 2012 year-end financial information, been a real problem for the drug manufacturer. In Bayer's prior third quarter 2012 report, the company admitted to as many as 12,000 lawsuits, as well as \$750 million in payouts to settle 3,500 cases. It appears that, in the last quarter alone, Bayer has settled over 1,000 claims worth approximately \$250 million. Now the thousands of claims that remain unsettled have been consolidated into an MDL in the District of Illinois, known formally as Yasmin and Yaz (Drospirenone) Marketing, Sales Practices and Products Liability Litigation (MDL No. 2100, Southern District Illinois). On January 14th, 2013, the MDL US Judicial Panel confirmed that there are in fact 9,455 actions currently pending in that litigation.

Bayer informed its shareholders in its year-end 2012 disclosure that it will continue to settle as many of these cases as it can. The company also disclosed that 4,800 additional claims involving blood clot injuries like deep vein thrombosis (DVT) or pulmonary embolism have settled at a cost of approximately \$1 billion. To put this in perspective, Bayer reported annual 2012 revenues totaling \$52 billion, leaving the \$1 billion spent so far for litigation expenses as a substantial, but ultimately manageable expense for the German pharmaceutical AG.

Bayer intends to commit as much as \$1.5 billion in litigation reserves to settle blood clot-type injury claims. The likelihood of settlement is not surprising in light of the harmful effects the drugs have had on women, including blood clots, strokes, heart attacks, and death. At present, Bayer has only indicated that it is willing to settle certain blood clot injury cases. Yaz and Yasmin drugs have been prescribed for over 100 million women throughout the country. It's significant that Yaz and Yasmin ranks as the second-highest drug leading to complications reported to the FDA in 2011. It is also one of the most popular birth control remedies on the market. This gives risk to the potential of additional claims. If you have any questions about the Yaz and Yasmin liti-

gation, contact Roger Smith, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Roger.Smith@beasleyallen.com.

Source: casefunding.com

FLORIDA JURY AWARDS \$250,000 IN ZOMETA JAW INJURY SUIT

A federal jury has awarded \$250,000 to a Florida couple who claimed Novartis Pharmaceuticals failed to adequately warn of the risk of osteonecrosis of the jaw from taking the bone strengthening drug Zometa. The Plaintiff, J. Hunter Chiles III, will receive \$200,000 in compensatory damages. The case was tried in the U.S. District Court for the Middle District of Florida in Jacksonville, Fla. The jury also awarded \$50,000 to Mr. Chiles' wife for loss of consortium.

In 2006, the Plaintiff filed product liability claims against Novartis in federal court. According to the complaint, Mr. Chiles took Zometa between April 2003 and March 2005 to prevent bone loss during cancer treatment. He then developed osteonecrosis of the jaw. Osteonecrosis is bone death resulting from poor blood supply to an area of the bone. Zometa contains bisphosphonate, which is intended to strengthen bones. But medical studies indicated in early 2003 that there was a link between Zometa and osteonecrosis of the jaw.

Novartis didn't begin warning health professionals of the risk until May 2005. The jury rejected the negligent failure-to-warn claim but found that Novartis was subject to strict liability because Zometa was defective due to the lack of adequate warnings. The jury did not award for punitive damages in the case. The jury's verdict was unanimous and was reached after eight hours of deliberation. The lawsuit was once part of the Zometa and Aredia multidistrict litigation in the Middle District of Tennessee before being remanded to the Middle District of Florida in 2011. In November, a federal jury in New York awarded \$10.5 million to a woman who said she developed necrosis of the jaw from taking Zometa.

Source: *Lawyers USA Online*

SERIOUS SIDE EFFECTS ASSOCIATED WITH MIRENA IUD

****MARCH 26, 2013—BEASLEYALLEN.COM**

Lawyers in our firm are investigating cases of injury associated with the Mirena IUD. The intrauterine birth control system has been associated with complications such as organ perforation, migration of the device to the outside of the uterus, expulsion of the IUD, and embedment in the uterus. The

Mirena IUD, made by Bayer HealthCare Pharmaceuticals, was approved by the FDA in 2000 to prevent pregnancy. In 2009, the agency approved the device to treat heavy menstrual bleeding in women who used IUDs as their method of birth control. It became the first IUD approved for this indication.

The small flexible device is inserted into the cervix and delivers a small amount of the hormone levonorgestrel. The most serious adverse events reported include ectopic pregnancy; intrauterine pregnancy; group A streptococcal sepsis; pelvic inflammatory disease; embedment of the device in the uterine wall and perforation of the uterine wall or cervix. Other, and more common side effects include uterine bleeding/spotting at irregular intervals; headache; ovarian cysts; vaginitis; pain during menstruation; pelvic pain and breast tenderness.

Pharmaceutical companies have a responsibility to adequately warn consumers of the dangers associated with their drugs or devices. Women who now have or who have had a Mirena IUD and experienced complications should talk with a lawyers to find out if they may have a claim against the manufacturer. If you would like more information on this subject contact Genie Pruett in our Mass Torts Section and she will put you in touch with one of our lawyers. Genie can be reached at 800-898-2034 or by email at Genie.Pruett@beasleyallen.com.

X. BUSINESS LITIGATION

ST. LOUIS COMPANY WINS SUIT OVER BOWL-SHAPED CHIP

A Texas jury has ruled for a St. Louis company in its fight with snack giant Frito-Lay over the right to produce bowl-shaped tortilla chips. Plano, Texas-based Frito-Lay sued St. Louis-based Ralcorp Holdings and its Medallion Foods subsidiary in February 2012, saying Ralcorp's Bowlz corn chips were too similar to Frito-Lay's Tostitos Scoops! chips. In both cases, the chips are formed into small bowl shapes, allowing for easier scooping. The lawsuit claimed:

Defendants' bowl-shaped tortilla chips and accompanying package are an apparent intentional effort to imitate the famous, successful mark and packaging of Frito-Lay's Tostitos Scoops! tortilla chips.

Frito-Lay asked the U.S. District Court in Dallas to order Ralcorp to stop making the chips and pay \$4.5 million damages, but a jury on March 1 sided with Ralcorp. Ralcorp is a leading maker of store-brand foods—private-label products using the brand names of stores where the items are sold. Ralcorp is now part of Omaha, Neb.-based ConAgra Foods Inc. after a \$5 billion purchase was completed in January. Ralcorp responded to the lawsuit, saying it used a different manufacturing process and made a better chip at a lower cost. ConAgra said in a statement:

We are pleased with the jury's decision in our favor. We believe private brands offer a strong value to consumers, and we are delighted to bring terrific choices to shoppers. We will continue to develop and make distinctive, high-quality food like this chip.

Frito-Lay spokesman spokesman Chris Kuechenmeister countered with a statement saying the verdict showed his company's chips were superior. He said the jury "agreed with Defendants' own argument that their product is not comparable to the design of the great Tostitos SCOOPS! products that tens of millions of Americans have come to love." That is an interesting spin on the outcome of the litigation.

Source: *Insurance Journal*

NINTENDO FOUND GUILTY OF 3D PATENT INFRINGEMENT

A federal jury in New York last month found that video game company Nintendo Co. infringed an inventor's 3-D display technology patent with its handheld 3DS video-game system. The jury awarded the inventor, Seiji Tomita, \$30.2 million in compensatory damages. The patent relates to technology that Tomita developed for providing 3-D images without the need for 3-D glasses. The case was tried in U.S. District Court in Manhattan.

The jury found that Nintendo used technology that Tomita developed for its 3DS. Tomita is a former longtime Sony Corp. employee. The defense was that the 3DS doesn't use key aspects of Tomita's patent. A 2003 meeting involving Nintendo officials and Tomita was important. Tomita, 58, sued Nintendo and its U.S. unit in 2011 for patent infringement. Joe Diamante, a lawyer from New York City, represented Mr. Tomita in this lawsuit. He did a very good job for him.

Source: *Insurance Journal*

XI. AN UPDATE ON SECURITIES LITIGATION

SUPREME COURT LIMITS WHEN SEC CAN LEVY FRAUD PENALTIES

The U.S. Supreme Court has limited the authority of the federal government's top securities regulator to seek civil penalties over conduct that occurred more than five years before investigators took action. The nine-member Court held on a unanimous vote that the five-year clock for the government to act on fraud begins to tick when the fraud occurs, not when it is discovered. The case was a victory for mutual fund manager Marc Gabelli and colleague Bruce Alpert, whom the U.S. Securities and Exchange Commission claimed allowed a firm now known as Headstart Advisers Ltd. to conduct hundreds of "market-timing" trades. Such trades involve rapid trading to exploit market or price inefficiencies. The practice, while not illegal, is considered improper.

Gabelli and Alpert, who deny any wrongdoing, said the clock for enforcement action starts to tick when the alleged act occurred. The SEC said it starts when the agency is reasonably able to detect fraud. The SEC claimed that Gabelli and Alpert violated the law from 1999 to 2002. But the agency did not sue Gabelli and Alpert until April 2008, nearly five years later, and more than five years after it said the last market-timing trade occurred. The SEC is reviewing the decision.

Chief Justice John Roberts, in the opinion, said allowing the SEC to bring a case so late, without Congress having explicitly given the SEC the power to do so, poses challenges. The Chief Justice wrote for the Court. He wrote:

Determining when the government, as opposed to an individual, knew or reasonably should have known of a fraud presents particular challenges for the courts. Agencies often have hundreds of employees, dozens of offices and several levels of leadership. In such a case, when does 'the government' know of a violation?

The SEC had won before the 2nd U.S. Circuit Court of Appeals in August 2011. Judge Jed Rakoff wrote for the Court that the regulator could not have reasonably uncovered the market timing until a high-profile investigation by then-New York Attorney General Eliot Spitzer brought it to promi-

nence. The case is *Gabelli v. SEC, U.S. Supreme Court*, No. 11-1274.

Source: *Insurance Journal*

CLASS ACTION STATUS GRANTED IN AIG LAWSUIT

Two groups of American International Group Inc. shareholders won class-action status from a federal judge last month in a \$25 billion lawsuit by former Chief Executive Hank Greenberg over losses allegedly caused by the U.S. government's bailout of the giant insurer. U.S. Court of Federal Claims Judge Thomas Wheeler also appointed David Boies, of Boies, Schiller & Flexner, as lead counsel for the classes. Starr International Co., once AIG's largest shareholder with a 12 percent stake, sued the United States in 2011 over what eventually became a \$182.3 billion bailout for the New York-based insurer.

It's alleged in the lawsuit that by taking a 79.9 percent AIG stake and then conducting a reverse stock split without letting existing shareholders vote, the government conducted an illegal taking that violated the 5th Amendment of the U.S. Constitution. Citing Boies' estimate that "tens of thousands" of shareholders might be affected, Judge Wheeler said "class certification is by far the most efficient method of adjudicating these claims." The judge distinguished the case from the U.S. Supreme Court's 2011 rejection of class status for more than one million Wal-Mart Stores Inc. workers alleging gender bias. Judge Wheeler said the AIG claims are "based on the same exact government action," rather than "literally millions" of separate actions.

One class includes AIG shareholders as of Sept. 22, 2008, when a credit agreement awarding the 79.9 percent stake took effect. The other class includes shareholders as of June 30, 2009 who were denied a chance to vote on the reverse split. AIG elected on Jan. 9 not to join Greenberg's lawsuit. Congress and the public were greatly upset over the prospect that AIG would consider suing the same entity that rescued it from collapse.

Greenberg has appealed a Nov. 19, 2012 dismissal of a related lawsuit in Manhattan federal court against the Federal Reserve Bank of New York. On March 1, AIG bought back warrants from the Treasury Department, eliminating the government's last financial interest in the insurer. The case referred to above is *Starr International Co. v. U.S., U.S. Court of Federal Claims*, No. 11-00779.

Source: *Insurance Journal*

XII. EMPLOYMENT AND FLSA LITIGATION

DOJ JOINS WHISTLEBLOWER LAWSUIT AGAINST LANCE ARMSTRONG

Lance Armstrong, a "household name" in the U.S. and abroad, has been in the news quite a bit lately and most of it was bad. The U.S. Department of Justice has joined a whistleblower lawsuit against the former cyclist. The lawsuit was filed by Floyd Landis, a former Armstrong teammate, who was stripped of his 2006 Tour de France win for doping. Landis alleged that for years he personally observed Armstrong take performance enhancing drugs (PEDs) on various occasions.

Armstrong, who won seven Tour de France victories, faced allegations of PED use going back to as late as 1999 and repeatedly denied such reports. In fact, he even went so far as to sue some of his accusers for making what he alleged were false statements. But in January 2013, during a televised interview with Oprah Winfrey, the former cycling champion recanted his previous denials. During the interview, Armstrong admitted to using banned PED substances throughout his career which began in the mid-1990s.

In the lawsuit—filed under the federal False Claims Act—Landis claims that Armstrong and other Defendants knowingly made false claims to the United States Postal Service (USPS) by regularly using banned substances to enhance the team's performance, in violation of USPS sponsorship agreements. The False Claims Act prohibits people or corporations from making false statements to the government in an effort to obtain government funds. The lawsuit alleges that the Post Office is a quasi-government agency. Therefore, according to the complaint, Armstrong and his co-Defendants are liable for civil damages for violating the USPS sponsorship agreements by lying about using PEDs in order to obtain government funding for his racing team.

If Armstrong is found guilty, he may be forced to pay the government millions of dollars. The False Claims Act permits the recovery of three times the government's actual damages, plus civil penalties ranging from \$5,500 to \$11,000 for each false claim that was submitted to the government. In addition, the Act allows the whistleblower to recover a percentage of any recovery that the government ultimately obtains. In this case, Landis could recover several millions of dollars. The USPS paid sponsorship fees to

Armstrong totaling \$31 million between 2001 and 2004 alone.

The False Claims Act dates back to the Civil War, and has been used successfully in recent years to combat government fraud and to recover taxpayer dollars from wrongdoers. In its current form, the federal Act has also served as a model for many state whistleblower statutes that allow a whistleblower to recover a percentage of any funds obtained under fraudulent methods from that state. In June 2011, the Congressional Budget Office estimated that the DOJ will recover between \$3 billion to \$4 billion annually in civil fraud judgments over the next ten years.

In a statement announcing the government's participation in Landis's lawsuit, Stuart F. Delery, Principal Deputy Assistant Attorney General for the Civil Division of the Department of Justice said that the decision to join the lawsuit, "demonstrates the Department of Justice's steadfast commitment to safeguarding federal funds and making sure that contractors live up to their promises." Lawyers in our firm routinely handle litigation under the False Claims Act to recover damages on behalf of the government and whistleblowers. For more information on this subject, contact Lance Gould, Larry Golston, Archie Grubb, or Andrew Brashier in our Consumer Fraud section at 800-898-2034 or visit our website at www.beasleyallen.com. You can also reach them by email at Lance.Gould@beasleyallen.com, Larry.Golston@beasleyallen.com, Archie.Grubb@beasleyallen.com, or Andrew.Brashier@beasleyallen.com.

Source: www.npr.org and www.justicenewsflash.com

MERRILL LYNCH SETTLES OVERTIME LAWSUIT

Merrill Lynch, the investment banking firm acquired by Bank of America, has agreed to create a \$12 million fund to settle a class-action lawsuit alleging it didn't properly pay overtime to employees who provide support services for brokers. Broker assistants are non-exempt employees who must be paid at least one and half times their hourly wage for all hours over 40 in a work week. The lawsuit alleged that Merrill Lynch broker assistants were paid overtime based on an incorrect and low regular rate of pay and that Merrill Lynch failed to properly record and account for all overtime hours they worked. According to a source familiar with the case, approximately 90% of the broker assistants are women. The \$12 million fund will provide financial recovery for broker assistants who worked for Merrill

Lynch between 2010 and 2012. The settlement will require court approval.

Source: *American Banker*

DEPARTMENT OF LABOR RECOVERS \$1.3 MILLION IN BACK WAGES FOR MISCLASSIFIED HOMEWORKERS

The U.S. Department of Labor obtained a consent judgment to recover \$1.3 million in back wages for thousands of current and former employees of kgb USA Inc., the world's largest independent provider of directory assistance and enhanced information services. The employees—homeworkers hired to respond to text messages from customers—were paid a piece rate based on the number of customer inquiries they replied to. But since the workers were employees rather than independent contractors as they were classified, they were guaranteed the protections of the Fair Labor Standards Act of 1938 (FLSA). When their earnings dipped below the minimum wage, FLSA violations occurred.

The misclassification of workers causes many problems. Misclassified workers are often wrongfully denied FLSA protections, and denied benefits such as unemployment insurance and medical leave. Misclassifying workers also causes losses to the Treasury, to Social Security and Medicare funds, state unemployment insurance, and workers' compensation funds. In recent years, the Department of Labor has cracked down on employers misclassifying workers as independent contractors. The \$1.3 million consent judgment obtained is the latest example. If you need more information on this subject, contact Brad Smelser, a lawyer in our Consumer Fraud section at 800-898-2034 or email Brad.Smelser@beasleyallen.com.

Source: www.dol.gov

NORFOLK SOUTHERN ORDERED TO PAY FIRED WORKER \$438,000

The Occupational Safety and Health Administration has ordered Norfolk Southern Railway Co. to rehire an Indiana employee fired in 2010 and pay him nearly \$438,000 in damages. According to OSHA, the Fort Wayne-based crane operator was fired in August 2010 after Norfolk Southern "determined he had made false statements" about an on-the-job eye injury he had suffered. But OSHA said its inquiry found the worker would not have been terminated if he had not reported the workplace injury.

Norfolk Southern was ordered to rehire the worker and pay him \$175,000 in punitive

damages, nearly \$156,500 in back wages and benefits, \$100,000 in compensation for pain and suffering and nearly \$6,100 in other expenses. Norfolk Southern has said it will appeal the ruling.

Source: *Claims Journal*

JURY FINDS FOR FEMALE FIREFIGHTER IN HARASSMENT LAWSUIT

A woman who was fired as an Orange Township firefighter after complaining of sexual harassment by a co-worker was awarded more than \$1.7 million in damages last month. Raechel Sterud, 32, sued the Delaware County township and her supervising lieutenant, Keith Myers, in 2010, saying she was the victim of gender discrimination. A jury in Franklin County found that she was fired in 2007 because of her gender and that Myers acted "with actual malice" in recommending her termination. The jurors returned a judgment of \$1.67 million against the township and \$75,000 against Myers.

Common Pleas Judge Kim Brown, in subsequent hearings, will determine how much Ms. Sterud is owed in attorney's fees by the Defendants and whether she should get her job back. If the judge determines that it is reasonable and safe for her to return to the fire department, where those involved with the harassment and termination are still working, she would not receive the largest part of the judgment—\$779,702 in future wages.

Ms. Sterud was hired as a full-time firefighter by the township in January 2007 and was fired two weeks before her one-year probationary period was to expire. In her lawsuit, she said that a male firefighter began sexually harassing her immediately after transferring to her unit and that Myers didn't act on her complaints. Evidence in the case included an email in which a firefighter warned Myers that Ms. Sterud planned to file a formal complaint once she left probation and became a member of the firefighter's union.

Testimony at the trial showed that township firefighters were shown sexual-harassment training videos on a split screen so they also could watch a NASCAR race. Fire Chief Tom Stewart, Assistant Fire Chief Matt Noble and the firefighter accused of harassment, were named as Defendants in the original lawsuit, but were dismissed from the case before it reached trial. Daniel Mordarski, a lawyer from Columbus, Ohio, who represented the Plaintiff, said "The verdict represents vindication for (Sterud). She's been waiting for five years for a jury to look

at all the facts and indicate that what happened was wrong.”

Source: *The Columbus Dispatch*

UNION PACIFIC ORDERED TO REINSTATE INJURED WORKER

Union Pacific has been ordered to pay \$350,000 and reinstate a worker who federal regulators say was fired after reporting an injury to the railroad. The U.S. Department of Labor's Occupational Safety and Health Administration said Tuesday that the payment the railroad owes would compensate the employee for back pay and damages.

Regulators say the employee was a top performer who won awards at Union Pacific during a career of more than 30 years before reporting his injury in December 2010. Then OSHA says UP charged the employee with misusing his company vehicle and eventually fired him. But OSHA released few details about the employee and his injury because regulators consider the employee a whistleblower.

Source: *Claims Journal*

XIII. PREMISES LIABILITY UPDATE

LAWSUIT FILED AFTER CHILDREN SHOCKED AND BURNED BY POWER WIRE

A lawsuit has been filed against CenterPoint. A five-year-old and her three-year-old brother were shocked and severely burned by a dangling power pole guy wire. In the lawsuit, filed by the family, it's contended that the power company is solely responsible for this incident. No one knew the guy wire was electrified or that it could become electrified. The only ones who should have known that was CenterPoint.

The lawsuit offers graphic details of the accident, which occurred in the backyard of the family's home. It says they were playing near the wire when it became electrified and knocked them unconscious. The little girl was set on fire and stopped breathing. Her father performed CPR and eventually revived her. Both children were flown to Shriners' Burn Center in Galveston, where doctors performed skin grafting procedures. The doctors also had to amputate some of the children's limbs.

The lawsuit contends the victims' parents told CenterPoint about the dangling wire two weeks prior to the incident, yet nothing

was done about it. Tony Buzbee, a Houston lawyer, represents the family.

Source: www.whou.com

\$11.25 MILLION AWARDED IN SLIP-AND-FALL CASE

A jury in Virginia has returned an \$11.25 million verdict in favor of a doctor who suffered a permanent back injury when he slipped and fell in a Wal-Mart store. The jury returned the verdict for radiation oncologist Christopher Walsh after a three-day trial. Dr. Walsh was at a Wal-Mart store five years ago when he stepped on a recently-treated patch of floor. Dr. Walsh, then 50, fell very hard.

A Wal-Mart employee had just stripped or waxed the floor, and had gone to get safety cones to warn customers. There were no signs or tools to warn that the floor was slippery. Dr. Walsh's elbow hit the floor very hard. The swollen and painful elbow masked a more permanent problem with his spine. Spinal fractures were not discovered until a year and a half later. The ongoing pain put a strain on Dr. Walsh's cancer treatment practice. He had opened a one-doctor office to serve a rural community in 2005, and he had to hire other doctors and take frequent breaks to keep going after his accident.

The special damages in the case totaled \$1.7 million. I understand Dr. Walsh had demanded \$3.5 million to settle before trial, but Wal-Mart only offered \$750,000. Wal-Mart did not dispute liability and defended only on damages. The slippery patch of floor could not be seen and Dr. Walsh did nothing to cause himself to fall. John P. Harris III, a lawyer from Fredericksburg, Va. and Edward E. Scher, who is from Richmond, represented Dr. Walsh. They did a very good job in this case.

Source: *Lawyers USA Online*

JURY RETURNS \$23 MILLION VERDICT IN ELDER ABUSE CASE

A jury has returned a \$23 million verdict against Emeritus Corp. after finding the Seattle-based company guilty of wrongful death and elder abuse. The senior living provider has been ordered to pay \$500,000 in compensatory damages and \$23 million in punitive damages to the family of Joan Boice, a former resident of Emerald Hills in Auburn, Calif. who died in 2008, three months after moving to a nursing home. I understand that post-trial motions will be set by the court to determine entitlement to and amount of attorneys' fees, and the legality and appropriate amount of the punitive damages award. Emeritus says it will appeal the jury's verdict.

It was reported that late last year, the senior living provider had offered \$3.5 million to the family in an effort to settle the lawsuit filed on behalf of their mother. Mrs. Boice was 82 years old and suffered from Alzheimer's disease at the time of her death. Rather than accept the offer, the family elected to go to trial.

In the liability phase of the trial, the jury initially awarded the Boice family \$3.875 million for their mother's pain and suffering. Another \$250,000 was awarded for the loss of her companionship. The punitive damages came in the second phase of the trial. Lesley Ann Clement, a lawyer from Sacramento, Calif., who specializes in elder abuse law, represented the family and did a very good job.

Source: seniorhousingnews.com

XIV. WORKPLACE HAZARDS

NEW JERSEY JURY AWARDS \$2.7 MILLION IN FACTORY EXPLOSION

A jury in northern New Jersey has awarded more than \$2.7 million to the family of a man killed and several workers injured in a 2008 blast at a metal casting plant. The jury in Hackensack awarded \$1.4 million of the judgment to the family of 61-year-old Mario Gomez, a married father of five from Jersey City. Gomez was killed instantly when a boiler-like pressurized tank exploded on Jan. 15, 2008, at the Tec-Cast Inc. facility in Carlstadt. It was reported that Tec-Cast failed to follow multiple safety regulations and failed to ensure that safety devices were operative. The company says it will appeal.

Source: *Claims Journal*

CSX MUST PAY \$1.25 MILLION FOR REPETITIVE STRESS INJURY

Maryland's Highest Court has ruled that federal law does not bar a railroad worker from recovering damages for degenerative conditions caused by having to continuously walk on crushed rocks in rail yards. On appeal, the court upheld a \$1.25 million judgment. The decision affirmed a ruling by a state appellate court. The Plaintiff worked at various jobs for CSX for over 35 years. According to the Plaintiff, his duties had him walking one-and-a-half to two miles a day on the crushed rocks or "large ballast" that typi-

cally covers rail yards and walkways. The Plaintiff sued CSX under the Federal Employers' Liability Act (FELA), alleging that he suffers osteoarthritis of both knees from walking on the uneven surfaces that resulted from the railroad's use of large ballast.

CSX argued that the Plaintiff's lawsuit was preempted by a regulation promulgated under the Federal Railroad Safety Act (FRSA) setting minimum requirements for ballast used for railroad tracks. But the Court concluded that the regulation only bars a FELA negligence claim when the ballast performs a track-support function, not when the ballast is used for walkways, as alleged by the Plaintiff. The Court said in its opinion that CSX failed to meet its evidentiary burden for a preclusion defense.

Source: *Lawyers USA Online*

WORKER FILES SUIT AGAINST HOUSTON PACKAGING PLANT

A worker at a Houston packaging plant, who lost his arm while operating a machine, has filed a lawsuit against the business and a staffing firm that helped him get the job. Blas Esteban Solis, an independent contractor and machine operator at Mauser USA in Houston, was working on a machine that applies seams to metal drums when it allegedly malfunctioned in July 2012 and severed his arm. It's alleged in the lawsuit that:

- An assistant turned off the machine so that Solis could make the required adjustments.
- After the modifications were made, the assistant turned the machine to the "on" position so that it would activate by a manual command from the operator. At that time, the machine malfunctioned and unexpectedly engaged without being manually turned on by the operator.
- The worker's left arm was caught in the machine and was sawed off above the elbow.

The lawsuit seeks damages for financial losses, physical pain and mental anguish, medical expenses, lost wages and court costs. The lawsuit also names as Defendants Demand Staffing & Consulting, which assisted Solis in getting the job. Mauser is an international packaging company with offices in 15 countries, including the United States. The company handles a wide range of packaging, including composites, steel, fiber, reconditioning and machinery. Benny Agosto Jr., a Houston lawyer with Abraham, Watkins, Nichols, Sorrel & Friend, represents the Plaintiff in the lawsuit.

Source: *Houston Chronicle*

XV. TRANSPORTATION

TEXTING WHILE DRIVING INJURIES TO RISE DESPITE BANS AND WARNINGS

As states take measures to keep drivers from texting and talking while driving, a new report from researchers at the West Virginia University School of Public Health concludes that the laws probably aren't having much impact on the number of injuries caused by distracted driving. "Keeping an Eye on Distracted Driving," appears in the latest issue of the *Journal of the American Medical Association* (JAMA). The paper was co-authored by Jeffrey H. Coben, M.D., interim dean of the WVU School of Public Health, and Motao Zhu, M.D., Ph.D. Both study public health and safety topics through WVU's Injury Control Research Center.

Drs. Coben and Zhu note that in 2003, cell phone use while driving was estimated to cause more than 300,000 total injuries annually, including 2,600 fatalities. The numbers increased 22 percent between 2005 and 2009. The problem is expected to worsen in coming years, despite efforts to curtail distracted driving. Dr. Coben said:

Young drivers are at greatest risk, both because they use cell phones more than older drivers, and because they are inexperienced behind the wheel. I see this problem only getting worse unless more is done to prevent it.

Zhu agrees. "I think the problem will be getting worse before starting to level off, since many young drivers have grown up with mobile devices, and texting is very popular among them," he said. "Still, I do believe there will be a point where these numbers will level off. It will take long-term and concerted efforts, as have been employed with encouraging seat belt use and discouraging drunk driving."

The researchers' own West Virginia is one of 39 states that have banned text messaging by all drivers, while talking on a handheld device behind the wheel has been outlawed in ten states, plus the District of Columbia. A number of public awareness campaigns have been implemented by insurance companies, safety advocacy groups, transportation agencies and public health groups. Still, these efforts don't seem to be enough to have an impact on behaviors. Improvements in technology may be the best answer, according to Dr. Coben. He added:

Solving this problem will require new approaches. My hope is that ten years

from now, there will be systems built into all automobiles that disable all hand-held devices when the car is in motion, allow only hands-free phone usage and convert incoming text messages to voice and outgoing voice commands to text using hands-free voice recognition technology.

Though all these technological innovations are possible, Drs. Coben and Zhu say they believe the federal government should take greater action, including setting new safety standards requiring the development and implementation of this technology. Combining new technology with improved safety standards has the potential to save lives, and failure to act will result in the continued loss of thousands of lives each year to distracted driving-related crashes, they said.

Source: *Insurance Journal*

POLICE SAY MAN WAS TEXTING BEFORE FATAL OHIO CRASH

A northern Ohio man, who died after a crash on Interstate 75, was texting while driving, according to Toledo police. Ken Harder, age 51, died from injuries suffered in the violent crash that occurred on March 3rd. Mr. Harder was critically injured when his SUV crashed into a parked Ohio Department of Transportation maintenance truck whose workers were picking up litter on the side of I-75 north in Toledo. The truck was parked off the roadway. During their investigation, the police determined Mr. Harder was texting while driving. A state worker who was hit by a side mirror was taken to a hospital, but was not seriously injured. The unoccupied state truck was pushed 35 to 40 feet by the impact. This tragic event is a prime example of why drivers should never text while driving a vehicle.

Source: *Claims Journals*

COMPANY IN KENTUCKY CRASH HAD 17 TICKETS IN TWO YEARS

A Michigan trucking company, involved in a crash that left six people dead on an interstate highway in central Kentucky last month, had a satisfactory rating from the federal agency that oversees long-haul carriers. The Federal Motor Carrier Safety Administration based its ranking of Highway Star Inc. on a 24-month span in which the company fell below the national average of vehicle problems. Nevertheless, the agency advised states to closely inspect the company's vehicles because it has accumulated 17 traffic violations in the two-year period.

A tractor-trailer driven by 47-year-old Ibrahim Fetic hit an SUV carrying a family back to Wisconsin from a vacation in Florida on March 3rd. Killed were 62-year-old driver James Gollnow and his wife, 62-year-old Barbara Gollnow; their 92-year-old friend, Marion Chapnoise; 18-year-old Sareena Gollnow; and the couple's foster children, ten-year-old Gabriel Zumig and eight-year-old Soledad Smith. This was a tragic event affecting several families. It appears that a company with drivers having 17 tickets would have been red-flagged by some regulatory agency. In addition, the company would have had an obligation to take steps to get unsafe drivers off the road. But this company had a satisfactory rating.

Source: *Claims Journal*

DRUNK DRIVING IS STILL A MAJOR PROBLEM

The fight against drunk driving and underage drinking is an ongoing affair. There is both good and bad news relating to the fight. First, the good news: The National Highway Traffic Safety Administration has released new data on drunk driving fatalities. In 2011, for the first time since the agency started collecting data, there were fewer than 10,000 fatalities. To put that in perspective, when MADD was founded, there were more than 22,000 drunk driving fatalities each and every year. MADD has led the fight that has helped save over 300,000 lives and prevented millions of injuries since the organization was founded. This also means that the Campaign to Eliminate Drunk Driving is working. Since MADD started the Campaign in 2006, drunk driving deaths have decreased by more than 25 percent. But the battle isn't over, and there is more work to be done.

Unfortunately, there is some bad news on this front. Preliminary data from the first half of 2012 shows a seven percent increase in traffic deaths. If fatalities continued to rise at that rate, almost 700 more people would die from drunk driving each year. It's known from historical data that as the economy improves, people drive more and they drive drunk more. But 700 more people killed by drunk driving and thousands more injured would be an increase never seen before.

MADD is redoubling its efforts in 2013 to reduce the toll from the violent crime of drunk driving. You can read about a few of these efforts in the March issue of *The Road Ahead*, including MADD legislative agenda for the year, the agency's efforts to stop the next generation of drunk driving by helping to prevent underage drinking, and its efforts to help victims of drunk driving through both support services and by helping secure better rights for those impacted by crime. If

any of our readers have suggestions on what MADD should be doing or ways the group could do things better, email Jan Withers of MADD at jan.withers@madd.org.

Source: Report from MADD

XVI. HEALTHCARE ISSUES

AHIF SERVES U.S. VETERANS WITH TRAUMATIC BRAIN INJURY IN ALABAMA

As U.S. service men and women return home from Iraq and Afghanistan, we are reminded that Traumatic Brain Injury (TBI) is the signature injury of modern warfare. Pat Motley, Alabama Head Injury Foundation (AHIF) Resource Coordinator reports that in St. Clair County, Ala., she is working with Lakeside Hospice-Behavioral Services, MAPS, Eden Westside Baptist Church, and several area veteran's programs, such as the AM Vets and DAV, to provide support and assistance to veterans who are survivors of TBI and/or PTSD.

The Cornerstone Café Veterans Support Group was formed in 2012 by concerned members of these organizations. Counselors facilitate the meetings where veterans and their family members are encouraged to share with the group any frustrations, concerns, or issues they are experiencing. As issues emerge, the veteran and/or their family members have the option of:

- working one-on-one with a professional from the group who has experience/knowledge in dealing with similar issues or
- discussions with input from all of the professional and volunteers involved.

In one case, this group was able to identify a volunteer driver to take a veteran (and spouse) to the Birmingham VA for medical appointments. Finding a place to park and being able to walk to the VA Clinic was a major concern for this veteran. In having a volunteer drive them to the front door of the VA those worries were completely eliminated. A quick call to the volunteer's cell phone after their appointment was all they had to do to be picked up and on their way home in record time. While it may seem a little thing, to this veteran, on this day, a volunteer driver made a tremendous difference.

In another situation, the wife of an Iraqi war veteran came to the support group. She told her husband's story and described some of his problematic behaviors. Many in the

support group were able to relate, having had similar situations. This veteran's spouse needed to talk and to hear that others had similar experiences and to learn what they found helpful. After that meeting, she felt more encouraged about the future. It is true; we find great comfort in knowing we are not alone and that there are people who care.

The Alabama Head Injury Foundation says it is excited to be part of this support group and looks forward to providing emotional support. When appropriate, it also provides resource coordination to veterans who are survivors of traumatic brain injuries. In my opinion, AHIF does tremendous work for returning veterans and their families. For more information on AHIF, contact AHIF Resource Coordinator Pat Motley, at 205-594-4992/ patmotley@windstream.net or Teresa Carden at 205-884-1111/tcarden@lakesidehospice.org.

Source: The Alabama Head Injury Foundation

ANTIBACTERIAL DRUGS LINKED TO POTENTIALLY FATAL HEART RHYTHM ABNORMALITIES

The Food and Drug Administration is warning that the antibacterial drug azithromycin, known by the brand names Zithromax or Zmax, used to treat bacterial infections such as sinusitis, pneumonia and tonsillitis, may cause abnormal changes in the electrical activity of the heart that could lead to a potentially fatal irregular heart rhythm. These new and stronger warnings have been added to the Warnings and Precautions section of azithromycin drugs with information related to the risk of QT interval prolongation and torsades de pointes, a specific, rare heart rhythm abnormality. Patients at particular risk for developing this condition include those with known risk factors such as existing QT interval prolongation, low blood levels of potassium or magnesium, a slower than normal heart rate, or use of certain drugs used to treat abnormal heart rhythms, or arrhythmias.

The FDA issued the warning following a review of a study published last year in the *New England Journal of Medicine* that linked the common antibacterial drug to a slight increase in cardiovascular death. The study compared the risks of cardiovascular death in patients treated with a variety of common antibiotics including Zithromax, amoxicillin, ciprofloxacin (Cipro), and levofloxacin (Levaquin). The study also included patients not taking antibacterial drugs. Researchers found a small increased risk of cardiovascular death, as well as death from any cause, in persons treated with a five-day course of Zithromax compared to patients on amoxicillin, ciprofloxacin or no antibiotics at all. The risk of cardiovascular

death associated with levofloxacin treatment were similar to those with Zithromax.

The FDA advises health care professionals to evaluate the risk of fatal heart rhythms with azithromycin when considering treatment options for patients who are already at risk for cardiovascular events. The agency notes that the potential risk of QT prolongation with azithromycin should be placed in appropriate context when choosing an antibacterial drug. Alternative drugs in the macrolide class, or non-macrolides such as the fluoroquinolones, also have the potential for QT prolongation or other significant side effects that should be considered when choosing an antibacterial drug.

JANUVIA STUDIES LINK MEDICATION TO SERIOUS SIDE EFFECTS

A new study examining the diabetes drug *Januvia* is disturbing in that it discusses the risk of serious side effects. Persons taking this drug have suffered serious side effects, including thyroid and pancreatic cancer. The side effects that have been linked to *Januvia* include pancreatitis, thyroid cancer and pancreatic cancer. These side effects are similar to *Byetta*, another type II diabetes medication. Lawsuits have been filed in California against the maker of *Byetta*, alleging patients were not adequately warned about the risks associated with the drug.

There have been lawsuits filed by persons who were diagnosed with either thyroid or pancreatic cancer. So far there have been no lawsuits involving pancreatitis. There have been studies suggesting a correlation between acute pancreatitis and pancreatic cancer, in that acute pancreatitis could be a precursor to pancreatic cancer.

In addition to studies suggesting a correlation between acute pancreatitis and pancreatic cancer, some studies have suggested a link between the use of *Januvia* and an increased risk of pancreatitis, thyroid cancer and pancreatic cancer. One study, published on February 25, 2013 in the journal *JAMA Internal Medicine*, found that patients hospitalized with pancreatitis were two times more likely to be taking either *Januvia* or *Byetta* (made by Bristol-Myers Squibb Co.) than diabetic patients who did not have pancreatitis.

Consumer Reports issued an article recently warning patients to talk to their doctor about switching from *Januvia* to another medication. There have been studies on *Januvia*, commissioned by the drug manufacturer, that say *Januvia* is harmless. Independent studies tend to indicate a high risk of injury from *Januvia*. Thus far the FDA hasn't issued a warning about a potential

link between *Januvia* and thyroid or pancreatic cancer.

Source: Lawyersandsettlements.com

XVII. ENVIRONMENTAL CONCERNS

TEVA TO PAY \$2.25 MILLION POLLUTION PENALTY

Teva Pharmaceuticals USA Inc. will pay a \$2.25 million civil penalty to settle violations of federal and state pollution laws. A 2007 inspection of the company's facility in Mexico, Mo., revealed violations of the Clean Air Act. The violations included failure to control emissions of hazardous air pollutants from wastewater and failure to comply with regulations designed to prevent leaks of air pollutants from equipment at the facility.

In 2007, an EPA inspection found the Teva facility was discharging pollutants above permitted levels established by the City of Mexico's Pretreatment Program, in violation of the Clean Water Act. In some cases, these pollutants were interfering with the city's ability to treat its domestic sewage, leading to pollutant discharges into the Salt River. A 2008 inspection found that Teva was discharging a green effluent that ultimately discolored a portion of the Salt River in November and December 2008. In 2009, an inspection by the Missouri Department of Natural Resources uncovered various RCRA violations. These violations included failure to determine if waste was hazardous, illegal storage of hazardous waste, failure to comply with labeling requirements and offering hazardous waste for transport without a manifest. Ignacia S. Moreno, the Assistant Attorney General for the Justice Department's Environment and Natural Resources Division, had this to say:

This settlement penalizes Teva for multiple violations of U.S. environmental laws when it allowed excess emissions of hazardous air pollutants from Teva's wastewater treatment facility and excess discharges of pollutants into the City of Mexico, Missouri's wastewater treatment facility.

With numerous violations over a period of years, Teva's actions resulted in significant environmental damage to the air and water. Karl Brooks, EPA Region 7 Administrator, said the penalty and injunctive relief required by this agreement send a strong message to Teva and others that businesses must comply with environmental laws.

Teva's \$2.25 million penalty includes a \$1.125 million payment to the U.S. Treasury and a \$1.125 million payment to the State of Missouri. In addition to the penalty, Teva will complete other actions at the facility valued at approximately \$2.5 million. These include the installation of equipment to recover and reuse approximately 59.5 tons of methylene chloride and reduce other emissions by 19 tons over a five-year period. Teva will also conduct an audit to identify past causes of Clean Water Act violations, implement a program to prevent leaks of hazardous air pollutants at the facility, take actions to prevent future violations and implement an Environmental Management System with third party monitoring.

Source: *Corporate Crime Reporter*

XVIII. THE CONSUMER CORNER

NHTSA EXPANDS PROBE INTO MERCEDES E-CLASS GAS LEAKS

U.S. safety officials have upgraded an investigation into an estimated 250,000 Mercedes-Benz E-Class sedans for a possible leak from the fuel tank. NHTSA upgraded its probe of model-year 2003 to 2008 E-Class cars to an engineering analysis, from a preliminary evaluation, based on 533 complaints received by regulators and Daimler AG's Mercedes. An engineering analysis is a step in a process that could lead to a recall if regulators determine that a safety issue needs to be addressed by a manufacturer.

The initial probe was opened in January 2012 after NHTSA received 20 consumer complaints from owners of E55 AMG cars about alleged fuel leaks or the presence of a strong gasoline odor both inside and outside the vehicle, particularly after refueling. To date NHTSA and Mercedes have received 370 and 163 complaints related to the issue, respectively. After the initial probe was opened, NHTSA said complaints were also received about other E-Class models, such as E320, E350, E500, E550 and E63 cars. The agency then decided to upgrade the investigation to further study the issue.

Source: *Claims Journal*

A MILLION GM MIDSIZE CARS COULD BE ADDED TO RECALL

Safety regulators in the U.S., at our press time, were considering investigating

whether to add more than a million General Motors midsize cars to a recall for brake light problems. The National Highway Traffic Safety Administration is checking into complaints about the 2004 to 2011 Chevrolet Malibu and the 2007 to 2009 Saturn Aura. According to NHTSA, the brake lights may not come on when the pedal is pressed, while at other times the lights can illuminate for no reason.

In 2009, GM recalled about 8,000 Pontiac G6 midsize cars from the 2005 model year for the same problem. NHTSA announced in February that it was investigating whether to add 550,000 G6s sold from 2005 to 2009. Now the agency is investigating 97 complaints from Malibu and Aura owners about the very same problems. The two cars share many of the same parts with the G6, though it is not clear whether all three cars have the same brake lights.

GM sold more than 1.5 million Malibus and Auras from 2004 through 2011, according to Ward's AutoInfoBank, but it was unclear how many of them are included in the investigation. No additional recalls have been issued beyond the 8,000 cars called in for repairs in 2009, although NHTSA says it opened the probe "to determine if the scope of the recall should be expanded or an adjustment in existing remedies is required."

NHTSA says if the brake lights don't illuminate, drivers behind the cars won't be warned, and that could lead to a crash. A GM spokesman said on March 12th that the company has no reports of crashes or injuries. In the 2009 recall, GM traced the problem to corrosion in a wiring connector. Dealers were to fix it by putting a lubricant on the connector to prevent corrosion. The company sent dealers a service bulletin in October of 2010 detailing how to fix similar brake light problems in Malibus and Auras, NHTSA said.

Some of the owners who complained about G6 brake light problems also said the cruise control may not engage or will disengage unintentionally. Owners who suspect brake light or cruise control problems should take their cars to any Chevrolet, Buick, Cadillac or GMC dealer. GM shut down the Pontiac and Saturn brands in 2010 as part of its massive restructuring.

Source: *Claims Journal*

MINI COOPER ENGINE DEFECT CLASS ACTION FILED

A class action lawsuit was filed last month against BMW of North America LLC in a New Jersey federal court. It's alleged that an engine defect in some of its 2007-09 Mini Cooper vehicles have cost vehicle owners thousands of dollars in repair and replace-

ment costs. The named Plaintiffs, Joshua Skeen and Laurie Freeman, contend BMW has known of the defect, which causes cars to suddenly quit without warning, since 2008, but failed to tell prospective purchasers about the problem, offer a recall or reimburse vehicle owners who have already paid to replace or restore their engines. The complaint reads in part:

Despite the safety risk to class vehicle occupants, Defendants failed to disclose material information regarding the defect in an attempt to avoid the cost of repair and, instead, unfairly shift the cost of repair to class members.

The models mentioned in the suit are the 2007-09 Mini Cooper R56 and the 2008-09 Mini Cooper R55. The alleged problem is a defect in the Mini's timing chain tensioner, which maintains an appropriate tension of the engine's timing chain. The timing chain controls the timing of the engine's valves, but when the chain doesn't have proper tension or synchronization, the engine's pistons and valves collide with great force and the engine components suffer so much damage that the engine seizes and the vehicle loses all power, according to the complaint. The named Plaintiffs both bought new Mini Cooper S models in 2007 and allege that while the timing chains used in the Mini Cooper are meant to last about ten years or 120,000 miles, they encountered problems with their engines far sooner than expected. Mr. Skeen said he paid \$3,288 in January to replace the car's engine, which had logged a little more than 74,000 miles, and Mrs. Freeman said her timing chain tensioner was first replaced in July 2009 under warranty, but needed to be replaced again in February, costing her \$1,381. She said at the time of the second replacement, her car had logged nearly 88,000 miles.

Most cars use rubber timing belts, but the timing chains used in the Mini are much more durable and expected to last the ten-year life of the car, according to the complaint. It was alleged that BMW advertised the timing chain as "maintenance-free" throughout the engine's life. It was further alleged that according to the Mini maintenance program, the chain and tensioner don't require service. But in reality, the complaint said the timing chain tensioner isn't maintenance free, and that motorists have submitted complaints to NHTSA's Office of Defects Investigation over safety concerns related to the engine defect. It's also alleged that one such complaint was filed after a Mini engine quit just as a motorist was about to enter a highway. Others were said to have been filed by folks who had or narrowly

avoided accidents when their cars quit in the middle of traffic.

The Plaintiffs contend BMW has been aware of the issue since at least January 2008, when it issued a technical service bulletin addressing the alleged problem. They also said the carmaker hasn't recalled the affected vehicles to repair the defect or offered a suitable free replacement or repair. The complaint also alleges BMW hasn't offered to reimburse class members or paid to repair their cars. The suit alleges breach of express and implied warranty claims and New Jersey Consumer Fraud Act and Georgia and Illinois law violations.

The Plaintiffs are represented by: William J. Pinilis of PinilisHalpern; Raymond P. Boucher of the Law Office of Raymond P. Boucher; Paul R. Kiesel, Jeffrey A. Koncius and Maria L. Weitz from Kiesel & Larson and David Markun of Markun Zusman Compton. The case is styled *Joshua Skeen and Laurie Freeman v. BMW of North America LLC*, case No. 2:13-cv-01531 in the U.S. District Court for the District of New Jersey.

Source: Law360.com

RECALLS RELATING TO ELECTRONIC SYSTEMS TRIPLE

It was reported last month by L.S. Sherman Consulting, litigation specialists, that U.S. vehicle recalls related to electronic systems have tripled. The firm also says that investigations relating to these systems have quadrupled in the past 30 years. The recalls follow a tremendous increase in the use of computers to control functions such as acceleration. Lawmakers and safety advocates probing Toyota Motor Corp.'s handling of sudden-acceleration complaints say NHTSA has failed to keep pace with the technology.

Recalls related to electronics averaged 34 a year this decade, up from 11 annually in the 1980s. It's also significant that defect investigations rose to a dozen per year from three in that period, according to data compiled by *Bloomberg News* from NHTSA databases. The data also reveals that complaints to NHTSA about vehicle electronic systems rose 50 percent from the mid-1990s to 3,798 annually this decade.

It's obvious that NHTSA badly needs an upgrade in a number of areas, and that's especially true when it comes to staffing. The agency currently has only two engineers out of 125 who specialize in electronics. NHTSA lacks regulations for auto electronics, and rules governing accelerators were written in 1973 and last updated in 1995. At present NHTSA may hire one more electronics specialist and can hire outside experts when needed and the money is available. It's feared by members of Congress and safety

experts that, while carmakers have entered the electronics era, NHTSA hasn't kept up with the industry nor with the technology.

Although NHTSA enforces a multitude of vehicle safety standards, the agency is definitely shorthanded. For example, NHTSA's rulemaking office has only 62 employees. The Obama administration has requested 66 additional employees for the agency in its fiscal 2011 budget and has said it "will target these positions to meet the areas in most need."

Andy Chou, Chief Scientist at Coverity Inc., a firm that analyzes automotive and other types of software for defects, says "a modern luxury car may have functions run by as many as 100 million lines of software code, enough to fill a stack of letter-sized pages the height of a 50-story building." Even the most carefully written software probably has about one defect per 10,000 lines of code, according to an analysis by Coverity. This was based on work done by the firm during the past seven years.

Microchips for U.S. cars were introduced in some luxury models in the 1970s to control engine timing, fuel injection and brakes, according to John Wolkonowicz, a former automotive engineer who is an analyst at IHS Global Insight Inc. in Lexington, Mass. The first industry-wide microprocessor modules, or devices that run particular automotive systems, were the engine control units required in 1981 to cut pollution, he said. Automakers added modules in the 1980s for heating and cooling systems, and transmission and drive-train functions were computerized in many models in the 1990s.

Wolkonowicz says that since 2000, the most significant proliferation has been of microprocessors to help avoid crashes, control air bags and improve engine efficiency. He pointed out that electronic throttles like those in Toyota models under scrutiny didn't come into widespread use starting in 2002. Today, a typical car has from 80 to 100 microprocessors, according to Atlanta-based Hughes Telematics Inc., which makes electronics for cars.

While allegations of sudden acceleration in Toyota models drew attention to possible electronics defects, the majority of such alleged failures involve less deadly, but still very serious, incidents such as stalling, instrument failures or fires. In one such case, U.S. regulators started tallying electronic-system complaints for 2004 Buick Rendezvous models almost as soon as they went on sale. Complaints to NHTSA show that the vehicles' reported failures included stalling at 65 mph and at stop lights. GM's subsequent 2005 recall of about 35,000 Rendezvous and Pontiac Aztek sport-utility vehicles to replace ignition modules was among

45 actions related to electrical systems that year, according to U.S. data. For the GM SUVs, the problem turned out to be silicon used to make ignition control modules that could become contaminated and keep the engine from starting or cause stalling.

In one failure, according to NHTSA records, Volvo last year recalled 11,993 cars and SUVs to download new software onto an engine controller because the original programming could fail to send a signal to a fuel pump, making the vehicles stall and possibly causing a crash. There are about 60,000 complaints about electrical or electronics systems among 767,000 records in the NHTSA database since the complaints were first compiled by computer in 1995. The data showed complaints alleging 1,100 crashes based on the malfunctions with electrical or electronics systems and a handful of deaths, several of which are included in at least 110 deaths linked to sudden acceleration at Toyota and other automakers in the U.S.

L.S. Sherman Consulting believes specific rules for electronics systems are badly needed as well as standards for the collection of information from "black boxes." Without these, they pointed out that "it's difficult to recreate the causes of crashes." An automobile tester for Consumer Reports made this observation:

Vehicles are getting so much more complicated and we have to expect that to diagnose these problems is going to be ever more hard. With mechanical problems, you could trace it to an issue you can see. In today's cars, most of the time you have to plug it into a laptop computer to find out what's going on. How often do you figure out what caused your laptop to crash?

You can get the complete report on the above subject by going to lsshermanconsulting.com. Linda Sherman and her folks have done a tremendous job of putting the information in an understandable format. If you need additional information on this subject, call Linda Sherman, who is well-known and highly respected in her field of expertise, at (610) 642-7755.

Source: L S Sherman Consulting
P.O. Box 61
Wynnewood, PA 19096

FAMILY SUES DRESSER MAKER OVER THE DEATH OF A CHILD

On Feb. 14, 2006, three years before her son Shane was born, Lisa Siefert, a Barrington resident, bought a child's dresser. In 2011, when the little boy was just more than two years old, the dresser tipped over and

crushed him, ultimately causing his death. A lawsuit over the death was filed in Cook County, Ill., against furniture manufacturer Gemme Juvenile Inc., and the now-closed Illinois store Furniture Kidz. The toddler suffered head trauma but ultimately the pressure of the dresser caused the trapped little boy to suffocate. After learning of the incident, the Consumer Product Safety Commission recalled about 300 of the "Natart Chelsea 3-drawer dressers" sold between January 2005 and December 2010 for between \$600 and \$900.

The lawsuit states that no warnings or instructions were given to help prevent a tip-over. It contends that the child's dresser should have had an "anchoring strap" in place, or some other system that would prevented the dresser from tipping over. According to its consumer hotline, Gemme Juvenile is now supplying the owners of these dressers with a "free retrofit kit" that includes a safety strap to secure the dresser to a wall.

According to the CPSC, the dressers—made in Canada—met safety standards when they were manufactured. A May 2009 voluntary industry standard "requires tip-over restraints that attach to the interior wall, framing or other support be included with all dressers to help prevent tip-over entrapment hazards to young children." For more information, go to the Commission's website at www.CPSC.gov.

Sources: *Chicago Tribune* and CPSC.gov

BANKS FIND WAYS TO CHARGE MORE FEES

As anyone who looks at their monthly statements from banks, credit card companies, cell phone companies and cable companies know, the types of fees and miscellaneous charges these businesses come up with is endless. I have often thought there must be some major or specialized degree that someone can get in college that teaches you how to create and hide this stuff. Well, out from the shadows, we have discovered an assortment of fees you may not have heard of or experienced yet.

For example, at least one bank is charging a fee if you get tired of waiting on hold and decide to disconnect. As of this writing, that bank is seriously considering discontinuing that policy. I wonder what took them so long to figure out this probably wasn't a good idea? A similar idea, and perhaps a little more palatable one, involves banks charging a fee to their customers who want priority in the calling que when they telephone customer service with a question.

Many of the new fees can be categorized as "add-on" fees for expanded services. As

consumers go, this is usually a little easier to swallow than a rate increase on a current service since you technically have a choice on whether to “add-on” the service. For example, many banks are now charging monthly, flat fees to waive the penalty they charge you for withdrawing your cash out of another bank’s ATM. For yet another monthly fee, those same banks will often refund to you the monthly fees you incur from those other banks as a result of using their ATM. Perhaps one of the better add-on services we have seen is the opportunity to get access to your credit score. Of course, whether it is ultimately a good service depends on the cost and the frequency with which you can review the information.

The thing about “add-on” fees is that they often start out at almost a nominal cost. But, as soon as you get used to them, the charges for these same service mysteriously start to creep upward. And, when enough customers begin to complain about the increases, well, that is when we tend to see another round of “new” fees and “add-ons” and the cycle begins again. If you need more information on this subject, contact Roman Shaul, a lawyer in our Consumer Fraud Section, at 800-898-2034 or by email at Roman.Shaul@beasleyallen.com.

Source: Time.com

MAJOR BANKS ASSIST IN PAYDAY LOANS BANNED BY STATES

It was reported recently that major banks have quickly become behind-the-scenes allies of Internet-based payday lenders that offer short-term loans with interest rates sometimes exceeding 500 percent. With 15 states banning payday loans, a growing number of the lenders have set up online operations in more hospitable states or in locales far away such as Belize, Malta and the West Indies to more easily evade statewide caps on interest rates.

While the banks, which include giants such as JPMorgan Chase, Bank of America and Wells Fargo, do not make the loans, they have become a critical link for the lenders, enabling the lenders to withdraw payments automatically from borrowers’ bank accounts, even in states where the loans are banned entirely. In some cases, the banks allow lenders to tap checking accounts even after the customers have asked them to stop the withdrawals. It was pointed out that “without the assistance of the banks in processing and sending electronic funds, these lenders simply couldn’t operate.”

Some state and federal authorities say the banks’ role in enabling the lenders has frustrated government efforts to shield people

from predatory loans—an issue that gained urgency after reckless mortgage lending helped precipitate the 2008 financial crisis. It was reported that the Federal Deposit Insurance Corporation and the Consumer Financial Protection Bureau are examining banks’ roles in the online loans.

Source: NYTimes.com

AN OVERVIEW OF SYNTHETIC DRUGS

Over the past few years, synthetic drugs have become a major problem in this country. U.S. federal, state and local governments, and even non-governmental bodies, have taken steps to slow the spread of synthetic drug production and use. However, many forms of synthetic drugs are still readily available and are likely more dangerous than the drugs they are intended to mimic. The most common form of synthetic drug mimics the effects of marijuana and is commonly referred to as fake pot, K2, Spice, or incense.

The makers of synthetic marijuana lace plant material with synthetic cannabinoids that mimics THC, the psychoactive ingredient in marijuana. The makers then bag the laced plant material, put a brand name or slogan on the package, and importantly, include the warning “not for internal consumption,” or “not for human consumption,” on the bags.

These products are labeled as incense or potpourri and were available at gas stations, convenience stores, smoke shops, and tobacco and beverage stores as recently as 2011 in Alabama. Not only were these drugs readily available, but they were sold to minors. Many young people did not appreciate the danger of the substance due to the fact that it was legal and would not show up on a drug test. Although most states have taken legislative action and banned synthetic drugs, several states have not, and they are still available at many convenience stores and smoke shops.

Similarly, a synthetic drug that mimicked cocaine or amphetamine was also readily available under the disguise of bath salts. The synthetic drugs labeled as bath salts are produced in much the same way as synthetic marijuana. The manufacturers spray bath salts with a synthetic ingredient that when smoked, offers a high similar to a stimulant such as cocaine or amphetamine. Makers again brand the substances, and include the same warning of “not for internal consumption,” or “not for human consumption.” These drugs have also been readily available and have caused countless users to act in unpredictable manners.

Synthetic marijuana first appeared in the United States in November of 2008. According to the American Association of Poison Control Centers, 2,906 calls were received relating to exposure to synthetic marijuana by 2010. During the following year, 2011, that number more than doubled as 6,959 calls were received. The American Association of Poison Control reports a similar trend for bath salts as well. In 2010, the Association received 304 calls related to bath salts exposure and the number sky rocketed to 6,138 in 2011.

It was very disturbing to learn that 11.4 percent of the nation’s twelfth graders admitted to smoking synthetic marijuana. That information is found in the 2011 “Monitoring the Future” survey of youth drug use trends. As a result of these alarming trends, the federal government and many states have taken aggressive actions to subvert the spread of synthetic drug sales and use. Many of the synthetic substances used to create bath salts and fake pot were designated as Schedule I substances by the DEA under its emergency scheduling authority in 2011. Since then many states, including Alabama, have taken even more progressive steps to outlaw these designer drugs.

The recently-passed Alabama law not only outlaws the known substances used to create the synthetic drugs, but it also includes a “catch all” provision that bans all substances that mimic the effects of the outlawed substances. This provision is extremely important because by slightly altering the illegal chemicals, a new, distinct substance not covered by the initial ban is created. Hopefully, this law will help solve that problem. These laws are a huge leap in the right direction and have done a very good job of helping to keep these drugs off the shelves of convenience stores. Unfortunately, these drugs are still readily available over the internet and are even being produced in homes and make-shift labs.

There has been civil litigation involving synthetic drugs. Many persons who have been hurt, or who have had a family member die, are contending that synthetic drugs contributed in causing a Defendant’s wrongful conduct. This has most commonly occurred in cases where a driver injures another person after using synthetic drugs. But, a few lawsuits allege wrongful death and products liability claims against the manufacturers and distributors of these drugs. In one such case, the parents of a Fayette County, Ga., teen who died after smoking synthetic marijuana, filed a wrongful death suit against the distributor of a synthetic drug. The 16 year old, Chase Burnett, died in his family’s hot tub in March of last year. An open package of synthetic marijuana was found next to the hot tub.

Similarly, two lawsuits which assert wrongful death claims against the manufacturer and distributor of synthetic drugs were recently filed in Indiana. In both of these cases, the Plaintiffs were killed in accidents after smoking synthetic drugs. The manufacturers of these drugs will likely assert the defense of misuse due to the "not for human consumption" warning on the package. The label for these drugs is deceptive. Although a warning is present on the package, the manufacturers obviously know that the product is being ingested because that is what it's actually intended for. The warning label itself indicates that the manufacturers and distributors are knowingly and intentionally placing an inherently dangerous product into the market place. They know that the product is going to be harmful for the users.

It is very likely that there are other civil lawsuits pending involving synthetic drugs. It will be very interesting to see how these cases play out. One thing is certain: as long as there is money to be made, synthetic drug makers will continue to produce these dangerous drugs. Governmental action and civil litigation are good ways to fight back. But, the strongest force will likely be education. Parents and educators must warn children of the severe dangers of synthetic drugs. If you need more information on the subject, contact Evan Allen, a lawyer in our Personal Injury/Products Liability Section, at 800-898-2034 or by email at Evan.Allen@beasley-allen.com.

Sources: <http://www.whitehouse.gov/>; <http://www.alreporter.com/>; <http://www.ajc.com/>; <http://www.wthr.com/>; <http://www.wishtv.com/>

XIX. RECALLS UPDATE

We again are reporting a large number of safety-related recalls in this issue. As has been the case for months, serious safety-related recalls have become commonplace. The following are some of the more significant recalls since those reported in the March issue. If more information is needed on any of the recalls mentioned below, readers are encouraged to contact Shanna Malone, the Executive Editor of the Report. We would also like to know if we have missed any safety recalls that should have been included in this issue.

FORD RECALLS 230,000 MINIVANS FOR CORROSION ISSUE

Ford Motor Co has recalled about 230,000 older minivans globally to fix a corrosion problem that could prevent

the fold-down third-row seats from locking in place. The recall affects 196,500 Ford Freestar and Mercury Monterey minivans from model years 2004 through 2007 in the United States and another 33,500 in other countries, mostly Canada, according to Ford spokeswoman. In the United States, the recall affects only vehicles sold or registered in 20 salt-belt states and the District of Columbia. Ford says it's not aware of any accidents or injuries related to the issue.

To address the problem, Ford dealers will install a new third-row seat mounting bracket and move the latches away from the potentially corroded area, while also installing overlay panels in the wheel wells, she said. The affected states are Connecticut, Delaware, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, West Virginia and Wisconsin.

FORD RECALLS 7,150 NEWLY BUILT VEHICLES TO REPAIR CHILD LOCKS

Ford Motor Co has recalled 7,150 vehicles built in November, including the 2013 Escape crossover, because some models are equipped with a defective child lock on the left rear door. Also included in the recall are the 2013 Focus and C-Max cars. The action marks Ford's fifth recall for the redesigned Escape since the vehicle's launch last year.

Ford says it will inspect 5,638 Escapes that were built in Louisville Assembly Plant between November 14th and November 24th. Ford is recalling 1,223 Focus cars as well as 283 C-Max vehicles. Both of the affected models were built at Michigan Assembly Plant between November 17th and November 21st. In some of these vehicles, the child lock on the left rear door may not work when the driver tries to activate the locks. The driver may incorrectly believe that the locks are functioning properly.

About 5,650 of the vehicles covered by the recall are in the United States. Ford says it is not aware of any accidents and injuries due to the problem. Ford has recalled its 2013 Escape crossover twice for problems with its 1.6-liter turbo-charged engine. The company issued two other recalls on the vehicle in early

July for problems with the brakes and carpeting.

AMERICAN HONDA RECALLS VEHICLES

American Honda has recalled 101,000 Honda Pilot vehicles, 60,000 Acura MDX vehicles and 21,000 Acura RL vehicles from the 2005 model year and approximately 800 Acura MDX vehicles from the 2006 model year in the U.S. The recall is to address potential malfunctions of the Vehicle Stability Assist (VSA) system in these vehicles. Honda has received several complaints about such malfunctions in these vehicles. No crashes or injuries have been reported related to this issue, according to the company. VSA is Honda's name for what is generically called electronic stability control, a computerized system that selectively applies braking power to each of the four wheels when the computer detects a loss of traction.

If an electrical capacitor on the VSA control unit was damaged during manufacture, the VSA system could malfunction and apply a small amount of brake force for a fraction of a second, without any input by the driver. Further, if the driver applies the brakes during a VSA system malfunction, the amount of brake force applied could exceed the driver's intended input. In either instance, unexpected brake activation could increase the risk of a crash. To remedy this potential issue, Honda and Acura dealers will install a new electrical sub-harness, free of charge.

Additionally, approximately 51,000 of the included Pilot vehicles will also be inspected to ensure that an electrical ground bolt for the VSA system is properly tightened. A loosened ground bolt may cause similar short periods of unexpected brake activation, increasing the risk of a crash. If the bolt is not properly tightened, Honda says a dealer will properly torque the bolt, free of charge.

Owners of all affected vehicles should take their vehicles to an authorized dealer as soon as they receive notification of this recall from American Honda. Mailed notification to customers will be sent this month. In addition to contacting customers by mail, at that time, owners of vehicles from the affected model years will be able to determine if their vehicles require repair by going on-line to www.recalls.honda.com and www.recalls.acura.com or by calling (800) 999-1009 for Honda

owners or (800) 382-2238 for Acura owners, and selecting option 4.

GM RECALLS BUICK LACROSSES AND CADILLAC SRXs FOR SOFTWARE PROBLEM

General Motors has recalled 26,582 model year 2013 Cadillac SRX crossovers and Buick LaCrosse sedans to fix a software problem that could allow the vehicles' transmissions to slip suddenly from manual to automatic mode. Information posted on the National Highway Traffic Safety Administration website said that the software problem may cause the transmissions to inadvertently shift to sport mode, removing any transmission-related engine braking effect. According to NHTSA, the risks of a crash are increased if engine braking is unexpectedly removed. GM said in a statement that the issue was discovered on a 2014 engineering development vehicle.

The company says it hasn't received any complaints or reports of crashes or injuries related to the problem. GM said dealers will reprogram the transmission control module for free. The LaCrosse were manufactured between April 25, 2012, through March 6, 2013. The Cadillac SRXs were built from May 29, 2012, through Feb. 18, 2013.

CHEVROLET VANS RECALLED

In a separate matter, NHTSA also posted a safety recall for 48 model year 2011 compressed natural gas versions of the Chevrolet Express full-size van. The recall was issued because an improperly built pressure release vent pipe could allow natural gas to vent into the passenger compartment, increasing the risks of an explosion or fire. GM said that all of the vans, which were sold to three U.S. fleet customers and one doctor, have been inspected. It says there have been no reported crashes, injuries or fires related to the issue.

NISSAN RECALLS FIVE MODELS OVER AIR BAGS

Nissan Motor Co. has recalled five 2013 model year vehicles, including top sellers Altima and Sentra, because the front passenger airbag may not deploy in a crash. The models in the recall are Nissan's Altima, Sentra, Pathfinder and Leaf as well as Infiniti JX35. Nissan did not supply the number of vehicles involved in the recall, or when they were manufactured. The reported recall affects only models sold in the

United States. Nissan did not say whether vehicles in other countries will be recalled.

Sensors that determine if a passenger is sitting in a seat may not have met specifications and do not detect a rider according to NHTSA. If a crash occurs and no passenger is detected, the air bag may not deploy. The recall is expected to begin this month. Documents filed with NHTSA did not say whether any injuries or accidents have occurred as a result of the potential defect. Nissan says it determined a recall was necessary on February 21st, two months after the automaker noticed an increasing number of warranty claims from owners who said their airbag detection dashboard warning was lit.

Nissan is also recalling about 400 Sentras made from Sept. 11 to Oct. 4 last year because fuel tanks were not properly sealed. This may lead to a small leak of gasoline when the tanks are filled. This recall is unrelated to the airbags recall.

PORSCHE RECALLS MORE THAN 2,000 CARRERA SPORTS CARS

Porsche AG has recalled more than 2,200 of the 911 Carrera sports cars from the 2012 and 2013 model years because their exhaust pipes can fall off. The recall involves 2,263 Carrera and Carrera 4 vehicles built between March and November of last year. All are equipped with standard exhaust systems. Vehicles with sport systems aren't affected.

Porsche said it discovered during internal testing that the exhaust pipes could fracture and fall off on vehicles that had been driven more than 25,000 miles. Porsche isn't aware of any injuries due to the problem. But the defect increases the risk of an accident because the tail pipe could be a hazard for other vehicles. Porsche will notify owners and repair the rear mufflers for free.

CHRYSLER RECALLING DODGE CHALLENGERS

Chrysler Group LLC has recalled 4,459 model-year 2013 Dodge Challenger cars to address a potential short circuit that could cause a fire. The company took the rare step of telling owners to stop driving the affected cars. The U.S. automaker, controlled by Italy's Fiat SpA, said about 2,500 of the cars are in

owners' hands, while the rest are still with dealers. Of the total with owners, about 2,100 were sold in the United States, about 350 in the Middle East and the rest in Canada, a company spokesman said. Affected owners are being advised to stop driving the cars and contact their dealers for loaner vehicles while repairs are completed, Chrysler said. Owners also should not park the cars in or near any structures.

It is extremely rare for an automaker to warn drivers to stop driving their vehicles immediately. Last summer, Ford Motor Co. did that after it recalled about 11,500 model-year 2013 Escape SUVs with 1.6-liter engines due to the risk of an engine fire. Chrysler said the short circuit could cause a wire harness to overheat and possibly lead to a fire. The company said it is aware of seven such incidents, but none caused any injuries. The recall affects only 2013 Challengers built with V-6 engines during an eight-week period ended Jan. 24, 2013, according to Chrysler.

ACURA RECALLING TSX SEDANS FOR CORROSION **MARCH 25, 2013—CLAIMSJOURNAL.COM

Honda Motor Co.'s luxury Acura brand has recalled 76,000 TSX sedans in America because corrosion could cause them to stall in cold weather. TSX sedans from the 2004 through 2008 model years are included in the recall. Acura says that in places where road salt is heavily used, salt and water can saturate the carpet under the dashboard that covers the vehicle's electrical control unit. Salty water can corrode the metal case that houses the electrical unit. If that corrosion damages the wiring in the unit, the vehicle may stall. Acura says no crashes or injuries related to the problem have been reported. Acura will notify owners about the recall this month. The company will install a water-resistant cover over the electrical unit at no charge.

SUBARU HAS RECALLED 47,000 CARS BECAUSE ENGINES CAN START ON THEIR OWN

Subaru of America has recalled Legacy, Outback, Impreza and XV Crosstrek models because the engines can start on their own if the key fob is dropped. The recall is for more than 47,000 vehicles, and includes the Legacy and Outback models from 2010 to 2013, the Impreza from 2012 and 2013 and the XV Crosstrek from 2013. According to the

recall notice, if the fob is dropped and the motor engages, it will run for up to 15 minutes, but could continue to start and stop until the car runs out of gas or the fob battery dies. Subaru dealers will replace the fobs free of charge.

YUBA BICYCLES RECALLS MUNDO CARGO BIKES

Yuba Bicycles of Sausalito, Calif., is recalling about 1,000 Mundo V4 cargo bikes. Passengers' feet can get caught in the rear wheel, posing a foot injury. The company says it is aware of two reports of passengers having their feet caught in the rear wheel. No injuries were reported.

The 26-inch bicycles have steel frames, aluminum fenders on the front and rear wheels, and a wood utility deck mounted on the rear cargo rack. The bikes come in orange, black or blue. The word "Mundo" is on the top tube of the bicycle frame and "Yuba" is on the down tube. The serial number range for the recalled bikes is ADA11A008000 to ACA12D018000. The serial number is located on the kickstand plate.

The bikes, manufactured in China, were sold at bicycle dealers nationwide and by Yuba Bicycles online from May 2011 through December 2012 for about \$1099. Consumers should immediately stop using the recalled cargo bikes and contact Yuba Bicycles to receive free wheel covers/wheelskirts and have them installed at no cost. Consumers may contact Yuba Bicycles toll-free at (877) 889-9822, from 9 a.m. to 4 p.m. PT Monday through Friday.

LIBERTY MOUNTAIN RECALLS MOUNTAIN CLIMBING LANYARDS DUE TO RISK OF SERIOUS INJURY

About 140 Easy Go XP Lock Via Ferrata Lanyards have been recalled by Liberty Mountain, of Salt Lake City, Utah and the manufacturer Singing Rock, of Ponikla, Czech Republic. The elastic webbing on the lanyards can deteriorate over time and break while in use, posing a risk of serious injury or death to the climber. This recall involves Easy Go XP Lock Via Ferrata Lanyards used for shock absorption on Via Ferrata mountain climbing routes. The lanyard has two elasticized webbing branches with self-locking carabiners at each end. Recalled units can be identified by the elasticized webbing. "EASY GO XP LOCK" is printed on a white tag sewn into the zipper pouch. They were sold

at specialty climbing shops nationwide and online at Amazon.com and other internet retailers between April 2011 to August 2012 for about \$120.

Consumers should immediately stop using the recalled lanyards and contact Liberty Mountain for a refund or replacement. For a replacement or refund contact Liberty Mountain; toll-free at (800) 366-2666, from 8 a.m. to 5 p.m. MT Monday through Friday, or online at www.libertymountain.com. Click on "Contact Us" for more information.

DYNACRAFT RECALLS MONSTER HIGH CITY MOTOR SCOOTERS DUE TO FALL HAZARD

About 5,500 Motor Scooters with Monster High graphics have been recalled by the distributor: Dynacraft BSC Inc., of American Canyon, Calif. and the manufacturer Zhejiang Qunying Vehicle Co. Ltd., of China. The scooters can accelerate suddenly while in use, causing the rider to lose control and fall. This recall involves electric, battery-operated City Scooters that are purple and black with Monster High graphics on the front panels, seat and rear fenders. The scooters were manufactured between October 5, 2012 and November 7, 2012. Model number "8801-14" and the date of manufacture, formatted as "YYYY/MM/DD," are printed on a data label on the underside of the scooter's center platform. Serial numbers for the recalled scooters have the letters "QYCEI" followed by a six-digit number in the following range: 003125 through 014456. The serial number can be found etched on the underside of the scooter's center platform near the data label.

The company says it has received nine reports of incidents of City Scooters accelerating unintentionally, including three with minor injuries. The scooters were sold exclusively at Walmart stores and Walmart.com nationwide from November 2012 to January 2013 for about \$249. Consumers should immediately stop using the City Scooter, disconnect the battery and return it to the nearest Walmart store to receive a full refund or store credit. Consumers can contact Dynacraft at (800) 551-0032, from 7 a.m. to 4 p.m. PT Monday through Friday; or online at www.dynacraftbike.com, and click on Owners, then select Warnings/Recalls.

DISCO LIGHTS RECALLED BY TWEEN BRANDS DUE TO ELECTRICAL SHOCK HAZARD

About 19,100 "Style my Room by Justice" Disco Lights imported by Tween Brands, Inc., of New Albany, Ohio and manufactured by Nantong Hengqiang Sports Goods Co., LTD and Zhejiang Navigate Industry & Trading Co., LTD, have been recalled. The electrical wiring in the lamp base is accessible and the lamp can overheat, posing an electrical shock hazard to consumers. This recall involves two styles of Tween Brands disco lamps: the black disco light (style 900528) and the star disco light (style 901651), sold under the Style My Room by Justice name brand. The recalled plastic lamps are about 7 inches tall and consist of a 4-inch diameter ball with multi-colored disco lights atop a round, black base with an on/off switch on the side. The style number appears in the lower left corner of the label located on the back of the product packaging. The firm has received one report of the lamp overheating and one report of a consumer receiving an electrical shock.

The lights were sold exclusively at Justice stores nationwide and online at www.shopjustice.com from May through November 2012 for about \$24. Consumers should immediately stop using and unplug the recalled lamp and return it to any Justice store for a full refund. Contact Justice toll-free at (866) 332-1110 from 8 a.m. to 5 p.m. ET Monday through Friday, or online at www.shopjustice.com and click on Customer Service at the bottom of the page and then on Product Recalls for more information. Photos are available at: <http://www.cpsc.gov/en/Recalls/2013/Disco-Lights-Recalled-by-Tween-Brands/>

LED LIGHT BULBS RECALLED BY LIGHTING SCIENCE GROUP

About 554,000 LED Light Bulbs have been recalled by importer Lighting Science Group Corporation, of Satellite Beach, Fla., and manufacturer Citizen Electronics and Lighting Science Group. The bulbs can overheat during use, posing a fire hazard. The 120-volt LED bulbs, sold as 6- or 8-watt bulbs (equivalent to 40- or 50-watts), were marketed under the brand names Definity, EcoSmart, Sylvania and Westinghouse. The model numbers A19, G25 and R20/PAR20 are found on the packaging and on the light-colored circular neck above the base of the bulb where the date

code is also printed. The date code reflects the week and year of manufacture; for example date code L4010 was produced during the 40th week of 2010.

Lighting Science Group is aware of 68 incidents of product failures, eight of which were accompanied by visible smoke or fire conditions. The incidents include damage to light sockets, melted fixtures, burned rugs/carpet/ floors, damage to a circuit and to a lamp. There have been no reports of personal injuries. The bulbs were sold at various retailers including hardware and lighting and electrical supply stores.

Consumers should immediately remove the bulbs from sockets and lamps and contact Light Science Group for replacement bulbs. Contact Lighting Science Group toll free at (855) 574-2533 from 9:00 a.m. to 6:00 p.m. ET Monday through Friday, or online at www.lsgc.com/recall. Photos are available at: <http://www.cpsc.gov/en/Recalls/2013/LED-Light-Bulbs-Recalled-by-Lighting-Science-Group/>.

LIFESCAN ANNOUNCES VOLUNTARY RECALL OF ALL ONETOUCH® VERIO®IQ BLOOD GLUCOSE METERS
****MARCH 25, 2013—PRNEWswire.COM**

LifeScan, Inc. is recalling all of its OneTouch® Verio®IQ blood glucose meters in the United States, effective immediately. LifeScan is recalling and replacing all of these meters because at extremely high blood glucose levels of 1024 mg/dL and above, the meter will not provide a warning that the blood glucose is extremely high and will shut off, thereby potentially leading to incorrect treatment and delaying proper treatment. The company says the likelihood of experiencing an extremely high blood glucose level of 1024 mg/dL or higher is remote. However, when such a blood glucose level occurs, it is a serious health risk requiring immediate medical attention. Because these products do not provide an appropriate warning at glucose levels of 1024 mg/dL or higher, diagnosis and treatment of extreme hyperglycemia may be delayed or incorrect treatment may be given resulting in potentially serious health risk or death.

Patients who are using the OneTouch® Verio®IQ Meter should contact LifeScan Customer Service at (800) 717-0276 to make arrangements to receive a replacement meter at no charge and to speak with a LifeScan representative. Repre-

sentatives are available 8 a.m. to 10 p.m. EDT Monday through Sunday (LifeScan U.S. Customer Service). There is additional information about this recall on www.onetouch.com.

The company says that patients may continue to test with their OneTouch® Verio®IQ Meters while they wait for their replacement meter to arrive as long as they are aware of this issue. However, LifeScan advises that if the meter unexpectedly turns itself off during testing, this could be a sign of extreme hyperglycemia requiring immediate medical attention and the patient should call a healthcare professional. LifeScan estimates that there are approximately 90,000 active OneTouch® Verio®IQ Meter users in the U.S. The company is in the process of implementing an update to the meter to address the issue. The timing to resume shipments of OneTouch® Verio®IQ Meters, however, had not yet been determined at press time.

To date, the company says no adverse events or patient injuries related to this specific issue have been reported for the OneTouch® Verio®IQ Meter. All other OneTouch® blood glucose brands sold in the U.S., including OneTouch® Ultra® Meters, OneTouch® Select Meters and OneTouch® Verio® Test Strips, are not affected and the company says they can continue to be used.

SOFT AIR USA RECALLS SWISS ARMS AIR RIFLE DUE TO INJURY HAZARD

About 2,400 Break-Barrel Air Rifles have been recalled by Soft Air USA, of Grapevine, Texas. The air gun can discharge while the safety is engaged, posing a risk of injury to consumers and those nearby. The recalled product is a Swiss Arms break-barrel, single-shot air rifle. The rifle is 34 inches long with a black barrel. It has a wood stock with checkering etched on the grip and forend and a rubber recoil pad on the butt. It has a metal fixed front sight, a fold-down rear sight and a receiver for mounting optics. The rifle comes with a 4x32 millimeter scope. "XT32" and "Cal.4.5/.177" are on the left side of the barrel hinge plate.

The rifle is cocked by swinging the barrel down on its hinge to "break" the gun open for loading, then swinging the barrel back up into firing position. Model number "288719" is located on the barrel near the rear sight. Soft Air reports no incidents and no injuries.

The rifles were sold exclusively at Sports Authority in December 2012 for \$100.

Consumers should return recalled Swiss Arms air rifles to Sports Authority for a full refund. Contact Soft Air USA toll-free at (866) 763-8247 from 8 a.m. to 5 p.m. CT Monday through Friday, or online at www.softairusa.com, and click on Customer Service for more information. Photos are available at <http://www.cpsc.gov/en/Recalls/2013/Soft-Air-USA-Recalls-Swiss-Arms-Air-Rifle>.

U.S. DIVERS RECALLS YOUTH SNORKELING MASK SETS DUE TO LACERATION HAZARD

About 44,000 Martinique LX Jr. Youth Snorkeling Mask Sets have been recalled by Aqua Lung Inc. dba U.S. Divers, of Vista, Calif. Notches in the tempered glass lens on the mask can break under certain water pressure, posing a laceration hazard to the user. This recall involves Martinique Jr. single paned, tempered glass youth snorkeling masks sold in a set with snorkel and fins. The masks feature a silicone face skirt, strap and adjustable buckles. The mask is blue with a silver accent piece that frames the tempered glass lens. The U.S. Divers logo is on the upper bridge of the mask as well as inset on the tempered glass lens. The lens is also labeled as tempered. The buckles are each printed with the U.S. Divers "wave" logo. The firm has received eight reports of the lens cracking or breaking, including four reports of cuts and scratches to the face. They were sold exclusively at Costco Wholesale stores nationwide from November 2010 through July 2011 for about \$30.

Consumers should immediately stop using the recalled masks and contact U.S. Divers for a replacement mask. Contact U.S. Divers toll-free at (888) 606-6162 anytime, or online at www.usdivers.com and click on "Recall Notice" for more information. Photos are available at: <http://www.cpsc.gov/en/Recalls/2013/U.S.-Divers-Recalls-Youth-Snorkeling-Mask-Sets/>

UNIQLO RECALLS CHILDREN'S PAJAMAS DUE TO VIOLATION OF FEDERAL FLAMMABILITY STANDARDS

About 700 Children's Pajamas have been recalled by Fast Retailing USA, Inc., of New York, N.Y. and UNIQLO USA LLC, of New York, N.Y. The pajamas fail to meet federal flammabil-

ity standards for children's sleepwear, posing a risk of burn injuries to children. The recalled products are one-piece micro fleece garment made of 100 percent polyester knit fabric. They were sold in infant sizes 9M to 12M. The pajamas are footed and have a front zipper and long sleeves. The brand name "UNIQLO BABY" appears on the neck label. There are a variety of colors and designs, including red and black plaid print; navy, green and yellow plaid print; off-white with pink, yellow and gray dots print; pink with off-white, dark pink and gray dots print; brown and pink with white snowflakes print; navy with white snowflakes print; gray with deer; beige with deer. The serial numbers of the recalled product, located at the bottom of the neck label, include: 187-074142(24-04), 187-074143(24-04), 187-074144(24-04) and 187-074145(24-04). Sold at: UNIQLO New York stores, except the SoHo store; UNIQLO Garden State Plaza store in Paramus, N.J.; and online at www.uniqlo.com from September 2012 through November 2012 for about \$15.

Consumers should immediately take the recalled pajamas away from children and return them to any UNIQLO store for a full refund. Contact UNIQLO toll-free at (877) 486-4756, from 10 a.m. to midnight ET Monday through Saturday and 11 a.m. to 11 p.m. ET Sunday, or at www.uniqlo.com, then click on ABOUT UNIQLO at the bottom left side of the page and then on UNIQLO NEWS for more information. Photos are available at <http://www.cpsc.gov/en/Recalls/2013/Uniqlo-Recalls-Childrens-Pajamas>.

TOYS R US RECALLS IMAGINARIUM ACTIVITY WALKER DUE TO CHOKING HAZARD

About 9,000 Imaginarium Activity Walkers have been recalled by Toys R Us Inc., of Wayne, N.J. The small bolt and spacer that attaches each front wheel to the walker can detach, posing a choking hazard to young children. The recalled Imaginarium Activity Walkers have a round wooden push handle on the top of a curved triangle-shaped wooden walker base with four wheels. There is a multi-colored metal xylophone with two triangle mallets, one multi-colored abacus and one scratch noise maker on the front of the walker. The walkers have multi-colored wooden, disc-shaped wheels. The walkers measure about 19 inches tall and about 13 inches wide. The recalled walkers have model number "Toys 'R'

Us 5F5E972" printed on the bottom of the activity walkers. Barcode number "3700217300319" is printed on the bottom of the activity walker box. Toys R Us has received five reports of the front wheels detaching. No injuries have been reported. The walkers were sold exclusively at Toys R Us stores nationwide and online at www.toysrus.com from August 2011 through January 2013 for about \$30.

Consumers should stop using the recalled walker immediately, put it out of reach of young children and return it to a Toys R Us store for a full refund or store credit. Call Toys R Us at (800) 869-7787 from 9 a.m. to 11 p.m. ET Monday through Saturday and from 11 a.m. to 7 p.m. Sunday, or visit its website at www.toysrus.com and click on Safety Information and Recalls for more information.

THE PAMPERED CHEF RECALLS GARLIC SLICERS DUE TO LACERATION HAZARD

About 286,000 Garlic Slicers have been recalled by The Pampered Chef, of Addison, Ill. This recall involves The Pampered Chef garlic slicers sold individually and with a garlic peeler. The garlic slicers were sold under product numbers 1113 (individual) and 2578 (set). The two-piece white plastic, tube shaped slicer measures 2 1/4 inches by 3 1/2 inches and has two blades on the end. "The Pampered Chef" is engraved on the top cover. The Pampered Chef has received 23 reports of blades detaching during use including one report of a consumer who cut her finger. The slicers were sold at The Pampered Chef independent consultants nationwide and online at www.pamperedchef.com from January 2009 through July 2011 for about \$14 for the individual garlic slicer and \$20 for the set. A blade on the garlic slicer can unexpectedly dislodge during use, posing a laceration hazard to the consumer.

Consumers should immediately stop using the recalled garlic slicers and contact The Pampered Chef for a replacement product. Consumers should contact The Pampered Chef at productalert@pamperedchef.com or tollfree at (877) 917-2433 anytime. To speak with an operator, consumers can call between 7 a.m. and 11 p.m. CT Monday through Friday, 8:30 a.m. and 4:30 p.m. CT Saturday. Consumers can also visit the company's website at www.pamperedchef.com and click on

the "Product Alert" tab for more information. Photos are available at <http://www.cpsc.gov/en/Recalls/2013/Pampered-Chef-Recalls-Garlic-Slicers/>

WOMEN'S SHOES RECALLED BY IMPO INTERNATIONAL DUE TO FALL HAZARD

About 13,500 Women's high-heel shoes have been recalled by the importer Impo International LLC, of Santa Maria, Calif. and the manufacturer Baoding Footwear Co. Ltd., of China. The heels on the shoes can become unstable, posing a fall hazard. This recall involves Versailles model (570053826) and Lourdes model (570053756) women's high-heeled shoes. The shoes have four-inch heels. The model name is stamped inside the shoes and on the shoe box. The model number is printed on the shoe box. The shoes were sold exclusively at White House | Black Market stores nationwide or online at whitehouseblackmarket.com from August 2012 through October 2012 for about \$120.

Consumers should immediately stop wearing the recalled shoes and return them to a White House | Black Market store to receive a merchandise card for the full purchase price of the shoes, or contact White House | Black Market to receive instructions for returning the shoes by mail. Contact White House | Black Market, toll-free at (877) 948-2525 anytime, email customerservice@whitehouseblackmarket.com or online at www.whitehouseblackmarket.com and click on the Recall tab at the bottom of the page. Photos available at <http://www.cpsc.gov/en/Recalls/2013/White-House-Black-Market-Womens-Shoes>

BUMBLE BEE EXPANDS RECALL OF 5-OUNCE CANS OF TUNA

Bumble Bee Foods LLC has expanded the recall on some of its 5-ounce chunk white albacore and chunk light tuna products because they did not meet company standards for seal tightness. The San Diego, Calif., company said loose seals or seams could lead to spoilage that could cause illness if the tuna is consumed, though there had been no reports of illness to date. Bumble Bee initially announced the recall after identifying an issue on a manufacturing line, which it said had been corrected.

The recall was expanded last month and now includes certain 5-ounce cans of Brunswick Brand chunk light tuna in water, Bumble Bee Brand chunk light

tuna in water, Bumble Bee Brand chunk light tuna in vegetable oil and Bumble Bee Brand chunk white albacore in water. The cans in question were distributed for retail sale nationwide between Jan. 17, 2013 and March 6, 2013. They have "best by" dates ranging from Jan. 14, 2016 to Jan. 18, 2018. A full list of lot codes for the recalled cans can be found on the website of the U.S. Food and Drug Administration at <http://www.fda.gov/Safety/Recalls/ucm342851.htm>. Consumers who have the recalled products should dispose of them in the garbage, according to the company.

Once again, there have been a very large 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.

XX. FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

CATHY HALL

Cathy Hall, who has been with the firm for 13 years, works with the receptionists and the Personal Injury staff in the day-to-day operations of the Section. Cathy is the proud parent of two children. Her daughter, Christie, attends AUM and is majoring in Early Childhood Education. Her son, Cameron, will be graduating from BrewTech Magnet School in May. They attend First Congregational Christian Church where they are very active. Cathy received a Bachelor of Science in Criminal Justice from Faulkner University. She loves spending time with her children and extended family, working in the church and relaxing with a good book. Cathy is a very good employee and helps keep things moving smoothly and efficiently in the section. We are blessed to have her with the firm.

MARC MCHENRY HIRED AS INVESTIGATOR

Marc McHenry came to work at the firm last month as an investigator. Marc recently retired from the Alabama Department of Public Safety after 26 years of service. His last position with DPS was Chief of the Administrative Division, holding the rank of Major. In that capacity, Marc was responsible for the oversight and management of the Homeland Security Liaison, the Financial Services, and Human Resources among other areas within the Department. Marc is a graduate of the FBI National Academy. One of his areas of work at DPS was in connection with the Alabama Criminal Justice Training Center where Marc provided direction and oversight for training of State Troopers and other law enforcement officers. Previously, Marc had served as Assistant Chief of the Highway Patrol Division.

Marc and his wife Kay have been married for 22 years. They have two children, Kristen (20) and Dalton (13). The family attends Coosada Baptist Church. Marc's hobbies include hunting and golf. He should fit in well with the other investigators at Beasley, Allen. We are most fortunate to have Marc with us. With his ability and experience, he will be a valuable addition to the firm.

KRISTI SMITH

Kristi Smith, who came to the firm in 1999, is a Legal Assistant, working with Chris Boutwell in our Toxic Torts Section. In this position, Kristi assists Chris and several of our contract lawyers with tasks related to the BP and UST cases. This has kept her very busy. Kristi says she really enjoys working with the staff and the lawyers on her team.

Kristi and her husband, Patrick Smith, who is a Lieutenant with the Montgomery Fire Department, have been married for ten years. They have two children Blake (age seven) and Brooke (age four). Blake is in the first grade at Redland Elementary and Brooke will start Kindergarten there in the fall. Kristi has a Bachelors in Criminal Justice from Auburn University Montgomery and a Legal Assistant Certification also from AUM. Kristi says her absolute favorite thing to do is spend time with her children. Most of her free time is spent getting the children to ball games, practice and recitals. Kristi also enjoys painting, arts and crafts, photography, spending time with friends and party planning. Kristi is a very good employee, who works hard and is dedicated to helping the clients in her cases. We are fortunate to have her with us.

BEASLEY ALLEN LAWYERS ARE ACTIVE IN MDLS

A number of Beasley Allen lawyers have been selected by federal judges around the U.S. to serve on the Plaintiffs Steering Committee (PSC) in lawsuits that have been consolidated in Multidistrict Litigation (MDL). Consolidating cases around the U.S. into a MDL allows the committee overseeing the process to focus on moving the cases forward. This results in cases being resolved much more quickly. Lawyers on these committees coordinate the litigation and work together on issues such as pretrial discovery and motions. It is a distinct honor and privilege for a lawyer to be selected to help direct litigation in this manner. It's also very hard work and is both time and finance intensive. The following Beasley Allen lawyers are serving on PSCs in active MDLs.

THE MASS TORTS SECTION

Vioxx Products Liability
Legislation MDL-1657
United States District Court,
Eastern District of Louisiana
Honorable Eldon E. Fallon

Andy Birchfield manages the firm's Mass Torts Section, which has been recognized as a national leader in pharmaceutical litigation. Andy has been active in several MDLs. To date, he has been involved in cases resulting in settlements and verdicts in excess of \$5.4 billion.

Andy's efforts have been indispensable in heading the firm's Vioxx® litigation. In April of 2005, Andy was chosen to co-lead the Plaintiff's Steering Committee for the federal Vioxx Litigation MDL. He was lead counsel or co-lead counsel in five Vioxx trials, including one that resulted in a \$51 million verdict against Merck. The litigation resulted in a \$4.85 billion settlement. In November 2007, Merck agreed to pay \$4.85 billion dollars to settle the personal injury claims of persons who suffered a heart attack or stroke while taking Vioxx. In just two and a half years, more than 50,000 claims were reviewed and all \$4.85 billion was paid out to deserving victims. The Vioxx settlement was not only one of the largest in the history of pharmaceutical litigation, but it also was the most efficient, ensuring that individuals affected by this dangerous drug were compensated in not only a fair and timely manner.

In November 2011, Merck, Sharp & Dohme agreed to pay \$950 million to resolve federal criminal charges and civil claims related to its promotion and marketing of the painkiller Vioxx. Under the settlement of the claims, Merck agreed to pay \$628,364,000 to resolve allegations regarding off-label marketing of Vioxx and false statements about

the drug's cardiovascular safety. Of the total civil settlement, \$426,389,000 will be recovered by the United States, and the remaining share of \$201,975,000 will be distributed to the participating Medicaid states. The settlement and plea concluded a long-running investigation of Merck's promotion of Vioxx.

Merck also pleaded guilty to a one-count information charging a single violation of the Food Drug and Cosmetic Act (FDCA) for introducing a misbranded drug, Vioxx, into interstate commerce. Under the terms of its plea agreement with the United States, Merck pleaded guilty to a misdemeanor for its illegal promotional activity and will pay a \$321,636,000 criminal fine. This case was handled by the Justice Department's Civil Division and the U.S. Attorney's Office for the District of Massachusetts.

Actos

In Re: Actos Products Liability
Litigation, MDL 2299
U. S. District Court for the
Western District of Louisiana
Honorable Rebecca F. Doherty

Andy Birchfield also is a member of the PSC for the MDL for the diabetes drug, Actos, which has been linked to an increased risk of bladder cancer. On December 29, 2011 the Judicial Panel on Multidistrict Litigation (JPML) established MDL No. 2299 for all federal claims alleging injury caused by the diabetes drug Actos (pioglitazone).

Actos, manufactured by Takeda Pharmaceuticals America Inc., is the tenth best-selling medication in the U.S. and has been found to increase the risk of developing bladder cancer in patients who have taken Actos for more than one year. More than 3,000 complaints have been filed by former users of Actos.

In May 2012, Judge Doherty issued a ruling known as a direct-filing order for any new claims. This ruling will allow anyone filing an Actos side effects lawsuit to do so directly to the MDL without first having to file a case in local court and waiting for it to be transferred to the federal court by judicial order. Signing this order will expedite future Actos side effects lawsuits as it will eliminate a procedural step that was to this point required of anyone who felt that he or she had suffered from Actos side effects as a result of using this diabetes medication and who wanted to file a legal action in response.

On Feb. 19, 2013, Judge Doherty set dates for the first two pilot bellwether trials in the federal Actos litigation with the goal of "moving these proceedings toward completion of the Court's responsibilities in a reasonable timeframe." The first trial is set for January 27, 2014 and a second to begin April 14, 2014.

Zoloft

In Re: Zoloft (Sertraline Hydrochloride)
Products Liability Litigation, MDL 2342
U.S. District Court for the Eastern
District of Pennsylvania
Honorable Cynthia M. Rufe

Andy Birchfield also serves on the PSC for the MDL related to Zoloft. In July 2006, the FDA notified healthcare professionals and consumers of a possible link between antidepressant medications—including Zoloft (sertraline)—and serious birth defects. Sertraline (marketed as Zoloft) is included in the class of drugs called selective serotonin reuptake inhibitors (SSRIs). This class of drugs is used to treat depression, anxiety, and other mood disorders.

The study, published in February 2006 in *The New England Journal of Medicine*, included pregnant women who were treated with SSRIs, or in a few cases, other antidepressant medications. SSRI medications are the most commonly used drugs to treat depression in the U.S. The study focused on newborn babies with persistent pulmonary hypertension (PPHN), which is a serious and life-threatening lung condition that occurs soon after birth. Babies born with PPHN have high pressure in their lung blood vessels and are not able to get enough oxygen into their bloodstream.

In this study, PPHN was six times more common in babies whose mothers took an SSRI antidepressant after the 20th week of pregnancy compared to babies whose mothers did not take an antidepressant. The finding of PPHN in babies of mothers who used a SSRI antidepressant in the second half of pregnancy adds to concerns from previous reports that infants of mothers taking SSRIs late in pregnancy may experience difficulties such as irritability, difficulty feeding and in very rare cases, difficulty breathing.

The MDL was created by Order of the United States Judicial Panel on Multidistrict Litigation (MDL Panel) on April 17, 2012. The typical case involves claims by a plaintiff from anywhere in the United States against defendant Pfizer, Inc., and may name other defendants as well. The MDL Panel noted that the actions "involve allegations that Zoloft, a prescription medication approved for the treatment of depression and other ailments, causes birth defects in children when their mothers ingest the drug while pregnant." Pfizer and the other Defendants deny these allegations.

Fosamax and ONJ

In re Fosamax Products Liability
Litigation, MDL No. 1789
U.S. District Court for the

Southern District of New York
Honorable John F. Keenan

Russ Abney serves on the PSC for the Fosamax Products Liability Litigation MDL. Alendronate sodium, a drug sold by Merck under the brand name "Fosamax," belongs to a class of drugs called bisphosphonates. Physicians use these drugs to treat abnormalities in the bone remodeling cycle that arise from metabolic and oncologic diseases. Fosamax is administered orally, and is generally prescribed at lower doses than intravenously administered bisphosphonates. The FDA approved Fosamax for the treatment of osteoporosis in 1995. In 1997, the FDA approved Fosamax for the prevention of osteoporosis.

Since October 2003, published reports have described the development of osteonecrosis of the jaw (ONJ), a condition characterized clinically by an area of dead jaw bone that becomes exposed to the oral cavity, among some bisphosphonate users. Symptoms include pain, swelling, and purulent secretion. The vast majority of ONJ cases have been reported in patients taking intravenously administered bisphosphonates.

Reported alternate causes of ONJ include radiation therapy to the head and neck, osteomyelitis (inflammation or infection of bone marrow), osteopetrosis, herpes zoster virus infection, chemotherapy, and major trauma.

Fosamax and Femur Fracture

In re: Fosamax (Alendronate Sodium)
Products Liability Litigation (No. II)
(MDL No. 2243)
U.S. District Court for the
District of New Jersey
Honorable Garrett E. Brown, Jr.

Chad Cook is one of 11 lawyers from around the country selected to oversee the consolidated litigation as part of the Plaintiffs Steering Committee (PSC) for In re: Fosamax Products Liability Litigation (No. II), MDL 2243. This litigation, which encompasses hundreds of cases against Merck Sharp & Dohme, Corp., involves femur fracture injuries, and is consolidated under U.S. District Judge Garrett E. Brown, Jr., in the District of New Jersey.

Fosamax is one of several prescription drugs known as bisphosphonates. When first developed, bisphosphonate was thought to be a drug women could take indefinitely to treat low bone density and help ward off osteoporosis. Other brand-name prescription drug bisphosphonates are Actonel, Boniva, and Reclast. In October 2010, following a review of more data on the safety of bisphosphonates, the FDA required all manufacturers of the drugs to add warnings to

their safety labels for the risk of thigh fractures, specifically low-energy femoral shaft and subtrochanteric fractures.

The MDL for Fosamax claims in state courts related to femur fracture was formed on May 23, 2011. At that time it was limited to plaintiffs who took only Fosamax. On Feb. 3, 2012, the MDL was expanded to include Plaintiffs who took Fosamax, but also may have taken other similar medications such as Reclast or Boniva, as long as they did take Fosamax, and suffered femur fracture.

Chad also is on the Plaintiff's Discovery Committee for In re Fosamax Products Liability Litigation, MDL-1789 which is venued in the Southern District of New York Federal Court before the Honorable John F. Keenan, and involves cases of osteonecrosis of the jaw. Chad also assists by serving on the Fosamax Science and Administrative Committees for this litigation.

Hip replacement systems

DePuy ASR Hip Replacement—MDL 2197
U.S. District Court, Northern District of Ohio
Honorable David A. Katz

DePuy Pinnacle Hip
Replacement—MDL 2244
U.S. District Court for the Northern
District of Texas
Honorable Ed Kinkeade

Biomet Hip Replacement MDL
U.S. District Court for the Northern
District of Indiana
Honorable Robert L. Miller, Jr.

Navan Ward is our firm's lead lawyer in the metal-on-metal hip implant litigation, which involves thousands of victims who have defective hip implants causing severe pain, metal poisoning, and in some cases revision surgery. These defective hip devices are manufactured by various companies, including Johnson & Johnson and DePuy Orthopedics, among others.

Navan was selected to the Plaintiffs Steering Committee for the DePuy Hip Implant Recall Multi-District Litigation (MDL), as well as to the PSC for the Pinnacle hip replacement MDL. Navan also has been selected to serve on the PSC for the Biomet M2a Magnum Hip Implants Product Liability Litigation. He also serves as Co-Chair to the DePuy Metal-on-Metal Hip Implant Litigation Group for the American Association for Justice (AAJ).

Artificial hips are typically made with ceramic or plastic parts, but during the last decade manufacturers began making the devices with all metal parts. It was thought that the devices would hold up better over time. Most artificial hips can last 20 years or longer. But the metal-on-metal devices were

failing after just five years or less. When hip implants fail, it is usually because they loosen, dislocate or fracture, which requires revision surgery to remove and replace the device. Hip replacement surgeries are already invasive and require long recovery, and second surgeries tend to be more complicated.

When surgeons went to replace the defective devices, they found another problem unique to metal-on-metal implants—blood poisoning. As the metal parts of the devices rubbed together, bits of metal debris could fall into the joint space causing inflammation and pain. In some cases, the metal has entered the bloodstream, resulting in chromium and cobalt in patients' blood. In August 2010, after studies revealed an unusually high failure rate, DePuy, an orthopedic subsidiary of Johnson & Johnson, recalled its ASR XL Acetabular and Hip Resurfacing Systems, affecting about 93,000 patients worldwide.

From 2000-2011, nearly 17,000 problems with metal-on-metal hip implants have been reported to the Food and Drug Administration (FDA). In May 2011, the FDA asked makers of metal-on-metal hip devices to conduct safety studies on their products.

Transvaginal Mesh Litigation

In Re C. R. Bard, Inc., Pelvic Repair System
Products Liability Litigation (MDL No. 2187)

In Re American Medical Systems, Inc.,
Pelvic Repair System
Products Liability Litigation (MDL No. 2325)

In Re Boston Scientific Corp.
Pelvic Repair System
Products Liability Litigation (MDL No. 2326)

In Re Ethicon, Inc., Pelvic Repair System
Products Liability Litigation (MDL No. 2327)

In Re Coloplast Corp. Pelvic Support Systems
Products Liability Litigation (MDL No. 2387)

U.S. District Court for the Southern
District of West Virginia
Honorable Joseph R. Goodwin

Leigh O'Dell serves on the PSC in all five of the MDLs listed above. Transvaginal mesh is used to repair conditions such as pelvic organ prolapse (POP) and stress urinary incontinence (SUI). The mesh is implanted through the vagina and is used to shore up pelvic organs that have become displaced due to age, childbirth, hysterectomy or obesity.

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 inconti-

nence. Often women require surgery to remove the mesh. In some cases, this can require multiple procedures without successful removing all of the mesh.

The U.S. Judicial Panel on Multidistrict Litigation recently granted motions to create MDLs against five transvaginal mesh manufacturers and transfer the MDLs to the U.S. District Court for the Southern District of West Virginia, under Chief Judge Joseph R. Goodwin. Centralizing the litigation in the Southern District of West Virginia makes the pretrial proceedings more efficient, conserves judicial resources and avoids the risk of inconsistent rulings.

Leigh was appointed as a member of the Plaintiffs' Steering Committee for all five MDLs. Currently, she is investigating cases involving mesh manufactured by American Medical Systems, Bard, Boston Scientific, Caldera, Coloplast, Cook Medical, and Johnson & Johnson.

Hormone Therapy MDL

In re Prempro Products Liability
Litigation MDL-1507
U.S. District Court, Eastern
District of Arkansas
Honorable Billy Roy Wilson

Ted Meadows was selected to help direct litigation related to Hormone Replacement Therapy (HRT) as part of the Plaintiffs Steering Committee in the above MDL. The multi-district Prempro Products Liability Litigation involves thousands of cases against drug manufacturer Wyeth Pharmaceuticals. It is consolidated under U.S. District Judge Billy Roy Wilson in the United States District Court, Eastern District of Arkansas, Western Division.

HRT is medication containing one or more female hormones, commonly estrogen plus progestin. HRT drugs such as Premarin, Prempro and Provera were prescribed to treat the symptoms of menopause such as "hot flashes," vaginal dryness, mood swings, sleep disorders, and decreased sexual desire. The drugs also were promoted for off-label uses, including prevention of cardiovascular disease and Alzheimer's disease.

In 2002, a comprehensive women's health study was halted as a result of increasing incidents of breast cancer linked to the use of HRT drugs. Evidence came out during trials that illustrates Wyeth's campaign to make billions of dollars in profit from HRT drugs while keeping the truth about the drugs' dangers secret. Among the fact presented to jurors:

Wyeth was on notice of the need to study whether combination hormone therapy causes breast cancer as early as 1975, but failed to conduct a single

breast cancer study over the course of the next three decades—despite over a dozen red flags that breast cancer was a safety problem; Instead of studying the breast cancer risk, Wyeth took active steps to downplay, dismiss and contain the release of data from other institutions' studies that showed such risk.

Even worse, Wyeth ghost-wrote dozens of medical articles that minimized the breast cancer risk and exaggerated the benefits of hormone therapy and then published these articles in reputable medical journals under independent doctor's names; It was not until a government study was stopped early because of breast cancer that the world learned the truth; Studies now confirm that 200,000 women—grandmothers, mothers, sisters and wives—would not have suffered breast cancer but for their use of combination hormone therapy drugs.

Ted says by marketing these drugs for uses that were never approved by the FDA and downplaying the risk of breast cancer, Wyeth put the lives of thousands of women at serious risk.

Ted became a shareholder at Beasley Allen in 2002. Since that time, he has been the lead Beasley Allen lawyer for the firm in verdicts and settlements totaling more than \$325 million, including a \$72.6 million compensatory verdict in a HRT trial in Philadelphia. This verdict was selected by the National Law Journal as No. 30 on its list of Top 100 Verdicts of 2011.

THE TOXIC TORTS SECTION

BP Oil Spill Litigation

In Re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010, MDL Docket No. 2179
U.S. District Court for the Eastern District of Louisiana
Honorable Carl J. Barbier

Folks throughout the Gulf Coast region were affected when BP's Deepwater Horizon oil platform exploded in the Gulf of Mexico in April 2010. The Macondo well was damaged and oil spilled into the Gulf for months before the well could be capped. In October 2010, Rhon Jones was selected as one of 15 lawyers out of more than 100 who applied to oversee the consolidated litigation as part of the Plaintiffs Steering Committee. The BP litigation involves thousands of cases against BP and other Defendants. It was con-

solidated under U.S. District Judge Carl Barbier in New Orleans.

Rhon was part of the team that negotiated a settlement in principle, reached in March 2012, which was first established by BP to be about \$7.8 billion. We believed that amount was low and in time it appears we were correct. Any business in the affected areas, including Alabama, Mississippi, Louisiana and the west coast of Florida, is eligible to file a claim for compensation under the terms of the settlement agreement. A court-supervised claim center opened in June 2012, and it has worked extremely well.

Rhon terms the BP settlement as "probably the most unique class-action settlement in the history of American litigation." Approximately \$2 billion has already been paid or is approved to be paid to claimants in the three years since the oil spill.

In January 2013, BP pleaded guilty to 14 federal criminal charges related to the Gulf oil spill. It will pay \$4 billion to resolve these charges, which include manslaughter and obstruction of Congress. In February 2013, the trial to determine civil fines under the Clean Water Act began in federal court. It is estimated BP may be required to pay in the neighborhood of \$21 billion, depending on whether the court determines the company acted with gross negligence in the events leading up to the spill.

THE CONSUMER FRAUD SECTION

Toyota Sudden Unintended Acceleration

In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation, MDL No. 2151
U.S. District Court for the Central District of California
Honorable James V. Selna

Dee Miles, head of the firm's Consumer Fraud section, was appointed by Federal District Judge James V. Selna to serve in a leadership role on the Plaintiffs Liaison committee in the Toyota Sudden Unintended Acceleration MDL Litigation in a California U.S. District Court. This committee has the awesome responsibility of coordinating the litigation for the entire country.

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 became 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.

In December 2012, Toyota Motor Corp agreed to a \$1.1 billion charge to settle hundreds of U.S. consumer claims related to sudden unintended acceleration in its vehicles. The settlement, which is pending approval by Judge Selna, would resolve claims of economic loss related to the defective vehicles. The proposed settlement would be the largest in U.S. history involving automotive defects. But this settlement does not cover claims of wrongful death and injury related to Toyota SUA. These cases are slated for trial in April 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 interest of all concerned. MDL Judge Selna's highly skillful case management of these cases is the reason the parties were able to announce this resolution of the economic loss portion of the case.

The settlement agreement establishes 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. All of this, of course, is subject to court approval.

In addition to serving on the PSC for the Toyota MDL, Dee is a proven leader in complex litigation and has been or is currently a leader on a national level in other MDLs. He has in the past served as Co-Lead counsel in the GenRe MDL, which is still pending, the Dollar General MDL, the American General MDL and he is currently being considered for a position before the court on the BCBS MDL, Judge Proctor in Birmingham presiding.

Dee is lead counsel in the Average Wholesale Price Litigation (AWP) in eight states, which are State MDLs in Mississippi, Louisiana, Kansas, Utah, South Carolina, Alaska, Hawaii and Alabama: State of Alabama v. Abbott (73 pharmaceutical companies); State of Mississippi v. Abbott (86 pharmaceutical companies); State of Louisiana v. Abbott

(108 pharmaceutical companies); State of South Carolina v. Abbott (18 pharmaceutical companies); State of Kansas v. Abbott (33 pharmaceutical companies); State of Utah v. Abbott (43 pharmaceutical companies); State of Hawaii v. Abbott (44 pharmaceutical companies); and State of Alaska v. Abbott (34 pharmaceutical companies). The AWP cases have led to the “McKesson Litigation” in which Dee is serving as lead counsel in: State of Louisiana v. McKesson; State of Kansas v. McKesson; State of Hawaii v. McKesson and State of Alaska v. McKesson.

Dee has been involved in cases totaling more than \$4 billion in settlement value, and has obtained actual verdicts in cases exceeding over \$5 million, including Toyota, Average Wholesale Price (AWP) litigation / Medicaid Fraud, GenRe, Dollar General, American General and many Insurance & Finance cases throughout the years.

Ford 6.0 PowerStroke diesel engine

In re: Navistar Diesel Engine Product Liability Litigation, MDL No. 2223
U.S. District Court for the Northern District of Illinois
Honorable Matthew Kennelly

Bill Hopkins was appointed by the court to serve on the PSC in the MDL listed above. This Multi-District Litigation is based on the sale of faulty 6.0L diesel engines in certain models of heavy duty vehicles manufactured by Ford Motor Company between 2003-2007. Plaintiffs have reported problems such as blown head gaskets, valve ruptures, poor engine acceleration, inability to start the engine, engine stalling, complete loss of power while driving, and complete engine failure. These engines have been plagued with what Ford has called “unprecedented problems.”

Ford Motor Company and Navistar, Inc. manufactured, marketed and sold Ford’s Super Duty trucks and Ford Excursion vehicles for model years 2003-2007 that contained 6.0L Power Stroke Diesel Engines containing manufacturing and design defects that render the engines and vehicles unmerchantable. Plaintiffs assert a variety of legal claims against Ford based on the engine’s design, the marketing of the vehicles, and Ford’s repair practices.

The Court preliminarily approved a settlement in this case in November 2012 and is set for a final approval hearing for next month. More than 1.1 million notices were sent out last month by the Settlement Administrator. The settlement provides actual cash reimbursement for the repair or replacement of several engine component parts.

XXI. SPECIAL RECOGNITIONS

U.S. NEWS AND WORLD REPORT RANKS TROY UNIVERSITY AMONG BEST

Troy University has been ranked in the top 30 public universities in the South by U.S. News and World Report magazine. Several of its programs have been recognized as leading online learning programs. The University was ranked 30 on the organization’s “Top Public Schools” listing, and was included in the “Best Regional Universities (South)” list. In addition, the University’s nursing and rehabilitation counselling programs were named to the “U.S. News Best Grad School” list. It was among the top 50 universities on the “Best Online Bachelor’s Programs” list. U.S. News also listed Troy among the best for its online graduate nursing, graduate education and graduate business programs. Chancellor Jack Hawkins Jr. observed:

We’re not trying to be all things to all people at Troy, but what we do we do very well. The real standard in education that will sustain an institution is quality. This recognition from U.S. News validates our commitment to providing high-quality academic programs both in class and on line.

In my opinion, Dr. Jack Hawkins is the best college “boss” in Alabama and he has to rank very high rationally. Jack has done a tremendous job at Troy University. He has a vision for higher education and has the ability and work ethic required to carry it out. He is also able to communicate a message effectively and that’s very important.

Source: Troy.edu

ANNUAL TRIP TO TROY UNIVERSITY

I have been traveling down to Troy to speak to a class at Troy University each year for the past four years. I must admit that I had never even heard of the class or of any state university having a “leadership minor” in its curriculum. My long-time friend Dr. John Kline introduced me to both when he invited me to come down and speak to his class in 2009. I accepted, went down and spoke, and it was a real eye-opener! My speaking to John’s class has become an annual affair and it’s something that I have really enjoyed. I asked John to write a brief

summary of the course at Troy for our readers and it’s all set out below.

Leadership Minor At Troy University

In 2007, a rapid increase in the number of outstanding undergraduate students at Troy University indicated need for a leadership minor for students in such disciplines as political science, sports and fitness management, communication, pre-med, accounting, and other fields calling for strong leadership skills. Leadership courses were added to the existing Introduction to Leadership course and the Capstone Leadership Seminar which was co-taught once each year to Honors students and other outstanding students by Chancellor Jack Hawkins and the Director of Institute for Leadership Development, Dr. John Kline.

Interest in the previously existing courses and newly added “Tools of Leadership” and “Leadership Theory” was high. In the 2007-2008 academic year, 80 students enrolled in the Intro course. In 2008-2009 the number jumped to 300 students. The current academic year enrollment has been 450 students. We expect a substantial increase next year. Some of these students qualify and choose to progress into the Leadership Minor.

The Intro course focuses on Servant Leadership. Here, students learn the value of such Character traits as service, ethics, morals, and integrity. They practice Competency skills of listening, speaking, group dynamics and teambuilding. Finally, students gain Confidence in themselves as leaders. The Tools course focuses on acquiring or developing communication skills of writing, briefing effectively, meeting management, delegation, interviewing, personal branding, and presenting short “elevator speeches” to get their points across quickly and effectively.

The Theories course covers such things as style, trait, and situational or contingency theories of leadership. The course focuses on the need to be transformational leaders—implementers of change—who seek to positively transform others and the organizations they serve. Several courses teach contemporary lessons of leadership from corporate, political, and social

leaders, as well as leadership lessons from the Bible. Additionally, students can receive credit for closely monitored Internships and Service Learning projects where they apply and refine their leadership knowledge, skills, and ability.

The Capstone course is the highlight of the minor. Here student leaders learn to state their core values, plan strategically, set goals and objectives, articulate their philosophy of leadership and develop a long-range plan of how they will lead in the future. They also learn dinner etiquette, business, phone, email, meet-and-greet manners, and other social graces. A day-long field trip includes visits to the office of the State Attorney General, CEO of Retirement Systems of Alabama, the President of ALFA Insurance, a presentation by a retired Lt. General, and a visit to Leadership Montgomery.

Some of the most exciting and useful days are when outside speakers come to class, including two former students—Troy Mayor Jason Reeves, and the Governor's Press Secretary, Jennifer Ardis. Other visitors include Covan CEO Jeff Coleman, former college president and community leader Shirley Woodie, self-made businessman from Dothan, Charles Nailen—and the highlight speaker at the course: Jere Beasley.

Dr. John Kline, Troy University

Each year when I visit the Troy campus, I became even more impressed with especially the quality of the students and with their interest in current affairs. These students, as well as Dr. John Kline, have been an inspiration to me. My plan is to continue speaking to John's classes for so long as he sees fit to invite me.

EDMUND PETTUS BRIDGE NAMED TO THE NATIONAL REGISTER OF HISTORIC PLACES

The Edmund Pettus Bridge in Selma, Ala., is now on the National Register of Historic Places. The U.S. Secretary of the Interior and National Park Service made that announcement last month. Civil rights marchers, wanting to draw attention to the need for voting rights legislation on March 7, 1965, were attacked by state law enforcement officials as they crossed the renowned bridge. Known as "Bloody Sunday," the attack was a

major, if not the deciding, factor in the passage of the Voting Rights Act of 1965.

National historic landmarks are nationally significant historic places that possess exceptional value or quality in illustrating or interpreting the heritage of the United States. The program, established in 1935, is administered by the National Park Service on behalf of the Secretary of the Interior. Currently there are 2,540 designated national historic landmarks. The designation of the Edmund Pettus Bridge is a tribute to the courageous folks who attempted to cross the bridge 48 years ago!

Source: AL.com

GRANT ENFINGER WINS THE ARCA-MOBILE 200

Grant Enfinger's first ARCA victory in 45 races was made all the sweeter by where it took place—at the Mobile International Speedway. A native of Fairhope, Ala., this was home turf for the Team BCR Racing driver, as he finished ahead of the pack in the March 9th race. Grant's been gunning for this particular accomplishment since 2009. He has finished second or third in his last 14 ARCA races. Beasley Allen sponsored Grant for a number of years and we still consider him to be part of our family.

Grant pulled into the lead during the final ten laps and never let go of the number one spot until the checkered flag ushered him into victory lane. But getting there wasn't exactly a walk in the park. The race had 11 restarts as cautions piled up like so much burned rubber. On the last restart, Grant passed his toughest competitor throughout the race, and was never passed again.

While Grant is not a regular on the ARCA circuit, he is scheduled to drive the ten televised ARCA races this season with sponsorship from the Casite Corp's Motor Honey product. He was able to race in Mobile thanks to the cooperation of a group of local sponsors. Grant drives the Team BCR Racing's No. 90 Triple K Construction Ford. His next ARCA race is in May at Talladega Superspeedway. We are very proud of Grant and wish him the very best in May and thereafter. I predict a very bright future for Grant and many more first-place finishes.

Source: al.com

A MOST INTERESTING BOOK

I have known David MacCollum, a noted safety engineer, for a number of years. The Arizona resident has written a novel entitled *Murder by Electrocution*. It is not only good reading but also instructive from a safety perspective. For more than 60 years, the

hazard of boomed equipment making contact with overhead power lines has been an ever-increasing source of wrongful injuries that maim for life or result in an extremely painful death. To overcome predictable human error, engineers must implement design-based safety, rather than speculate that such behavior can be modified. For more than 50 years, power line proximity sensors and interlocks have been known to stop dangerous boom movement before the power line is struck, thereby eliminating the hazard. The use of insulation guards against the dangerous flow of electrical current should contact be made.

The MacCollum novel explains in graphic form how easily overhead contact accidents can happen and the devastating results that occur. The novel also shows how elimination of the hazard and guarding against the flow of dangerous electrical current will save lives. This book not only describes the boom hazard in great detail, but it also tells how important the court system is for people and for safety. This novel describes how the legal system is often abused by Corporate America in order to avoid implementing system safety.

In addition to being an interesting novel, readers will learn about electrical hazards, safety design features and how some parts of industry and society aggressively work at defeating safety. I recommend this book for lawyers, lay people and even for safety and design engineers. The book is available for sale through the International System Safety Society, P.O. Box 70, Unionville, VA 22567-0070 USA Tel: 540-854-8630; email: system-safety@system-safety.org; Website: www.system-safety.org.

XXII. FAVORITE BIBLE VERSES

Leigh O'Dell, a lawyer in our Mass Torts Section, supplied a verse for this issue. It has a message that is especially meaningful for folks who are undergoing difficulties and trials in their lives.

And we know that all things work together for good to those who love God, to those who are the called according to His purpose.

Romans 8:28

My good friend, Dr. John Kline, the professor at Troy University mentioned in this issue, sent in a verse this month. John says Psalm 71, and specifically the 18th verse,

inspires him to keep teaching young college students.

Now also when I am old and gray-headed, O God, do not forsake me, Until I declare Your strength to this generation, Your power to everyone who is to come.

Psalm 71:18

Another good friend, Don Eddins, a lawyer from Auburn, Ala., sent in a verse for this issue. Don is also the managing partner of The Auburn Villager, an excellent weekly newspaper. Don says in Matthew 25:40 Jesus admonishes us to help the poor, the weak and unfortunate among us.

Verily I say unto you, in as much as ye have done it unto the least of these my brethren, you have done it unto Me.

Matthew 25:40

Betty Baggott, who comes to the firm once each month to give the firm's devotion, spoke last month on "Life's most important question and life's most important answer." Betty took her message from Matthew 16:13, which is set out below. Incidentally, this very question is being put to all of us today. How we answer it is critically important to each of us and our families.

When Jesus came into the region of Caesarea Philippi, He asked His disciples, saying, "Who do men say that I, the Son of Man, am?"

Matthew 16:13

XXIII. CLOSING OBSERVATIONS

WE HAVE ALLOWED A CULTURE OF VIOLENCE TO BE CREATED IN THE U.S.

Since the horrific massacre of elementary children in Newtown, Conn., a national debate has centered on ways to prevent such tragedies from occurring in the future. As expected, most of the attention has been on guns and for good reason. I am convinced that reasonable gun control is a definite need and is long overdue. Proposals such as universal background checks, banning assault rifles and limiting the size of magazines and increasing care for the mentally ill, should be enacted by Congress. I am equally convinced that those in elected positions of authority have an obligation to take a serious

look at the role played by movies, television and video games.

A culture of violence has been created and is being perpetuated by the movie, television and the video games industries. I am convinced that these industries and their products have a tremendous influence on the behavior of people. This is especially true for persons with mental illness and behavioral issues. I am disappointed, but not surprised, that these three industries have been virtually ignored in the debate.

Sadly, the bosses of the movie, television and video game industries refuse to consider their role in producing and distributing graphic violence in entertainment as contributing to a culture of violence in the U.S. But recent polling indicates how people around the country feel on this issue. While executives from the three industries attempt to deflect any responsibility for the violence they promote, it certainly appears parents in the U.S. have a different opinion. According to a recent survey, 77% of parents say violence in entertainment creates a culture of violence. The numbers are even more significant when it comes to violent video games. It's also significant that 88% of parents surveyed say that violent TV shows should not be shown during the times when TV is watched by large numbers of children.

We should all be shocked at the brutal and graphic nature of violence exhibited on broadcast television. Interestingly, or perhaps tragically, these programs are rated by the networks as appropriate for a 14-year-old child, which defies all reasoning and common sense. There is scientific proof that media violence is linked to violence in real life. But common sense also leads to the same conclusion. Even without the science, I am convinced that the continuous watching of extreme acts of violence in movies and on television contributes to the creation of a culture of violence. Add to those media outlets, the violent video games, where young people actually participate in the games, and the problem becomes much worse.

We should learn from past events. I am convinced that what folks hear and see on a recurring basis affects what they do. English statesman Edmund Burke made the astute observation: "Those who do not know history are destined to repeat it." Spanish philosopher George Santayana, gave his view when he said: "Those who cannot remember the past are condemned to repeat it." But points are well made. Those living in the present should learn from and be informed by the past. But so many in this nation—especially those who are producing television programming, making movies, and creating video games—are ignoring

what could or should have been learned in the past.

In 1975, a study released in the Journal of the American Medical Association suggested that television violence was having "a deforming effect on children." In response, the American Medical Association passed a resolution declaring that television entertainment "increased the likelihood of aggressive behavior." In 2000, representatives from six of our nation's top public health organizations issued a joint statement noting:

The conclusion of the public health community, based on over 30 years of research, is that viewing entertainment violence can lead to increases in aggressive attitudes, values and behavior, particularly in children. Moreover, prolonged viewing of media violence can lead to emotional desensitization toward violence in real life.

In 2013, the Parent Television Council published a report entitled, "TV Bloodbath: Violation on Prime Time Broadcast TV," which surveyed television shows in 1998, 2000 and 2002. The report found that the prevalence of violent programming increased in every time slot and that in 2002 depictions of violence were 41% more frequent during the 8 p.m. hour than in 1998. Despite a clear record of scientific investigation, movies and television continue to provide incredibly violent programming. Advertising dollars and ticket sales make these movies and shows possible. When you add ultra-violent video games to the equation, the problem is magnified. This industry is reaping record profits from sales and for that reason there won't be any voluntary pulling back by their bosses.

My hope and prayer is that we in America will do more than just complain. We must get actively involved and support legislation at every level—national, state and local—and help to put an end to the culture of violence that consumes us today. When will we wake up in this country?

Source: Parents Television Council

MONTHLY REMINDERS

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

2 Chronicles 7:14

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

Edmund Burke

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

Isaiah 10:1-2

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

Louis Brandeis, 1937
U.S. Supreme Court Justice

XXIV. PARTING WORDS

The Bible teaches us how God works in the lives of His people. We don't always

understand what He is doing in our lives and are all too often slow to accept the course He sets for us. That's because His ways can be mysterious and difficult to understand on occasion. God knows that we make mistakes, that we don't always understand his will for us and that sometimes we even resist the direction in which we are being led. But God is sovereign and He wants us to know that truth without reservation. There is nothing that God can't do for and in us and that is a lock-solid guarantee. Paul expressed it in language that is easily understood when he said: "We know that God causes all things to work together for good to those who love God, to those who are called according to His purpose." (Romans 8:28)

When we let Him, God will guide us in ways that we may never fully understand. But the good thing is that we really don't have to understand. All it takes is believing, having faith, trusting and obeying God. It really is just that simple and that may be why some folks have difficulty in getting past the belief requirement.

We must all accept and remember that God has a definite plan for our lives. He wants to bless us and fulfill His sovereign purposes for us. Instead of worrying and being overly concerned about the twists and turns of everyday life, God wants us to rest in His love for us and believe in his promise: "trust in the Lord with all your heart and do not lean on your own understanding. In all your ways acknowledge Him, and he will make your paths straight" (Proverbs 3:5-6). You might want to consider the promise made through Paul, when he said: "I can do all this through him who gives me strength." (Philippians 4:13)

On March 31st, Easter was celebrated. There is no better time during which to consider what God has done for each of us and also what He still has in store for us. The message of Easter, as found in the Gospel of Luke (24:1-53), should be read over and over. It will brighten your spirits, even on the darkest days in your life, and that's a good thing. May God bless each of you and your families and may God bless America.

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