THE JERE BEASLEY REPORT

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Beasley Allen

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I. CAPITOL OBSERVATIONS

Fred Gray Publishes Updated Edition Of 'Bus Ride To Justice' Book

Even if you previously purchased and read Bus Ride To Justice when it was published in 1995, it would be worth taking another look at a follow up to this book by Fred D. Gray, a prominent Alabama lawyer. The best-selling autobiography of one of the nation's leading civil rights lawyers has recently been updated to include new information about Fred's distinguished career and his reflections on the 1955 arrest of Mrs. Rosa Parks. That event sparked the Montgomery Bus Boycott and brought the eyes of the nation—and eventually the world—to focus on the issue of Civil Rights. The new volume also includes new photographs not found in the previous edition.

Fred, who describes his career goal as to "destroy everything segregated that I could find," served as Mrs. Parks' lawyer following her arrest when she defied Jim Crow segregation laws in refusing to give up her seat on a Montgomery city bus to a white passenger. In the book, he says that although Mrs. Parks is often portrayed as a demure seamstress in the wrong place at the wrong time, she was in fact a strong activist in the Civil Rights movement. Fred describes her willingness to be arrested and go to jail in order to challenge segregation laws.

Fred was just 24 years old and out of law school for less than a year when he took the case that would begin to change history. The Bus Boycott went on for 382 days and ended only when busses in Montgomery were integrated in December 1956. In addition to representing Mrs. Parks, Fred served as the lawyer for Dr. Martin Luther King, Jr., and the Montgomery Improvement Association. This group organized the Montgomery Bus Boycott.

During the course of his career, Fred has handled cases involving desegregation, integration, and constitutional law, racial discrimination in voting, housing, education, jury service, farm subsidies, medicine and ethics. Fred served as the first African American president of the Alabama State Bar. I am proud to say that Fred Gray is a personal friend. He is truly a great American and had a definite role in bringing about badly needed changes in this country. He also was, and still is, a great lawyer. Few individuals can look back on a career as a lawyer and can say that they had such a tremendous influence on our country's history.

Super Lawyers Magazine Spotlights Dee Miles

Dee Miles, who heads up our Consumer Fraud Section, was spotlighted last month in the *Super Lawyers* magazine. Dee acknowledges that some folks will always find a way to cheat, and his lawyers are determined that they will not get away with it. Dee says he approaches the practice of law, particularly in his area dealing with consumer fraud and wrongdoing in the workplace, with a faith in the triumph of good over evil. In the feature interview in *Super Lawyers* magazine, Dee said, "We come in and make sure that the cheaters are taken care of and whatever it is they're doing is stopped." That is the purpose and function of Dee's section in our firm.

Dee has involved the firm in cases on a national level. He has served as lead and co-lead counsel in numerous cases resulting in multi-million dollar verdicts. He is currently serving as lead counsel for the State of Alabama against 73 pharmaceutical companies accused of defrauding the state Medicaid system. Twenty-two other states have filed similar suits against the same pharmaceutical companies, and Dee is representing eight states in this litigation.

Dee has also been appointed by Federal District Judge James V. Selna to serve in a leadership role on the Plaintiffs Liaison counsel in the Toyota Sudden Unintended Acceleration Multidistrict Litigation (MDL) in the California U.S. District Court. This committee has the awesome responsibility of coordinating the litigation for the entire country. In December 2012, Toyota proposed a $1.1 billion settlement to resolve hundreds of consumer claims in this litigation. If approved, it would be the largest in U.S. history involving automotive defects.

The Consumer Fraud section, under Dee's direction, has been actively working on cases involving *Qui Tam*, or whistleblower laws. Under the *qui tam* provision of the False Claims Act, citizens are allowed to sue on behalf of the government when they uncover evidence of fraud or wrongdoing. They may receive a portion of the money recovered in these cases. Examples of these types of cases include any instances where individuals or businesses attempt to solicit a fraudulent claim for payment. There also are SEC Whistleblower protections for people reporting securities fraud, and IRS whistleblower laws for claims involving tax fraud.

Dee, who credits his success to his faith, stated in the magazine that his daily goal is "to serve the Lord by giving generous love" to his family and "hard work" to his clients, in that order. Dee says while "life is a constant balancing act, "if we know the priorities of the Lord first, then our families and our work third, we can achieve anything in life we seek." Dee is a tremendous lawyer, a dedicated leader of the lawyers and support personnel in his Section and, more importantly, a good man. We are blessed to have him in the firm in an important leadership position.

IN THIS ISSUE

II. A REPORT ON THE GULF COAST DISASTER

Oil Spill Claim Offers Surpass $3 Billion

The Settlement Program headed up by Claims Administrator Pat Juneau has reached another milestone. The Settlement Program announced in May that it had paid out more than $2 billion to businesses and individuals eligible in the settlement. In total, the Program as of May 6 had extended offers totaling $3.06 billion to thousands of eligible claimants. Juneau will file a more detailed report on the center's progress with U.S. District Judge Carl Barbier. Juneau had this to say in a statement:

> *This is another milestone in the claims process. We started this new process in June of 2012 and in less than a year, we have reviewed claims and determined, by the settlement agreement, that over $3 billion in claims are eligible for payment.*

This is welcomed news for those devastated by our nation's largest environmental disaster. Our firm has a team of lawyers and staff dedicated to assisting businesses and individuals with claims throughout the Gulf Region. If you have any questions about the Settlement Program, please feel free to contact Sandra Walters at Sandra.Walters@beasleyallen.com or at 800.898.2034. She will put you in touch with one of the lawyers involved in the BP litigation.

Source: *The Times-Picayune*

Many More Claims Expected As April 2014 Deadline Approaches

Administrator Pat Juneau is expecting a surge in claims as the April 2014 deadline for claims quickly approaches. To put things in context, over 165,000 claims had been filed by Gulf Coast claimants in the settlement as of mid-May. Juneau expects that number to increase as the deadline approaches. He made this observation:

> *It certainly wouldn't surprise me that we'd break the 200,000 mark…It's happened in every case I've been involved in, and there's no reason to believe it would be otherwise in this case.*

Without any doubt the Administrator and his staff have had their hands full. More than 1,000 people are tasked with processing claims filed in the Settlement Program. I believe there is a need for more. Speaking to Reuters, Juneau noted that he still needs more help to handle the heavy load, noting that some claims involve "huge business losses that require a ton of accounting analysis." On top of his responsibilities dealing with claims, Juneau has been a firsthand recipient of the frustrating appeals tactics utilized by BP.

Before starting the process, Juneau said he and his team reviewed many procedural questions with lawyers from both BP and the plaintiffs to ensure they all agreed on how claims would be analyzed. He said formulas in the agreement were designed to take subjective considerations out of the process and ensure claims would be decided based on quantifiable economic factors. Juneau noted that BP lawyers raised no objections to any of the terms of the settlement after it was agreed to. Neither did BP's lawyers object when the settlement was first considered by Judge Barbier. Juneau's recent court filing with the Fifth Circuit points out that BP knew well before the fairness hearing on November 8, 2012 all about the very issues it now complains about. It's very important to note that lawyers for BP never even raised the issues it now complains about with Judge Barbier at any time during the fairness hearing. Our lawyers who were involved confirm Juneau's position as being totally factual.

Source: *Reuters*

BP's $4.2 Billion Profit Beats Forecasts

To say that BP is doing very well financially may be a gross understatement. That's because the oil giant has reported first-quarter profit of $4.2 billion after adjustment for inventory changes and one-off items. The performance handily beat analysts' forecasts. Even though profit was 11 percent lower than the same quarter last year, Peter Hutton, an analyst at RBC Capital Markets in London, called the report "a very positive set of results." BP had earned 30 percent more than analysts' forecasts, according to Hutton, because of start-ups in Angola and Norway and better performance in Trinidad. Hutton also said costs had been lower than expected.

Chief executive, Robert W. Dudley, said in a statement that "these strong first-quarter results demonstrate the progress BP is making." As expected, he said there was a reduced fall in production in the United States. The company is trying to bring back its core deepwater production in the Gulf of Mexico after the 2010 disaster. Production in the first quarter, 2.3 million barrels a day, was down about 5 percent compared with the first quarter of 2012 and roughly half the output of ExxonMobil. In 2009, BP's production was 4 million barrels per day, which was comparable to Exxon Mobil's. Based on reports, BP is more dependent on the Gulf of Mexico for high-margin oil than is any other company.

Source: Yahoo.com

Texas Sues BP And Halliburton

The State of Texas has finally filed suit against BP and Halliburton in U.S. District Court. The defendants are accused of causing the state to lose tax revenue due to business disruptions prompted by the 2010 oil spill in the Gulf of Mexico. Texas is seeking damages for every barrel of oil that leaked during the spill. As we have reported, we filed the first state lawsuit in 2010 on behalf of the State of Alabama. Since then the other states have filed suit against the companies that owned and operated the Deepwater Horizon, Texas being the last.

All of the suits are expected to be eventually combined into a single action or sent back to the respective states for trial. I believe Alabama's case will come back to Montgomery for trial. Texas alleges that the Deepwater Horizon disaster was caused by "willful and wanton misconduct" on the part of the defendants. Based on all we now know, that is 100 percent accurate.

Source: investorplace.com

III. DRUG MANUFACTURERS FRAUD LITIGATION

Amgen To Pay $11 Million To Settle Drug Rip Off Charge

Thirty-six states have reached an $11 million settlement with the drug manufacturer Amgen, Inc. The agreement settles claims that the company inflated pricing data for six of its prescription drugs in a way that caused the settling states' Medicaid programs to overpay for those drugs. New York Attorney General Eric Schneiderman, who took the lead in the case, had this to say:

> *There are no excuses for ripping off New York State taxpayers and defrauding our Medicaid programs. At a time when state budgets are already strained, I am committed to going after any company that rips off our taxpayers—no matter how big they are. With*

this settlement the message we are sending is clear: Biotechnology giants are not above the law and my office will continue to ensure that those who cheat the system are held accountable.

The drug pricing data at issue in this settlement concerns the "Average Wholesale Price" (AWP) and "Wholesale Acquisition Cost" (WAC) issues. As we have reported on numerous occasions, the Medicaid programs of most every state, including New York, have used AWP and WAC to set pharmacy reimbursement rates for pharmaceuticals dispensed to state Medicaid beneficiaries. In this case, Amgen reported inflated AWP and WAC pricing data, thereby creating an artificially inflated "spread" between the price at which Medicaid providers dispensed the named drugs and the price at which the states reimbursed providers for the drugs. Under this law in most every state that is fraudulent conduct. After creating the inflated spread, Amgen marketed that spread to Medicaid providers in order to boost Amgen's sales of Aranesp, Enbrel, Epogen, Neulasta, Neupogen, and Sensipar. These drugs are used to treat kidney disease and cancer patients.

This settlement was part of a larger investigation into illegal marketing practices, which included promoting the drugs for unapproved uses, and illegal kickbacks schemes by Amgen. The investigation resulted in a misdemeanor guilty plea in federal court by Amgen for introducing a misbranded drug into interstate commerce. The company has now paid a total of more than $647 million in damages related to the investigations. New York's Medicaid program received more than $19.2 million of the money.

Source: *Corporate Crime Reporter*

Two False Claims Act Lawsuits Filed Against Novartis

Federal officials have filed a second False Claims Act (FCA) lawsuit against Novartis. The second lawsuit alleges that the pharmaceutical giant paid kickbacks to doctors to induce them to prescribe Novartis pharmaceutical products that were reimbursed by federal health care programs. The lawsuit alleges that as a result of the unlawful conduct by Novartis, the federal government paid false claims for reimbursement for Novartis pharmaceutical products. The Justice Department intervened in part in an action before Judge Paul G. Gardephe filed by a whistleblower on January 5, 2011, under the *qui tam* provisions of the False Claims Act.

This was the second lawsuit to be filed in the Southern District against Novartis alleging illegal kickbacks. The U.S. Attorney's Office in Manhattan has also sued Novartis for allegedly paying kickbacks disguised as rebates and discounts to pharmacies in exchange for the pharmacies switching patients on CellCept or a generic drug to Novartis's immunosuppressant drug, Myfortic. U.S. Attorney Preet Bharara issued this statement:

Novartis corrupted the prescription drug dispensing process with multi-million dollar "incentive programs" that targeted doctors who, in exchange for illegal kickbacks, steered patients toward its drugs. And for its investment, Novartis reaped dramatically increased profits on these drugs, and Medicare, Medicaid, and other federal healthcare programs were left holding the bag, doling out millions of dollars in kickback-tainted claims. Healthcare fraud imposes tremendous costs and causes great harm to an already burdened healthcare system, and the government will not tolerate it. The widespread kickback fraud alleged in our two lawsuits against Novartis—which only a few years ago settled a False Claims Act case involving violations of the Anti-Kickback Statute (AKS) based on illegal payments to doctors—makes us question whether Novartis is getting the message.

Novartis, the pharmaceutical company headquartered in East Hanover, N.J., is a subsidiary of Novartis AG, an international pharmaceutical company headquartered in Basel, Switzerland. Federal officials alleged that:

- Novartis systematically violated the anti-kickback law, which prohibits the payment of remuneration to induce referrals of items or services covered by Medicare, Medicaid and other federally-funded programs;
- The company violated its own internal policies concerning speaker programs, which require that the programs have an educational purpose and that slides about the company's drugs be presented;
- Novartis violated the anti-kickback law by paying doctors to speak about certain drugs, including its hypertension drugs Lotrel and Valturna and its diabetes drug Starlix, at events that were often little or nothing more than social occasions for the doctors.

The government says the payments and lavish dinners given to the doctors were, in reality, kickbacks to the speakers and attendees to induce them to write prescriptions for Novartis drugs. It appears, based on the charges, that in many instances Novartis made payments to doctors for purported speaker programs that either did not occur at all or that had few or no attendees. Thousands of the programs were held all over the country. It was reported that few or no slides were shown at any of the programs and the doctors who participated spent little or no time discussing the drug at issue. Many speaker programs were said to have been held in circumstances in which it would have been virtually impossible for any presentation to be made, such as on fishing trips off the Florida coast.

Novartis's internal analyses show that speaker programs had a high return on investment in terms of the additional prescriptions for its drugs written by the doctors who participated in the programs, both as speakers and attendees, with the highest return arising from payments to doctors as "honoraria" for speaking. In short, doctors increased the number of prescriptions they wrote when they were being paid by Novartis to speak about a drug. As a result, Novartis spent millions on speaker programs yearly. According to Novartis' data, during the period from January 2002 through November 2011 it spent nearly $65 million and conducted more than 38,000 speaker programs for just three drugs: the hypertension drugs, Lotrel and Valturna, and the diabetes drug, Starlix.

In September 2010, Novartis entered into a settlement with the U.S. Department of Justice to settle False Claims Act lawsuits based in part on violations of the AKS due to illegal remuneration paid to doctors through such mechanisms as speaker programs, and signed a Corporate Integrity Agreement (CIA) with the U.S. Department of Health and Human Services Office of Inspector General agreeing to implement a rigorous compliance program. Even after entering into the CIA, it was alleged that Novartis' compliance program was inadequate to prevent kickbacks from being paid in conjunction with Novartis' speaker programs.

Source: *Corporate Crime Reporter*

Generic Drugmaker Pays $500 Million To Settle Whistleblower Suit

India's largest generic drug manufacturer, Ranbaxy Laboratories Limited, settled with the United States and states' attorneys general earlier this month for allegations that Ranbaxy falsified data, violated Current Good Manufacturing and Laboratory Practices, and sold substandard and unapproved drugs. This settlement is due to the efforts of whistleblower Dinesh S. Thakur through a False Claims Act (FCA) lawsuit. It clearly was a whistleblower-inspired settlement.

The case was filed in the U.S. District Court for the district of Maryland and was based on violations of the Federal False Claims Act and a number of state false claims laws. Dinesh Thakur, former Ranbaxy director and global head of research information and portfolio management, will receive $48.6 million as the whistleblower in the case. Thakur, who uncovered the unsafe practices and violations at Ranbaxy, said in a statement:

> *Ranbaxy's management was notified of these widespread problems. When they failed to correct the problems, it left me with no choice but to alert healthcare authorities. It took us eight years to help government authorities unravel a complicated trail of falsified records and dangerous manufacturing practices that threatened to compromise the quality and safety of Ranbaxy drugs.*

The whistleblower learned of Ranbaxy's fraudulent practices and reported them internally to no avail. Due to Ranbaxy's lack of action, Thakur left the company and exposed the fraud against the federal government by filing a False Claims Act lawsuit in 2007. It was alleged in the complaint that Ranbaxy caused false claims to be submitted for payment by government health care programs for various drugs that were adulterated and substandard.

The False Claims Act allows whistleblowers to report fraud against the federal government by filing a lawsuit on behalf of the government. Successful whistleblowers will recover a percentage of the overall recovery that the government receives. Typically, a whistleblower recovers between 15-25 percent of the total recovery. In Thakur's case, he will receive 21 percent of the $350 million awarded in civil damages. An additional $150 million in criminal penalties were assessed against Ranbaxy.

Almost 80 percent of all generic drugs in the United States are manufactured overseas. Whistleblowers like Thakur can save the taxpayer millions of dollars by stepping forward and filing a False Claims Act lawsuit. The impact of whistleblowers is tremendous and results in hundreds of millions of dollars recovered for the government each year. In a time when the United States faces a budget crisis, whistleblowers are quickly becoming a much-needed asset in recovering government funds that have been fraudulently used. Additionally, states such as Alabama are benefiting from Thakur's whistleblowing. In Alabama's case, the state is benefiting to the tune of $6.9 million, all because of Thakur taking a stand.

Many states have adopted state versions of the False Claims Act. In order to qualify as a whistleblower under the False Claims Act, a person must have direct knowledge of a false claim being submitted to the federal or state government for payment. Most fraudulent schemes are very complex and only insiders know the intricate details of the fraud. However, it is not a requirement that the whistleblower be an employee of the company defrauding the government, so long as the whistleblower has direct knowledge of the fraud committed.

False Claims Act cases are filed for a variety of fraudulent schemes against the government. The health care industry, specifically Medicare and Medicaid, are commonly defrauded and ripe for a False Claims Act lawsuit. Additionally, government contractors, especially defense contractors, have defrauded the federal government for the past 10 years as the War on Terror continues. Anyone considering filing a False Claims Act lawsuit should know that their suit will be under seal for potentially several months or even years until the government decides whether it wants to intervene in the case. Also, the False Claims Act forbids employers from retaliating, harassing or threatening employees for reporting fraud to the government. Finally, the possibility of earning 15-25 percent of the government's recovery is a positive incentive for whistleblowers to step forward and tell the truth. It is in the taxpayer's interest that whistleblowers speak out against fraud being committed on the government.

It should also be noted that Alabama will receive $6.8 million from the settlement, which will go to the state's ailing Medicaid program. As stated above, false and fraudulent claims were submitted to the State Medicaid Programs, including the Alabama Medicaid Agency, by Ranbaxy. It's rather interesting, to say the least, that corporate fraud in the Medicaid program exists in the rest of the U.S. Ironically, Alabama is getting money in this settlement based on fraudulent conduct that the Alabama Supreme Court a few years back said was not fraud. Perhaps we should revisit the issue in Alabama.

Lawyers at Beasley Allen continue to vigorously investigate fraud against both the federal and state governments and encourage any person who knows of fraudulent activities to step forward. Potential whistleblowers have the right to not be retaliated against for doing the right thing and reporting the fraud they have witnessed. Anyone considering doing the right thing and blowing the whistle is strongly urged to seek legal advice before doing so. The lawyers in our firm who handle the claims are very familiar with the federal False Claims Act and its state counterparts. They can guide whistleblowers along the process. If any of our readers have any information and would like to speak with a lawyer, they can contact Andrew Brashier at Andrew.Brashier@beasleyallen.com, or at 1-800-898-2034 or 334-269-2343.

Source: Reuters and *Dailyherald.com*

IV. PURELY POLITICAL NEWS & VIEWS

Observers Say Gov. Robert Bentley Can't Lose In 2014

Gov. Robert Bentley has already let it be known that he will seek a second term and that really didn't come as a big surprise. From all accounts, it will be extremely hard to beat Gov. Bentley in 2014. While a lot can happen before that race officially begins, all of the current polling indicates that the governor is in very good shape with the people of Alabama. His favorability ratings are in the 70 percent range. While Gov. Bentley has had a few bumps along the way, I believe the man has done an overall good job. I have disagreed with some of his decisions, but I am convinced that he has always acted in good faith and sincerely believed that his actions were best for Alabama.

The only potential candidate whose name is being thrown around at the State House in recent weeks is that of Bradley Byrne, who lost to Gov. Bentley in the 2010 Republican primary. Bradley is said to be the Riley candidate and that shouldn't be a big surprise since it's well known that there is no "love lost" between the Riley camp and Gov. Bentley. Also, some of my Republican friends tell me the GOP leadership doesn't really like Gov. Bentley very much and that many have never accepted his winning the Governor's race in 2010. It was pointed out in a news story by a very good journalist, George Talbort, that campaign fundraising could be a problem for Gov. Bentley. Obviously, that wouldn't be a problem for a Riley-backed candidate. It will be most interesting to see what develops over the coming months heading toward 2014.

Source: *Mobile Press-Register*

The Future Of The Alabama Democratic Party

Things don't look very good for the splintered Alabama Democratic Party in our state. To say that the future of the party appears to be shaky is a pretty good assessment. Republicans hold every statewide elected office in Alabama and control all three branches of government, including both the Legislative and Judicial branches. There are a number of reasons for this total takeover. For one, it does take a an official poll to learn that President Obama is not very popular in Alabama. His being on the ballot had a negative influence in the 2010 legislative races, helping to elect a number of Republican candidates. The president's unpopularity in the state has also contributed in some small degree to the current plight of the Alabama Democratic Party. Unfortunately, I don't see the president's approval ratings in the state changing very much over the next two years. But the party problems started in Alabama long before President Obama took office.

Democrats need to regroup, decide on both a short and large range strategy, and then move forward. That's a necessity if things are going to get any better in Alabama. The party must be willing to stand up for ordinary folks and be sensitive to the real issues that affect them on a daily basis. That must happen very soon if the party expects to become a factor in statewide races in 2014.

The Republican Party, on the national level, has totally abandoned working men and women, as well as the elderly and minorities, and that has hurt the GOP in most parts of the country. Public employees, including school teachers, have been treated rather shabbily by the GOP. Ironically, many from each of the groups mentioned above have voted the GOP ticket in recent elections, which was against their own economic and social interests. I have never really understood why ordinary folks could be comfortable voting with right-wingers such as the Koch brothers. Nevertheless, it has certainly happened.

It might be helpful to briefly review the history of the Alabama Democratic Party over the past 75 years in order to put things in the proper perspective. It's quite apparent, that historically Alabama has never really been a true two-party state. Back in the mid-1900s, there were few real Republicans in Alabama. During that era, the Democratic Party in Alabama was split between Dixiecrats and Loyalists, with the Loyalists being in the distinct minority. The George Wallace era, starting in 1962, pretty much widened that split. It was evident that Gov. Wallace felt no need for any real party affiliation. In fact, he ran successfully against both national parties for years.

In modern times, until 1964 the Republican Party was never a political factor in Alabama. Many attribute the Goldwater sweep that year in Alabama during the presidential race, which was really an anti-Lyndon Johnson vote, as giving birth to the present Republican Party in our state. There were two Republican governors, Guy Hunt and Fob James, elected between 1964 and 2002. But their wins were more the result of something "dumb" the Democrats did than their own efforts. In 2002, the political climate in Alabama really started to change when Bob Riley won a very close race, unseating Don Siegelman, the incumbent governor. Since that time, no Democratic candidate has even had a chance to be elected to the state's highest office. In the 2010 election, for example, it was very clear from the outset that the candidate who survived the Republican primary would be elected governor.

I have been a Democrat all of my adult life and have no intention of abandoning the party. I will remain a Democrat so long as I have breath in me. But I have to face reality—and that reality is—the Alabama Democratic Party is in big-time trouble. I just hope that local Democratic candidates around the state won't be hurt in the 2014 elections because of the current split in the party. The factions of the Democratic Party must come together, develop a strategy for growth and then start acting like Democrats again. If this doesn't happen very soon, things will only get worse in our state. I believe we need two strong political parties in the state for the good of the people of Alabama. Perhaps, that will become a reality one of these days.

V. LEGISLATIVE HAPPENINGS

Medicaid Restructuring Bill

Gov. Robert Bentley has signed the Medicaid restructuring bill passed by the Alabama Legislature into law. Hopefully, this major piece of legislation will be good for current and future Alabama Medicaid patients. I have always believed that Medicaid should be more consumer-friendly and I am told that the new law is a step in that direction. A cost-effective health care system for vulnerable Alabamians is an absolute necessity. The proponents of the new law have promised that it will provide a better health care system for our state. The bill changes Alabama Medicaid's administrative structure from a centralized statewide program to a network of regional care organizations (RCOs). The legislation is designed to give local providers, consumers and other stakeholders more control over health care delivery.

Under the new system, Alabama Arise and the Disabilities Leadership Coalition of Alabama will recommend consumer representatives to the governing board and citizens' advisory committee of each RCO. Having these groups involved is a good thing. In a move designed to reduce costs by improving patient outcomes, new payment provisions in the bill are designed to reward health care providers for effective preventive and primary care and penalize them for more costly and delayed care. The administration of the program will be at the regional level, which in theory is good and hopefully it will work.

All who follow the affairs of state government in Alabama know our current Medicaid program has been under constant attack. Folks on Medicaid and the health care providers have suffered as a result of these "politically motivated" attacks on the program. Unfortunately, none of the politicians leveling the attacks offered anything constructive. The attempt to come up with something better came from Gov. Robert Bentley. Now it's incumbent upon those in charge of the Alabama Medicaid Agency to make the new law work. I have tremendous respect for and confidence in Dr. Don Williamson, a highly capable man, who is currently in charge of Medicaid. But he has his hands full in his real job running the state health department. Hopefully, he can handle each job well.

Common sense tells me that the best way to control rising health care costs is to detect and catch problems early and keep folks healthy. While I still believe expanding the Medicaid program under the national healthcare law is needed, that doesn't appear to even be a possibility. So I am hopeful that the new law in Alabama will make things better. If it does work well, a major breakthrough in health care in Alabama will have been accomplished. Hopefully, doctors will continue to take and treat Medicaid patients under this new system. As I understand the new law, payments will be made to the RCOs, which will then take care of paying all of the heath care providers, including doctors. In theory, this sounds good, but will it work? We shall see.

Source: Alarise.org

Public Education Needs To Be Made Alabama's Top Priority

During the last days of the session, the Alabama Legislature passed a $5.77 billion education budget for the upcoming school year. The budget provides for a 2 percent raise for K-12 employees, their first since October 2007. Our failure to pay teachers a decent wage is a sad state of affairs and it hurt our state. We must pay our teachers adequately, and give them the support they need and deserve. That's long overdue. Gov. Robert Bentley recommended 2.5 percent at the start of the legislative session in February, but that was before the Legislature approved tax credits for parents who send their children to private school. Nobody seems to know how much this ill-advised plan will cost public education, but it will certainly be costly.

The budget provides an extra $9.4 million to expand Alabama's voluntary pre-kindergarten program for 4-year-olds. That is less than the $12.5 million recommended by the governor in hopes of adding 2,000 students. But pre-K advocates said it still represented an advance. The budget allocates $5 million to provide the state's first liability insurance for K-12 employees. This is an obvious attempt by the Republican majority to weaken AEA, which already provides liability coverage to its members.

Unfortunately, the Alabama Legislature has never really made public education our state's top priority. In fact, over the past decade the plight of public education has become much worse. As a result, many good teachers have had to look to other states for employment. We have lost some good teachers as a result. While there were some good things in the current budget, those were offset by some extremely bad things. The prime example of the bad is the "private school" bill, called the Alabama Accountability Act, referred to above. More will be said on that legislation in another section of the issue. Suffice to say, the Alabama Affordability Act will go down in history as having dealt a crippling blow to public education in Alabama.

Payday Lenders Rule In Alabama

Despite a broad base of support, three bills before the Alabama State Legislature seeking to reform payday and title loan businesses died painful deaths. The proponents of the legislation were unable to make it past a stronger coalition of lobbyists on the side of the lenders. That was a real shame, and it was bad news for the poorest citizens in Alabama on whom these loans sharks prey.

Two bills were introduced in the House. The payday loan bill, HR320, was sponsored by Birmingham Representative Patricia Todd and Senator Marc Keahey, who is from Grove Hill. The title loan bill, HR462, was sponsored by Jefferson County Representative Roderick Scott and Representative Mike Ball, who is from Madison County. The bills sought to place a cap of 36 percent on interest rates for short-term payday and title loans. Currently, interest rates can reach as high as 456 percent on payday loans and 300 percent on title loans. Those are not "misprints," but the actual rates folks are paying currently.

The legislation would also have called for a central database to be created to track the number of payday loans a person has taken out. Often, people who take out a payday loan do so to cover necessary daily expenses—things like paying rent, buying groceries or paying a medical bill. When it comes time to repay the loan, they take out another payday loan, and so on, until they are hopelessly mired in debt with nearly impossible interest rates.

There are more than 1,000 payday lenders in the state. Without a central database, one payday lender has no way of knowing if someone already owes one or more of the loans when they apply for another. Research by Pew Charitable Trusts found that an average payday and title loan customer takes out an average of eight loans a year.

The bills had support from a wide variety of groups including Alabama Appleseed, Alabama Federation of Republican Women, Alabama Arise and the Alabama Citizens' Action Program. Even though Gov. Robert Bentley supported the reform efforts, the legislation died a "painful death." Payday lenders, through their powerful army of lobbyists, argued the high interest rates they charge are necessary for securing high-risk loans. They say that loans are available to folks who wouldn't be able to get them from a traditional lender. They claim the reform measures would put them out of business, which is difficult to believe.

The Southern Poverty Law Center recently produced a booklet outlining the toll payday and title lenders take on a community. In that publication, *Easy Money, Impossible Debt: How Predatory Lending Traps Alabama's Poor*, the Center points out that in states that have cracked down on this type of predatory lending, when predatory lenders leave the market, responsible lending grows up in their place.

As the House bills faltered, Senate President Pro Tem Del Marsh sponsored and introduced a compromise bill that would cut the interest rates charged by payday loan companies, but not as harshly. The legislation would have reduced the maximum APR to 326 percent. It also included limiting the number of payday loans a person can take out, and favored creating a central database of loans. The compromise bill did not address title loan reform.

The legislation was developed by Sen. Marsh in conjunction with State Banking Superintendent John Harrison, in hopes that any step forward in payday loan reform, however small, would still be forward progress. This bill made it out of committee, but never came to a vote in the Senate. John Harrison worked extremely hard and tried his dead-level best to get a good bill passed. But to put it bluntly, the pay day lenders and their army of lobbyists ruled the day. It was a sad day for Alabama!

Sources: *The Montgomery Advertiser* and WSFA TV News

A Recap Of Other Bills In The Session

The Elder Abuse law

The Alabama Legislature has made it much easier to prosecute people who abuse, neglect or financially exploit senior citizens. The Protecting Alabama's Elders Act pushed by Senator Cam Ward and Republican Paul DeMarco, has been signed into law by Governor Bentley. The Act better defines what constitutes elder abuse and increases the penalties for the most serious offenses. Passage of this important act was one of the highlights of the session. It may wind up being the very best thing done by the Legislators during the session.

The Alabama Accountability Act

Passage of the so-called Alabama Accountability Act is a throwback to the days of Freedom of Choice that prevailed during the 1960s in Alabama. While proponents tout the new law as being one that will improve public education, I see very little in the law that will benefit public education in any respect. The flexibility aspect is good, but it's overshadowed by the negative parts. This new law will further weaken a system that needs help in the worst way. It's difficult to defend the passage of this law. Taking money from the public schools to benefit private schools makes no sense at all.

The manner in which the law was originally passed is no way to pass legislation. In fact, it's impossible to justify how it was done. It would never have passed in its final form if the members of the House and Senate had known what was in it. The original bill was as bad as anything done by the Legislature in recent years. The amendments to that law passed in the last days of the session, as I understand it, do little other than protect a few school systems that don't want certain students in their schools. I hope I am wrong, but I consider this legislation to be extremely bad for pubic schools in our state. It's passage was a sad day for public education in Alabama. When those in charge of our public schools from top to bottom oppose the new law, it has to be bad for public education and ultimately for the people of Alabama.

The NRA Bill

Alabama lawmakers have passed a bill that has the potential to make Alabama very much like the Old West, which was a pretty wild place. The House and Senate gave final approval to sweeping gun legislation that, among other things, would stop employers from prohibiting workers from having guns in their cars while at work. Proponents of the legislation say said the bill was needed to make sure that people "have access to weapons to defend themselves, including when they are on long drives to work." So now drivers on our highways and streets had better be careful about offending others on the highway.

The bill will keep employers from prohibiting their workers from bringing guns into workplace parking lots. A concealed carry permit would be required for pistols, but it appears that it will be very easy to get a permit. A shotgun or hunting rifle can only be carried during hunting season, and a valid hunting license or a concealed carry permit will be required. I have to wonder how many business owners in Alabama like the concept of every one of their employee bringing a gun to work. It's a pretty scary thought.

The bill was pushed by the National Rifle Association, but opposed by the Business Council of Alabama (BCA). Billy Canary, BCA President and CEO, strongly opposed the bill. He said in a statement:

> *The BCA strongly maintains that all amendments to the Constitution of the United States are applied equally, with none having precedence over another. The Fifth Amendment rights of property owners are equally as important as the Second Amendment right to bear arms. Without an Opt-out provision we could not support this legislation.*

Sen. Scott Beason, the sponsor of the original bill, said he pushed the bill to clarify Alabama's law regarding the open carrying of weapons and to make sure law-abiding citizens had access to weapons. I have not talked to a single law enforcement officer who likes this new law. As I understand it, the new law provides:

- That the carrying of a visible, holstered or secured pistol in public is not a crime of disorderly conduct.
- Changes in the law regarding carrying a pistol in a vehicle. A concealed carry permit will still be required to carry a loaded pistol in the car. A permit won't be required if the pistol is unloaded and locked in a compartment that is attached to the car and out of reach of the driver and passenger.
- A limit on sheriffs' discretion in denying applications for a concealed carry permit. An appeals process for denials is created.

I had hoped that Gov. Robert Bentley would veto this bill. But he didn't and the governor may regret having had the opportunity to kill a bad bill that may put Alabama citizens at risk. We don't live in the Wild, Wild West and we don't need to have guns on our hips or in the workplace. This new law will not only put the people of Alabama at risk, but it will also adversely affect those citizens who work in law enforcement.

The Campaign Finance Law

Alabama's law governing campaign finance has changed in numerous ways under a bill approved by the Legislature. The bill repeals the $500 cap on campaign donations by corporations. Proponents of that change have said the cap is meaningless because corporations can legally skirt it. A 1989 attorney general's opinion interpreted the $500 cap to mean companies could give each PAC $500, multiplied by the number of elections held in the state in any given year.

Among other changes, the bill designates who would be responsible and prosecutable for illegal PAC-to-PAC transfers and other violations. That addresses what was identified as a weakness in the existing law cited by a Montgomery County grand jury. The new law also sets a $1,000 threshold for campaign fundraising or spending that triggers the reporting requirements under the FCPA. Currently, the threshold ranges from $1,000 to $25,000 depending on the office sought.

Source: AL.com

VI. COURT WATCH

Koch Brother Wins $12 Million In Lawsuit

Recently, a federal jury in New York awarded $12 million in punitive damages to U.S. billionaire William Koch in his dispute over the alleged misrepresentation of 24 bottles of wine he bought at an auction. This man is one of the infamous Koch brothers who are very much anti-consumer, against all government regulation, and who have led the tort-reform movement in the U.S. The founder of Oxbow Group energy company, William Koch had accused tech entrepreneur Eric Greenberg of knowingly selling him counterfeit bottles of wine at a 2005 Zachys auction. Koch said after his win: "There's been a huge code of silence in this industry. My purpose is to shine a bright light on it."

Koch filed the federal lawsuit in 2007, accusing Greenberg, the San Francisco-based founder of several Internet companies, of fraud and misrepresentation. He sought $320,000, the amount he paid for the 24 bottles, as compensation damages. He also asked for—of all things—punitive damages. The jury returned with a compensatory verdict of $379,000, which included the amount he spent on the wine and a little extra for good measure. Later the same panel awarded $12 million in punitive damages. After the verdict, Koch announced that he was "out of sight, over the moon" over the damages award.

William Koch is the brother of Charles and David Koch, the major supporters and funders of the Tea Party in the U.S. In addition to his jury verdict, William Koch had settled a separate lawsuit with the auction house in 2011, details of which were kept confidential.

Initially, I was shocked to learn about the filling of a lawsuit by one of the Koch brothers—and even more shocked to learn he demanded punitive damages. This is a man who, along with his brothers, believes all consumer lawsuits are frivolous and that asking for punitive damages is a "sin." So much for tort-reform for the Koch brothers. But do you believe this win will make the brothers more compassionate for other victims—including those who can't pay $20,000 for a bottle of wine—of corporate fraud?

Source: Associated Press

The Times Looks at the Supreme Court

The U.S. Supreme Court has thrown out a very important antitrust class action that subscribers had brought against Comcast, the nation's largest cable company. This most significant development went virtually unnoticed by court-watchers including many in the media. At the time of the high court's ruling, news coverage was dominated by accounts of the arguments before the court on same-sex marriage. That subject taking center stage should come as no surprise. As the *New York Times* pointed out, "the Supreme Court's business decisions are almost always overshadowed by cases on controversial social issues."

Many court-watchers believe the Supreme Court's business docket reflects a definite pro-business leaning. The current court's decisions, overall, are only slightly more conservative than those from the courts led by Chief Justices Warren E. Burger and William H. Rehnquist, according to political scientists who study the court. But the court's rulings in business cases are quite another matter. A new study finds that the current court has been far friendlier to business than any court since at least World War II. In the eight years since Chief Justice John Roberts joined the court:

- the court has allowed corporations to spend freely in elections in the Citizens United case;
- has shielded them from class actions and human rights suits; and
- has made arbitration the favored way to resolve many disputes.

Business groups say the court's decisions under Chief Justice Roberts have helped combat frivolous lawsuits. Of course, the tort-reform groups label most every type case as frivolous. But consumer groups contend the court's rulings have destroyed legitimate claims for harm caused by faulty products or resulting from discriminatory practices and even the result of outright fraud. I can say, without reservation, that the court has made it much more difficult to pursue legitimate tort claims of most every description.

The new study takes a careful and comprehensive look at some 2,000 decisions from 1946 to 2011. Published in April in *The Minnesota Law Review*, the study ranked the 36 justices who served on the court during those 65 years by the proportion of their pro-business votes. All five of the current court's more conservative members were in the top 10. But the study's most striking finding was that the two justices most likely to vote in favor of business interests since 1946 are the most recent conservative additions to the court, Chief Justice Roberts and Justice Samuel A. Alito, Jr. Both were appointed by President George W. Bush.

The study was prepared by Lee Epstein, who teaches law and political science at the University of Southern California; William M. Landes, an economist at the University of Chicago; and Judge Richard A. Posner, of the federal appeals court in Chicago, who teaches law at the University of Chicago. The article in the *New York Times* on the study that appeared last month was very good.

Source: *New York Times*

Alabama Supreme Court Reinstates $3.2 Million Verdict

The Alabama Supreme Court has reinstated a $3.2 million malpractice verdict returned in favor of the estate of a Montgomery woman who died in 2005 after being treated at the Baptist East Emergency Room in Montgomery. Lauree Durden Ellison had visited the Baptist Medical Center-East emergency room, which was operated by the Health Care Authority for Baptist Health. She was initially released from the emergency room, but later died after it was determined she had an infection.

A Montgomery County jury later found against the authority in a malpractice trial and awarded the estate $3.2 million. The verdict was later overturned when the Supreme Court ruled the authority was a state entity and possessed immunity from being sued. But the Supreme Court has now ruled that the authority is not immune from its debts in this case. Shay Samples, who is with the Birmingham firm, Hare, Wynn, represented the plaintiff. Shay did a very good job in this very important case. The amount owed, with the accrued interest since the verdict, totals about $4.5 million.

Source: *The Montgomery Advertiser*

Madeline Hughes Haikala Nominated

Madeline Hughes Haikala was nominated last month by President Obama to fill a District Judge vacancy in Alabama. She has served as a United States Magistrate Judge in the Northern District of Alabama since 2012. Previously, Judge Haikala was a partner at the Birmingham law firm Lightfoot, Franklin & White. In private practice, the nominee handled a broad range of commercial litigation at both the trial and appellate levels, appearing in both federal and state courts. From 1998 to 2005, Judge Haikala taught Appellate Law at Cumberland School of Law as an adjunct professor. She received her J.D. *magna cum laude* in 1989 from Tulane University Law School and her B.A. in 1986 from Williams College. Hopefully, Judge Haikala will be confirmed by the U.S. Senate. I believe she is an excellent nominee and will be an outstanding District Judge.

VII. THE NATIONAL SCENE

Foreclosure Crisis Cost $192.6 Billion In Lost Wealth Last Year

I am not sure that the full impact of the foreclosure crisis that took place in this country last year is fully understood by most U.S. citizens. That is, unless they were a foreclosure victim, and that changes everything. Even though the housing market may be recovering, the country is still suffering. Americans lost $192.6 billion in wealth, or an average of $1,700 per household, last year due to the foreclosures. A report released May 16 by the Alliance for a Just Society, a coalition of progressive grassroots organizations across the country, tells this sad story. The report also found that the United States could actually lose $221 billion if public officials don't come to the aid of millions of borrowers who owe more on their homes than the homes are actually worth.

The findings indicate that many Americans are still suffering from the housing bust, which was the result of major lenders pushing shoddy loans on borrowers who couldn't afford them. Meanwhile, Wall Street investors and construction companies are reaping the benefits of a recent rebound in the housing market. LeeAnn Hall, executive director of the Alliance for a Just Society, told The Huffington Post:

> *[The wealth loss] has a major impact not only on the families but on communities as a whole. They're putting so much money into trying to save their home, the ripple effect that has on spending hurts the whole community.*

The loss of wealth was more pronounced for communities of color, which suffered 17 foreclosures per 1,000 households and lost an average of $2,200 in wealth per household, according to the report. In contrast, predominantly white communities saw 10 foreclosures per 1,000 households and lost an average of $1,300 per household. Ms. Hall made this observation that such a "disparity in terms of wealth loss is pretty shocking and glaring." She is absolutely correct in her assessment.

But the findings in this report really shouldn't come as a big surprise, considering that money lenders targeted black and Hispanic families for subprime loans in the lead-up to the financial crisis. The report found that Black and Hispanic borrowers were 80 and 70 percent, respectively, more likely to receive subprime loans than white borrowers. That phenomenon, in part, contributed to the growth of the racial wealth gap during the recession.

The Alliance for Justice report offers one solution, "principal reduction," to the problems it revealed. That proposal, while somewhat controversial, would help underwater borrowers by reducing the principal amount they owe on their loans. Ed DeMarco, the soon-to-be-replaced head of the agency overseeing Fannie Mae and Freddie Mac, has rejected principal reduction as a solution to the nation's housing problem. He says it promotes "moral hazard." I really don't understand what he means. But in any event, I totally disagree with him and hope that his successor will have a different view.

The study found that a principal reduction program would save more than $7,000 per underwater household on average and boost the economy by more than $100 billion. That makes sense and it should be done. Ben Henry, the co-author of the report, told HuffPost:

> *If we reduce their payments, it benefits the overall neighborhood, it benefits the bank, it's a win-win solution. The benefits of doing this are far reaching and profound.*

Hopefully, those in the federal government in positions of power and authority have learned a lesson during the past few years. If so, they will take all necessary steps to make sure Wall Street acts responsibly in the future. Pure old greed motivated the mortgage lenders, drove their runaway train, and the national foreclosure crisis almost destroyed our nation's economy.

Source: *Huffington Post*

Cyber Experts Fear Escalation Of Attacks

Cybersecurity professionals know myriad ways hackers can try to wreak havoc on critical infrastructure or infiltrate corporations to steal or spy, but it is the fear of the unknown that some say keeps them up at night. It was reported last month that U.S. security officials and private sector experts wonder what kinds of time-bombs can be—or have been—embedded by malware into computer networks, just waiting to explode. Cyber espionage is already "the greatest transfer of wealth in history," National Security Agency Director Keith Alexander, the top U.S. general in charge of cybersecurity, told the Reuters Cybersecurity Summit in Washington last month. He said that "disruptive and destructive attacks on our country will get worse."

Stealing software or money—like the $45 million stolen from two Middle Eastern banks—could pale in comparison to an attack that could, for example, switch off the lights in a major U.S. city. That was the fear in New Orleans in February when a power outage struck the Super Bowl, the National Football League's championship game, witnessed by tens of millions of viewers. While that outage was blamed on an electrical relay device and not a cyber attack, it should be a warning as to what could happen. U.S. Secretary of Homeland Security Janet Napolitano told the Summit:

> *The known unknown is what I worry about. For example, we don't have the identity of all the adversaries who are trying to either commit crimes or acts over the cyber networks. The things we know about, we can deal with. It's the known unknown.*

It's pretty obvious that the military would be a big target. It was reported that military networks see thousands of intrusion attempts every day. It's critically important that the military's defensive systems are up to par and capable of protecting vital systems. It was pointed out at the Summit that the United States has not suffered the kind of destructive cyber attack that damaged some 30,000 computers at Saudi Arabia's oil company, Saudi Aramco, last year. Experts said they are concerned about the increasingly sophisticated cyber capabilities of countries such as China, Russia and Iran.

More and more elements of our nation's economy are migrating to the digital world. That opens the door to malfeasance. We have seen tremendous advances in technology in the past few years. I just hope we haven't outkicked our coverage.

Source: *Claims Journal*

VIII. THE CORPORATE WORLD

Front Groups Work For Corporate America

Over the past two decades, the bosses in Corporate America have successfully convinced many in government—both at the national and state levels—that there is far too much governmental regulation and that all lawsuits involving corporate wrongdoing are frivolous. They have done an excellent job selling this message to the media. The smartest thing they did was to create a number of organizations to front for them. These groups, all with carefully selected names, and extremely well financed, have been working very hard to protect corporate wrongdoers, to destroy the civil jury systems, and to take away fundamental rights of the American people. The following are some of these groups.

American Tort Reform Association

The American Tort Reform Association (ATRA) was founded in 1986 and for many years was at the vanguard of the tort reform movement. Documents released in accord with the Tobacco Master Settlement revealed that ATRA was initially beholden to the tobacco industry, which provided as much as half of the organization's total budget. In more recent times ATRA has relied on the largesse of a broader spectrum of big business interests, including corporations such as Dow Chemical, Exxon, General Electric, Aetna, Geico, State Farm, Pfizer, Johnson & Johnson and Nationwide. As much as 20 percent of its budget comes from the executives of its stealthy benefactor, the Civil Justice Reform Group (CJRG). With help from the giant public relations firm APCO Worldwide, ATRA was heavily involved in Astroturfing—creating fake grassroots campaigns—for tort reform. The regional Astroturf groups Citizens Against Lawsuit Abuse (CALA) and Sick of Lawsuits were a direct result of this strategy.

Searle Civil Justice Institute

The Searle Civil Justice Institute found a new home at George Mason University's Law & Economics Center in 2010. One of its primary roles is to coordinate empirical research efforts. Searle pays between $70,000 and $100,000 to produce and promote each research project and the issue areas of interest closely resemble ILR's legislative priorities. Searle also works closely with the Civil Justice Caucus Academy, its sister program in the Law & Economics Center at GMU.

Civil Justice Reform Group

Founded in 1994, the Civil Justice Reform Group (CJRG) is the silent partner to its more boastful colleagues in arms. The secretive group has no employees, no office, and leaves the lightest paper trail possible. Run out of the law firm Wiley Rein, the CJRG is the source of much of the tort reform movement's ideas and resources. Corporate general counsels from the likes of Exxon, State Farm, Johnson & Johnson, DuPont and Caterpillar are responsible for establishing the group's agenda. The CJRG does not like to promote its own brand, preferring to keep its corporate members out of the spotlight. The group has few expenses other than the contributions it makes to other tort reform associations. For example, the CJRG provides ATRA with as much as 20 percent of its budget every year. According to ATRA's Victor Schwartz, one of the architects of the tort reform movement, the CJRG "do things in a quiet and effective way without fanfare."

American Legislative Exchange Council

Few have ever heard of it, but the American Legislative Exchange Council (ALEC), is the ultimate smoke-filled backroom operation. On the surface, this group's membership is mostly comprised of thousands of state legislators. Each pays a nominal membership fee in order to attend ALEC retreats and receive model legislation. ALEC's corporate contributors, on the other hand, pay a king's ransom to gain access to legislators and distribute their corporate-crafted legislation. So, while the membership appears to consist of public officials, it is bankrolled almost entirely by major corporations. In fact, public sector membership dues account for only around one percent of ALEC's annual revenues.

The result has been a consistent pipeline of special interest legislation being funneled into state capitols. Thanks to ALEC, 826 bills were introduced in the states in 2009 and 115 were enacted into law. ALEC's campaigns and model legislation have run the gamut of issues, but all have either protected or promoted a corporate revenue stream, often at the expense of consumers. For example, ALEC has worked on behalf of:

- Oil companies to undermine climate change proponents;
- Pharmaceutical manufacturers, arguing that states should be banned from importing prescription drugs;
- Telecom firms to block local authorities from offering cheap or free municipally owned broadband;
- Insurance companies to prevent state insurance commissioners from requiring insurers to meet strengthened accounting and auditing rules;
- Big banks, recommending that seniors be forced to give up their homes via reverse mortgages in order to receive Medicaid;
- The asbestos industry, trying to shut the courthouse door to Americans suffering from mesothelioma and other asbestos-related diseases; and,
- Enron to deregulate the utility industries, which eventually caused the U.S. to lose what the Securities and Exchange Commission estimated as $5 trillion in market value.

ALEC has been up to its ears in controversy for the past two years thanks to the increased attention it has received for promoting a number of controversial state laws, including Arizona's immigration law. The organization also faces potentially even more serious challenges, with the IRS receiving two formal complaints challenging the group's nonprofit tax status.

Institute For Legal Reform

The U.S. Chamber of Commerce's Institute for Legal Reform (ILR) is said to be the 800-pound gorilla of the tort reform movement. Funded by corporations whose average contribution tops $600,000 per year, ILR routinely spends an astounding $30 million per year lobbying the federal government. Ironically, considering its multimillion-dollar effort to shut the courtroom door to individuals, ILR's parent organization is also one of the most aggressive litigators in Washington, D.C., appearing in hundreds of lawsuits a year. The Chamber has its own litigation arm, the National Chamber Litigation Center (NCLC), which both files its own lawsuits and enters into the lawsuits of others more than 130 times a year. In the words of Chamber president and CEO Tom Donohue, "litigation is one of our most powerful tools for making sure that federal agencies follow the law and are held accountable."

U.S. Consumers and ordinary folks generally have been hurt badly because of the successes that the groups mentioned above and others have had during the past two decades. I suspect that less than 1 percent of the American people have ever even heard of any of these groups, with the Chamber of Commerce being an exception. But most folks don't realize the national chamber is basically a tort reform group that protects huge corporations. It's high time that all of these front groups be exposed for what they really are. Then the public will know who have been working against their economic and social interests. It's important that this information gets out to the public.

Source: TakeJusticeBack.com

Apple Avoided Billions In Taxes With Record-Setting Debt Issue

Bloomberg reported last month that Apple will save nearly $10 billion on its taxes by issuing debt rather than bringing cash that is currently sitting in overseas accounts back to the U.S. Apple announced that it would issue $17 billion in debt, a record-setting transaction for corporate entities, to pay for part of a stock buyback that is now reportedly worth $55 billion. It appears that Apple is borrowing so much, despite holding roughly $145 billion in cash, because interest rates are currently extremely low.

But Bloomberg's Peter Burrows believes another reason is taxes. He points out that to free up $17 billion in cash, Apple would have had to transfer slightly more than $26 billion from an offshore account—$17 billion for the buyback, plus $9.2 billion in additional funds to pay for a 35 percent tax surcharge. He also reminds us that interest payments on debt are also tax deductible. I suspect working men and women, who not only work hard, but also pay their taxes, will have a difficult time identifying with Apple's tax and debt dilemma.

Source: Bloomberg and AL.com

Flagstar To Pay $110 Million To Settle MBIA Mortgage Lawsuit

Flagstar Bancorp Inc. will pay $110 million to settle a lawsuit brought by MBIA Inc. The bank was accused of misrepresenting the quality of loans underlying $1.1 billion in mortgage-backed securities. MBIA filed the lawsuit in January in the latest legal battle between bond insurers and banks that packaged mortgage financial products at the center of the 2008 financial crisis. The banks' conduct was about as bad as it gets. Greed and irresponsibility led to lots of people and businesses being badly hurt.

MBIA, based in Armonk, N.Y., had agreed to insure two mortgage-backed transactions by Flagstar in 2006 and 2007. It was alleged that mortgage defaults mounted, resulting in MBIA paying out $165 million. The settlement has no impact on a separate lawsuit filed in 2011, Assured Guaranty Ltd., another bond insurer. The trial in that case resulted in a $106.5 million judgment against the Troy, Mich., based lender. Flagstar has appealed that decision, which came out of the first trial in the bond insurers' lawsuits against the banks. MBIA's case had been assigned to the same judge, U.S. District Judge Jed Rakoff in Manhattan.

It was reported that Flagstar will pay the settlement to MBIA's structured finance insurer MBIA Insurance Corporation. The subsidiary will in turn use the money to partially pay down a secured loan from MBIA's municipal bond insurer, National Public Finance Guarantee Corp. According to a MBIA filing with the U.S. Securities and Exchange Commission (SEC) the amount of the loan outstanding at the time of the settlement was $1.7 billion. The loan was secured in part by any future receivables MBIA expected in pursuing claims against banks over mortgage-backed securities.

MBIA still has cases pending against other banks, including Countrywide Financial Corp, which Bank of America Corp bought in 2008. This case is *MBIA Insurance Corporation v. Flagstar ABS, LLC*, U.S. District Court, Southern District of New York.

Source: *Chicago Tribune*

Raytheon Will Pay $8 Million To Settle Export Control Case

Raytheon Company will pay $8 million to settle allegations brought by the U.S. State Department that the company violated of the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR). The State Department's Office of Defense Trade, which Controls Compliance in the Bureau of Political-Military Affairs, determined that Raytheon's numerous violations demonstrated a "recurring, corporate-wide weakness in maintaining effective ITAR controls." Raytheon disclosed to the Department hundreds of ITAR violations, largely consisting of failures to properly manage Department-authorized agreements and temporary import and export authorizations.

The violations included inaccurate tracking, valuation and documentation of temporary exports and imports of controlled hardware, manufacture of such hardware by Raytheon's foreign partners in excess of the approved amounts, and failures to timely obtain and submit required documents. Raytheon repeatedly discovered and disclosed such violations to the Department, in some cases finding that previously reported remedial measures failed to prevent or detect additional similar violations subsequently disclosed. Under the terms of a four-year consent agreement with the Department, Raytheon will pay a civil penalty of $8 million.

The State Department agreed to suspend $4 million of this amount on the condition that the funds have or will be used for Department-approved pre- and post-consent agreement remedial compliance measures. An external "special compliance official" will be engaged by Raytheon to oversee the consent agreement, which will also require the company to conduct two external audits of its compliance program during the agreement term as well as implement additional compliance measures.

According to the State Department, Raytheon disclosed nearly all of the ITAR violations resolved in this settlement voluntarily to the Department, acknowledged their serious nature, cooperated with Department reviews, and implemented or has planned extensive remedial measures. The Department said that it had determined that an administrative debarment of Raytheon is "not appropriate at this time."

Source: *Corporate Crime Reporter*

Level Global Will Pay $21.5 Million To Settle Claims

Hedge fund advisory firm Level Global Investors has agreed to settle all charges brought by the Securities and Exchange Commission, and will pay more than $21.5 million. This will settle charges that the firm's co-founder, who also served as a portfolio manager, and its analyst engaged in repeated insider trading in the securities of Dell Inc. and Nvidia Corp. In January 2012, the SEC filed insider trading charges against Level Global, the firm's co-founder Anthony Chiasson, a former analyst Sam Adondakis, and six other Defendants, including five investment professionals and the hedge fund advisory firm Diamondback Capital Management. As has become par for the course in these settlements, Level Global neither admitted nor denied the allegations made by the SEC.

The SEC's complaint, filed in federal court in Manhattan, alleged that Adondakis was a member of a group of closely associated hedge fund analysts who illegally obtained highly sensitive information regarding the financial performance of Dell and Nvidia before this information was made public. The illegally obtained information involved Dell and Nvidia's revenues and profit margins and sometimes indicated that the tech companies' quarterly results would differ significantly from the consensus expectations of Wall Street analysts. During 2008 and 2009, Adondakis passed the information on to Chiasson, who used it to execute trades on behalf of hedge funds managed by Level Global and reap millions of dollars in illegal profits.

In 2011, following news reports of the government's investigation, Level Global, which had once managed as much as $4 billion, announced that it would close its business and begin returning money to its investors. It is presently in the process of winding down its business. Sanjay Wadhwa, of the SEC's New York Regional Office, had this to say:

> *The insider trading at Level Global was hardly an isolated event—it occurred repeatedly, and involved multiple companies and multiple quarterly announcements. This settlement serves as another reminder that the SEC will hold hedge fund managers accountable when their employees violate the securities laws.*

The settlement with Level Global, which is subject to court approval, requires the firm to disgorge $10,082,725 in fees that it reaped from the alleged insider-trading scheme, to pay prejudgment interest of $1,348,824, and to pay a penalty of $10,082,725. Level Global has also agreed to the entry of an order permanently enjoining the firm from future violations of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5, and Section 17(a) of the Securities Act of 1933.

Adondakis previously pled guilty to parallel criminal charges and agreed to a settlement with the SEC in which he admitted liability for insider trading. The SEC is continuing to pursue its insider trading claims against the firm's co-founder Chiasson, who was convicted in December 2012 of securities fraud in a parallel criminal proceeding.

Source: *Corporate Crime Reporter*

U.S. Renal Care Will Pay $7.3 Million To Settle False Claims Charge

U.S. Renal Care will pay $7.3 million to the federal government to settle a whistleblower lawsuit brought by Laura Davis, a nurse. Ms. Davis alleged the company U.S. Renal Care acquired, Dialysis Corporation of America (DCA), overcharged Medicare for years for the anemia drug Epogen — used to treat dialysis patients. Her lawsuit alleged that DCA was billing Medicare and other government health care programs for more Epogen than was actually used.

The Department of Justice investigated the allegations and joined the lawsuit. The lawsuit was filed under seal in 2008 and not made public until last month. Epogen is used to increase the red blood cell counts of kidney dialysis patients, many of whom are anemic. It is packaged in small vials. To administer the drug, health care staff withdraws Epogen from the vials using syringes and inject it into patients' blood during the dialysis process.

When a drug in liquid form is packaged in a vial for withdrawal with a syringe, a small volume of the drug typically adheres to the inside of the packaging, making it impossible to withdraw the full amount of the drug from the vial with standard syringes. To ensure that providers can withdraw the purchased amount of the drug from the vial, the manufacturer, Amgen, fills the vials with approximately 11 percent more Epogen than is stated on the label. That extra 11 percent is called "overfill."

The manufacturer doesn't charge extra for the overfill because it can't be recovered using standard syringes, so the overfill is thrown away along with the vials. DCA billed Medicare for not just the Epogen the patients received, but also for the overfill that remained in the vials. This was even though DCA used standard syringes and did nothing to ensure that it was actually withdrawing and administering any overfill. At one point, reimbursement for Epogen use accounted for more than 25 percent of DCA's medical-services revenue. Hasegawa said that "since the patients didn't receive the overfill, DCA shouldn't have billed Medicare for that amount."

Ms. Davis filed the *qui tam* lawsuit in 2008 in federal district court in Baltimore, Md. She is a registered nurse who worked at one of DCA's dialysis centers in Georgia. DCA operated more than 35 outpatient dialysis facilities and was acquired by U.S. Renal Care in 2010. Ms. Davis raised concerns about DCA's billing practices for Epogen internally, but no one listened to her. In fact, the bosses "thought she was a little strange to care that the government was being overcharged," according to reports.

Roann Nichols, Assistant U.S. Attorney for the District of Maryland, and Arthur Di Dio, trial attorney for the U.S. Department of Justice, worked on the case with the primary lawyers. Ms. Davis was represented by Stephen Hasegawa, a partner at Phillips & Cohen in San Francisco., D.C., who had this to say:

This case shows how taxpayers benefit when government attorneys work closely with whistleblowers and their lawyers to stop fraud and recover government funds.

All of the lawyers in the case for Ms. Davis and the government did very good work in this case. It's a prime example of how important whistleblowers are in the battle to combat corporate fraud.

Source: *Corporate Crime Reporter*

IX. CONGRESSIONAL UPDATE

Legislation In Congress If Passed Would Revoke Corporations' License To Steal

While much of the attention in Congress has focused on arbitration in securities transactions, the evils of consumer arbitration cover a wide spectrum of consumer transactions. It's very important to do everything possible to put pressure on Congress of the public is going to win the arbitration battle. Simply put, our elected officials need to know how forced arbitration hurts folks and that it won't be tolerated. The American people are finding arbitration clauses in every conceivable consumer transaction.

Buried in the fine print of everything from credit card, cell phone and nursing home contracts to employee handbooks and online user agreements are dangerous forced arbitration clauses that take away a person's right to go to court. Instead they are forced into a private arbitration tribunal designed by the very corporation that broke the law. The process is secretive, costly and rigged so that corporations cannot be held accountable. By removing access to justice, it grants corporations a license to steal and violate the law.

Because the U.S. Supreme Court, which incidentally created the problem in the first place, has refused to correct the situation, this abusive practice can only be stopped by Congress. Sen. Al Franken (D-Minn.) and U.S. Rep. Hank Johnson (D-Ga.) have introduced the Arbitration Fairness Act of 2013 (AFA) to restore Americans' rights. This legislation, if passed, will stop corporations from forcing people into arbitration and ensure that citizens' rights are not eliminated by the fine print in a document. So far, 18 Senators and 22 Representatives have signed on as co-sponsors of the bill. Hopefully, others will elect to join them.

When Americans lose access to the courts, corporations can get away with the worst sort of conduct, and that's been proven. These clauses often target society's most vulnerable such as nursing home patients. While there is strong opposition to the bill in Congress, the legislation is badly needed. If passed, the AFA would:

- Eliminate forced arbitration in employment, consumer, civil rights and antitrust cases;
- Ensure that the decision to arbitrate is truly voluntary;
- Restore the constitutional right to a jury trial;
- Restore fundamental rights created by state and federal laws that are currently at risk of being wiped out by forced arbitration.

Most folks don't even know that they have been forced into arbitration. Even fewer realize how many different laws can be affected by arbitration. There are a large number of very important federal laws that can be affected adversely by forced arbitration. When a consumer signs an arbitration clause, and later has to submit a claim to forced arbitration, he or she will learn for the first time how the process works. The person who serves as arbitrator is most often not a stranger to Corporate America. The arbitrations depend on the work in arbitration from an economic perspective and that creates an uneven playing field for ordinary folks.

The American people don't have to give in to this corporate assault on their basic rights. The U.S. Constitution guarantees the right to trial by jury and that right has been under assault. In years past. At one time, this right under the 7th Amendment was considered one of the most important rights enjoyed by the American people. But attacks in the civil justice system have changed that view to some extent. The Arbitration Fairness Act would put an end to forced arbitration clauses and would restore the individual's right to decide how to pursue disputes with powerful corporations. Make sure your members of Congress know where you stand. If you want a level playing field for consumers and ordinary folks, contact your Senators and House members and ask them to support the ARA.

Source: TakeJusticeBack.org

Senators Lautenberg And Vitter Introduce Important Bill

Senators Frank Lautenberg (D-NJ) and David Vitter (R-LA) last month jointly introduced the Chemical Safety Improvement Act of 2013. The bipartisan bill seeks to reform the weak and outdated federal law that currently regulates toxic chemicals. The compromise bill would require all chemicals to be screened to protect public health, and would require chemicals that are given a "high priority" risk label to undergo further safety evaluations by the U.S. Environmental Protection Agency (EPA). The bill also would equip the EPA to take action against chemicals determined to be unsafe. Under the current law, the Toxic Substances Control Act (TSCA), which has been in effect since 1976, only approximately 200 of the 80,000 chemicals approved for sale in this country have undergone safety testing.

This bill, if passed, will protect human health and the environment. Senators Lautenberg and Vitter should be commended for leading this bipartisan effort. Congress should amend TSCA so that the chemicals folks are exposed to are not placing them, their children and their communities at risk. If you agree, contact your Senators and ask them to support this legislation.

Source: earthjustice.org

X. PRODUCT LIABILITY UPDATE

Tire Importers Must Act Responsibly

More and more frequently, tires are being made for this country by Chinese and other foreign tire manufacturers. Unfortunately, too many of these manufactures do not take the appropriate steps through good design and manufacturing practices to assure that their tires are safe. Equally troubling are the companies that import the tires from these foreign companies and bring them into this country. In too many instances, "importers" are not taking the appropriate steps to assure that Chinese and other foreign tire makers' tires are safe, despite the National Highway Traffic Safety Administration standards requiring them to do so.

Under Federal law, importers of tires are deemed to be "manufacturers." As such, FMVSS holds importers to the same responsibilities as a domestic manufacturer. Thus, "importers" must take steps to assure that the tires they import are free of defects. Good manufacturing processes require "importers" to conduct on-site inspection(s) of a foreign tire makers' facilities to assure that adequate testing, manufacturing, quality control and other measures are in place. Further, "importers," once they import tires into this country should perform random sampling, testing and inspection of foreign tires before they distribute and/or sell the tires to consumers in this country.

Lawyers in our firm are seeing more cases where importers of foreign tires are completely ignoring the responsibilities imposed upon them by the Federal Government. One of our lawyers, Rick Morrison, is currently handling a case were a very large tire importer of a particular foreign manufacturer's tire line is doing nothing to assure that the tires it sells and profits from are safe. In fact, this importer has admitted it never inspected the manufacturing plant which produces the tire line at issue. In addition, they have not observed any FMVSS testing or required verification that the minimum tire testing is being performed.

Further, it concedes that it has taken no steps to assure that the foreign manufacturer's manufacturing processes are reasonable or that the foreign manufacturers employs any quality control. Finally, this importer, has never performed one post "import" inspection, test or taken any other actions, on even one single tire it has sold. This conduct is particularly troubling when you consider how important it is for the tires you drive on to be safe.

Companies which make substantial profits from importing potentially dangerous tires need to be held responsible for failing to take basic steps to assure that the tires it sells are safe. We are seeing more and more importers which make no efforts at all to assure that the products they sell to our consumers meet even minimum standards. If a company is going to import a product to this country, that company should have in place procedures to assure that our consumers are not hurt by defective products and in particular tires. If you need more information on this subject, contact Rick Morrison at 800-898-2034 or by email at Rick.Morrison@beasleyallen.com.

Vehicle Safety Components Manufactured In Unregulated Countries

Rollover crashes are a significant and a particularly deadly safety problem. Rollovers are second only to frontal crashes as a source of fatalities in light vehicles. From 2000 to 2009, 47 percent of the occupants killed in rollovers were completely ejected from their vehicle. As a result, the National Highway Traffic Safety Administration (NHTSA) established regulations requiring larger, enhanced side curtain airbags that deploy in rollovers to reduce occupant ejection.

Our firm is currently handling a case where a young lady was involved in a rollover accident in a vehicle that was equipped with curtain shield airbags. The airbag over the driver's side front window did not deploy. As a result, the lady suffered severe head injuries from which she was unable to recover. It is now known that the reason the air bag did not fully deploy was because of a hole created in the air bag during the manufacturing process. This is known as a manufacturing defect.

Most folks are becoming aware that vehicles manufactured and sold in the U.S. are subject to numerous regulations. Some of the regulations are good and some are very weak. But that's another story. I will focus here on another problem area. Most key occupant protection devices and vehicle safety components, like the side curtain airbags, are actually being manufactured in unregulated foreign countries before being installed in vehicles. U.S. suppliers of safety components have very automated manufacturing systems, which are more expensive but are also more efficient and reliable. Foreign-based suppliers tend to rely more on manual labor because it is cheaper; however, it is also more susceptible to error. In fact, research has shown that manual visual inspection processes are only about 80 percent effective at catching manufacturing defects. Regardless, most highly recognized vehicle manufacturers continue to rely on foreign suppliers.

Foreign suppliers include AUTOLIV, TAKATA, and Toyoda Gosei. AUTOLIV dominates the markets in North America, Europe, Asia-Pacific, India and South America. TAKATA and Toyoda Gosei are the choices of vehicle brands such as Toyota, BMW, Ford, Chrysler and Volkswagen. For now, although vehicles may be given superb crash test ratings, safety component problems and manufacturing defects will continue to arise as long as the manufacture of vehicle safety components remains unregulated.

Machine Guarding Issues

Some of the most common and oftentimes severe on-the-job injuries occur when machine operators are injured by industrial equipment. As long as heavy machines have been in existence, injuries stemming from the use of those machines have also been around. Throughout the years machines have become safer. Greater safety awareness, better engineering and other technological advances have certainly helped reduce the likelihood of injury. Guarding against hazards is just one of many ways to eliminate on-the-job injuries, and is an ever-evolving practice.

When a hazard within a machine is identified, there are typically three options available to mitigate that hazard. The design engineers can:

- redesign the machine to completely eliminate the hazard;

- guard against the hazard; or
- warn the user of the hazard.

The preferred method for dealing with a hazard is to redesign the machine when possible so as to totally eliminate the hazard. When a machine poses a hazard that cannot be completely eliminated, the appropriate course of action is to guard against the hazard. If a hazard cannot be eliminated or guarded against, the final course of action is to develop adequate warnings alerting the user of the hazard. This process of identifying a hazard and choosing the best method for eliminating that hazard is known as a safety hierarchy.

Industrial machines, often due to the very nature of the machines, create hazards that cannot be completely eliminated. Machines that mill lumber, cut steel or bind materials can oftentimes also mill, cut or bind the user. To completely do away with these functions would eliminate the hazard, but also the utility of the machine. In such cases, guards are often the best means to retain both the function of the machine and protect against the hazard. The OSHA Act of 1970 requires that every employer provide a workplace "free from recognized hazards," and requires the guarding of any machine part, function or process that may cause injury to operators or others.

Hazards generally occur in three locations: the point of operation, or the location where the machine cuts, bends or presses a material; a power take-off or power transmission device; and with any other moving parts. There are many different types of guards that are commonly used to protect the user from the hazards associated with these locations. Fixed barrier guards, interlocking devices, light curtains and sensors are all common methods to protect the user from hazards. An appropriate guarding method largely depends on the type of hazard. The most effective guards are those that do not hinder the function or utility of the machine while safely eliminating the hazard posed to the user.

All too often machines are unguarded, inadequately guarded, or the wrong type of guard is used. In many instances, productivity and ease of use is given more weight in machine design than user safety. Failure to adequately guard against hazards can cause any number of injuries including amputations, lacerations and even death. Every on-the-job injury involving a machine must be examined on a case-by-case basis. Just because guards are incorporated into a particular machine does not necessarily mean that the user or operator is adequately protected. If you need more on this subject, contact Evan Allen, a lawyer in our Personal Injury/ Products Liability Section, at 800-898-2034 or by email at Evan.Allen@beasleyallen.com.

Toys R Us Appeals $20 Million Award in Massachusetts Slide Death

On a warm summer day in July 2006, Robin Aleo climbed to the top of a 6-foot inflatable pool slide and slid down head first. As she neared the bottom, the slide partially collapsed and Robin hit her head on the concrete pool deck, causing fatal injuries.

Mrs. Aleo, 29, was visiting relatives in Andover when she went down the "Banzai" pool slide. Her husband, Michael, and 15-month-old daughter were watching as her head hit the pool deck. She suffered a broken neck and died the next day at a Boston hospital. Five years later, in 2011, a state court jury awarded Mrs. Aleo's estate $20.6 million, including $2.5 million in anticipated lost income from her career in advertising and marketing, $100,000 for pain and suffering before her death and $18 million in punitive damages. The jury found that the slide sold by Toys R Us did not comply with federal safety standards for swimming pool slides. Toys R Us contends that the $18 million in punitive damages was "grossly excessive."

Toys R Us has now appealed the verdict to the highest court in Massachusetts, asking that the award be overturned. The national chain contends that the 1976 Consumer Product Safety Commission (CPSC) regulation cited by the Aleo family does not apply to inflatable in-ground pool slides, but only to rigid pool slides. Toys R Us also claims that the trial judge allowed lawyers for the family to inflame the jury by accusing Toys R Us of importing an "illegal" product. The company says that the slide met all safety regulations.

Pool slides have been subject to a federal safety standard since 1976. This standard applies to all pool slides, no matter what they are made of. But Toys R Us claims the standard was only meant to apply to rigid slides, not the flexible, inflatable slides that have become very popular in recent years. The regulation should apply to all swimming pool slides regardless of the materials of manufacture or structural characteristics. There is no exception in the standard that would apply to this case.

The slide had an instruction manual and small warning label near the climbing footholds that said the weight limit was 200 pounds, but the safety standard required that slides should be able to support up to 350 pounds. Mrs. Aleo weighed 148 pounds. The slide had been purchased by the homeowners from Toys R Us through Amazon.com. Toys R Us had imported the slides from China, where they were manufactured. Apparently, the slide was never tested and it carried no required certification that it had been tested. Under the federal Consumer Product Safety Commission standards and the Consumer Product Safety Act, if a product that comes into the country without a certification that it's been tested to its applicable standards, the sale of that kind of product is unlawful.

The CPSC announced in May 2012 that Toys R Us and Wal-Mart stores were recalling the slides, citing Mrs. Aleo's death and injuries suffered by two other people, including a 24-year-old man who became a quadriplegic and a woman who fractured her neck. The Aleo case has drawn the attention of the Toy Industry Association Inc., a trade group whose nearly 600 members account for about 85 percent of the annual U.S. domestic toy market. The group filed a friend-of-the-court brief supporting Toys R Us in its position that the consumer safety regulation does not apply to inflatable pool slides. Boston lawyer Benjamin Zimmermann represents Michael Aleo in this important case. He has done a very good job and we wish him well on the appeal.

Source: *Claims Journal*

XI. MASS TORTS UPDATE

The Two-Year Anniversary Of The FDA Safety Update On Transvaginal Mesh

The FDA, on July 13, 2011, issued a safety update concerning "serious complications associated with transvaginal placement of surgical mesh for pelvic organ prolapse." The FDA concluded that serious complications associated with the use of surgical mesh for transvaginal pelvic organ prolapse (POP) repairs were "not rare." The agency said it was not clear that transvaginal mesh repair was safer than traditional non-mesh repairs and that transvaginal mesh repair could present greater risks to the patient.

As we have written in previous issues, transvaginal mesh products are used to repair conditions in women such as pelvic organ prolapse (POP) and stress urinary incontinence (SUI). Pelvic organ prolapse occurs when muscles in the pelvic floor weaken and pelvic organs such as the bladder, rectum, uterus, etc. slip out of place. Stress urinary incontinence is the involuntary leaking of urine while exercising, coughing, sneezing, laughing or lifting.

The FDA's safety bulletin noted that the most common reported complication from the transvaginal placement of mesh is erosion of the mesh material. Complications can lead to severe pelvic pain as well as painful sexual intercourse or the inability to engage in intercourse. Other serious complications can include organ perforation, bleeding, urinary incontinence, fecal incontinence, infection and the need for corrective surgeries.

The 2011 FDA report may trigger the deadline to file a claim in states that have a two-year statute of limitations. Because a potential claim may expire by July 13, 2013, it's extremely important to get sound legal advice on this issue. Failing to file suit within the time frame would result in the suit being untimely.

Lawyers in our Mass Torts Section have been investigating claims where women have experienced organ perforation, bleeding, urinary incontinence, fecal incontinence, pelvic pain, infection, discomfort during intercourse and the need for corrective surgeries following the transvaginal placement of mesh for pelvic organ prolapse (POP) or stress urinary incontinence (SUI) repair. If any of our readers, a loved one, or a friend or coworker has suffered such an injury, contact Leigh O'Dell or Chad Cook, lawyers in our Mass Torts Section. They can be reached at 1-800-898-2034 or by email at Leigh.Odell@beasleyallen.com or Chad.Cook@beasleyallen.com.

Actos Trial Verdict Lost

More than 3,000 individuals have sued Takeda Pharmaceuticals, the Japanese manufacturer of Actos. As we have previously reported, Actos was approved by the FDA for the treatment of type 2 diabetes in 1999. Despite strong evidence that the drug could cause bladder cancer, no warning appeared on the label until 2011, far too late for Jack Cooper to avoid bladder cancer.

The jury heard opening statements in Mr. Cooper's lawsuit in a California state court on February 28, 2013. After deliberating several days, the jury returned a verdict in favor of Mr. Cooper in the amount of $6.5 million on April 26. Mr. Cooper's principal causation expert, Dr. Norm Smith, is a urologist specializing in bladder cancer. He testified that, based on his differential diagnosis, Actos was the cause of Mr. Cooper's bladder cancer. Prior to trial, the Judge ruled that Dr. Smith could testify as to "general causation," but deferred ruling on whether he could testify regarding specific causation. On May 1, the Court excluded Dr. Smith's specific causation testimony and granted Takeda a non-suit (in essence a judgment notwithstanding the verdict), which was a blow to Mr. Cooper.

The Court noted that in California a Plaintiff only need show an exposure's contribution to a disease was more than negligible or theoretical and that the use of a differential diagnosis was accepted by an "overwhelming majority of courts." In the Cooper case, however, the Court found that Dr. Smith did not conduct a reasonable differential diagnosis, but based his analysis on speculation and lacked intellectual rigor. Dr. Smith previously published an article in which he listed numerous known and potential causes of bladder cancer. In forming his opinion that Mr. Cooper's bladder cancer was caused by Actos, the court said Dr. Smith did not:

- evaluate potential exposures Mr. Cooper may have had at work;
- know Mr. Copper had continued to smoke for two decades after Dr. Smith thought he had quit;
- review medical records revealing Mr. Cooper suffered from chronic kidney disease and skin cancer; and
- rely on well conducted studies as the basis of his opinions.

The Court also relied heavily on Dr. Smith's failure to rule out age, sex and race as a cause of Mr. Cooper's cancer. These were all risk factors noted by Dr. Smith in his article. It appears this Court, like many others, fell for the "cloud of confusion" tactic thrown up by every pharmaceutical defendant. Age, sex and race are risk factors for most types of cancer. But they are NOT causes of cancer and studies are careful to adjust for these factors when evaluating relative risk. The Court also seemed to have adopted the "defense interpretation" of every study upon which Dr. Smith relied.

Nothing could possibly be more frustrating to the jurors, the Plaintiff or Plaintiff's lawyers than to have a judge deciding after a verdict is returned what testimony the jury should and should not have heard and thereby employing such delayed rulings to nullify the jury's verdict. The practical lesson to learn from this court's ruling, however, is that it is imperative for your expert in a case not only to have, but to review, all relevant information before rendering an opinion. In any event, it's difficult to understand why this judge delayed his ruling until after a verdict was returned and judgment entered.

Zoloft Birth Defects Lawsuit Update

There are approximately 330 Zoloft birth defects lawsuits pending against Pfizer in the federal multidistrict litigation (MDL) established in U.S. District Court, Eastern District of Pennsylvania. The first Zoloft bellwether trials are set to begin in 2014. As we have previously reported, the Zoloft lawsuits involving children who have suffered Zoloft birth defects have been consolidated into the MDL.

The selection process for the bellwether trials began in January 2013, and will consist of 25 lawsuits, which are chosen from those lawsuits currently pending. Twelve are chosen from Plaintiff's lawyers, and the remaining 13 cases will be submitted by Pfizer's lawyers. Following discovery and pretrial proceedings, the first federal bellwether case to be tried over congenital birth defect side effects linked to Zoloft is planned to begin by September 12, 2014. The outcomes of bellwether trials are intended to establish settlements for future claims against Pfizer regarding Zoloft. A bellwether trial is described as one that indicates future trends in a specific litigation and reveals any patterns that could exist regarding legal issues.

The Court has published two new Pretrial Orders on the Zoloft litigation's website, one of which amends the previously established Joint Discovery and Scheduling Plan. The second Order posted by the Court governs the process for selection of the litigation's Initial Discovery Group. All of the Zoloft birth defects lawsuits pending in the Eastern District of Pennsylvania claim that the SSRI drug taken during pregnancy can increase the risk of delivering a child with severe birth defects. Those birth defects linked with Zoloft include Zoloft heart birth defects and many more.

Some of those include: clubbed foot, oral clefts, cleft lip and cleft palate, delayed development, Autism, Persistent Pulmonary Hypertension of the Newborn (PPHN), Gastrochisis, atrial and ventrical septal heart defects, pulmonary atresia, pulmonary stenosis, Hypoplastic Left Heart Syndrome (HLHS), Transposition of Great Arteries, Coarctation of the Aorta (CoA), Tetralogy of Fallot (TOF), skull defects, Craniosynostosis, neural tube defects of the brain and spinal cord, Anal Atresia, limp reduction defects, and Spina Bifida.

Pfizer knew all about the link between Zoloft and birth defects but did not provide sufficient warnings regarding the risks. With more public awareness regarding Zoloft and pregnancy lawsuits, it's probable that more lawsuits will be filed against Pfizer. Our firm is handling Zoloft lawsuits. If you need more information, contact Roger Smith, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Roger.Smith@beasleyallen.com.

Source: Lawyersandsettlements.com

Jury Awards $2.2 Million in First Humira Infection Case To Go To Trial

An Illinois state court jury last month found Abbott Laboratories negligent and ordered it to pay a man $2,244,063 for a near-fatal infection his late wife suffered while taking the rheumatoid arthritis drug Humira. The jury in the Cook County Circuit Court awarded the verdict to the Plaintiff, Milton Tietz. The jury found Abbott negligent for not taking reasonable measures to make sure Delores Tietz's doctors had a "high index of suspicion for histoplasmosis," a fungal lung infection suffered by the Plaintiff.

This is the first Humira injury case to go to trial. Delores Tietz was prescribed Humira, a tumor necrosis factor (TNF) blocker, in October 2009 and took the drug for nearly seven months. In May 2010, she experienced chest pain and fever and several weeks later was diagnosed with histoplasmosis, the firm said.

Mrs. Tietz sued Humira manufacturer Abbott Laboratories (now spun off as AbbVie Inc.) in 2012, alleging that it negligently failed to warn her or her doctor of the risk of histoplasmosis infection. In September 2008, the Food and Drug Administration (FDA) told all manufacturers of TNF blockers to provide new information about the risk of unrecognized, drug-induced histoplasmosis. Humira acts as an immunosuppressant in autoimmune diseases such as rheumatoid arthritis.

It was alleged that Abbott failed to send warning letters directly to physicians until 10 days after Mrs. Tietz was hospitalized in May 2010. She died in March 2013, and her husband, Milton Tietz, was named her personal representative in the suit. Mr. Tietz is represented by Jim Purdue Jr., Andy Vickery and Fred Shepherd of Perdue, Kidd & Vickery in Houston and Gary D. McCallister of Gary D. McCallister & Associates in Chicago. These lawyers did a very good job in this significant case.

Source: Lexisnexis.com

Punitive Damages Claims Permitted To Go Forward In NuvaRing Lawsuit

A New Jersey state judge refused last month to strike down claims for punitive damages in nine bellwether cases over injuries allegedly caused by a Merck & Co. Inc. subsidiary's NuvaRing contraceptive. The judge ruled that the laws of the individual states could allow the awards. Rejecting the motion for summary judgment, filed by Merck and Organon USA Inc., Judge Brian R. Martinotti emphasized that the alleged injuries took place in separate states, each of which have an interest in governing punitive damages.

Source: civiljusticemagazine.com

DePuy Discontinues Use Of Metal-on-Metal Hip Products

Johnson & Johnson, the world's largest maker of health care products, announced last month that it would discontinue sales of its metal-on-metal hip replacement products. The company claims that decreased sales is the reason for its decision and not safety or effectiveness concerns. Interestingly, the company is not recalling the devices. Metal-on-metal hip sales in the United States and Europe have plunged almost 90 percent since 2007 because of widespread safety and effectiveness concerns.

Interestingly, Johnson & Johnson's decision comes on the heels of the Food and Drug Administration's proposed rule that would request metal-on-metal hip replacement manufacturers put metal-on-metal products through a more extensive safety review process if they want to continue selling the metal-on-metal products. Johnson & Johnson recalled the DePuy ASR Acetabular System in August of 2010 after reports worldwide indicated that the ASR device was failing at an alarming rate.

DePuy also sold and marketed the Pinnacle Acetabular Cup System, which included a line of cup inserts made of plastic, ceramic and metal. The Pinnacle System was never recalled even though there are safety and effectiveness issues concerning the Pinnacle metal liner. Johnson & Johnson's recent decision will result in the Pinnacle metal liner being removed from the market.

Problems related to the metal-on-metal hip devices concern the accelerated wear of the articular surface, i.e., the all-metal ball and socket. This accelerated wear causes metal debris to release into the soft tissue surrounding the hip joint. Adverse reactions from this metal debris often lead to revision surgeries. These adverse reactions include metallosis, pseudotumors, bone and tissue loss and necrotic tissue. In addition to revision, major complications included dislocations, palsy of the femoral nerve and early loosening of the acetabular component.

If you need more information on this subject, contact Navan Ward, a lawyer in our Mass Torts Section, at 1-800-898-2034 or by email at Navan.Ward@beasleyallen.com.

Source: Bloomberg

XII. AN UPDATE ON SECURITIES LITIGATION

SEC Chair Should Fight Forced Arbitration Contracts

Thirty-seven members of the United States Congress, including Senators and Representatives, signed and submitted a plea for prohibition of mandatory arbitration provisions in customer service agreements. The legislators presented their argument in a letter to U.S. Securities and Exchange Commission Chair Mary Jo White, calling for her to exercise the SEC's authority under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

As most of our readers should know, the Dodd-Frank Act is a federal statute signed into law by President Obama on July 12, 2010. The Act represented a major change in the American financial regulatory environment and affects almost every aspect of the nation's financial services industry. It includes the SEC Whistleblower Act and a "whistleblower bounty program" that allows people who provide information that leads to successful SEC enforcement to receive 10 to 30 percent of the monetary sanctions in excess of $1 million.

Section 921 of the Frank-Dodd Act reflects Congress's concern of the use of mandatory arbitration agreements in customer and client contracts. As we have stated on numerous occasions arbitration clauses take away a person's access to the courts, and the right to a trial by jury. Instead, cases are diverted to a costly private legal system that favors huge corporate defendants. Forced arbitration undermines consumer protection, civil rights and other laws that level the playing field between Big Business and individuals.

The Act grants the SEC the authority to restrict or prohibit the use of mandatory arbitration provisions. However, the legislators write that in the nearly three years since enactment of the Frank-Dodd Act, the SEC has "largely disregarded this important mandate." One thing that helped spur Congressional leaders to action in this matter is a recent decision by investment brokerage firm Charles Schwab to expand mandatory arbitration clauses in its customer agreements to include a waiver of class action rights. The letter addressed the Schwab action:

> *In this instance, Schwab argued that, in response to the Supreme Court's interpretation of the Federal Arbitration Act (FAA) in AT&T Moblity v. Concepcion, it could include a waiver of*

class action and class arbitration rights in its customer agreements. FINRA initiated a disciplinary action against Schwab for violation of FINRA rules barring class action waivers. In February, however, a FINRA hearing panel ruled that although Schwab's actions did in fact violate FINRA rules, those rules could not be enforced under Concepcion. [FINRA Department of Enforcement v. Charles Schwab & Company Inc. (CRD No. 5393) Disciplinary Proceeding No. 2011102976021. February 21,2013.]

It appears that the letter, and pressure from consumer groups, has had an effect. Schwab temporarily reversed its requirement that clients waive their right to bring class-action lawsuits. "Effective immediately, Schwab is modifying its account agreements to eliminate the existing class-action lawsuit waiver for disputes related to events occurring on or after May 15, 2013 and for the foreseeable future," the San Francisco-based brokerage company said in a statement that was posted on its website May 15th.

Public Citizen congratulated the company for its "responsible" decision. The consumer watchdog group said many of its 19,000 supporters who signed a petition also are Schwab customers who spoke directly to the firm. That type contact is very important and quite often gets results. But just as things seemed to be headed in the right direction, the progress was slowed. A member of the SEC announced in late May that the arbitration issues wouldn't be considered until 2014. It was said that the agency "didn't have time" to take it up until then.

States Join The Fight To Stop Forced Arbitration

State securities regulators have also joined the fight to end mandatory arbitration clauses in brokerage contracts. The regulators are putting pressure on the Securities and Exchange Commission to end the practice. The regulators urged the SEC to utilize the power mentioned above in the Dodd-Frank financial reform law to end or restrict the compulsory arbitration provisions included in almost every brokerage agreement with clients. In the letter, A. Heath Abshure, the Arkansas Securities Commissioner, who also serves as NASAA president, wrote:

The decision by Charles Schwab & Company to include these class-action waivers in the arbitration provisions of its customer contracts is yet another example of the pernicious effects of mandatory arbitration clauses. Now, more than ever, it is essential that the SEC use its authority to insure that investors have meaningful remedies and a choice of forums in which to resolve disputes with broker-dealers and investment advisers. Charles Schwab's attempt to unilaterally alter its account agreements to include the class action waiver is an obvious attempt by the firm to insulate itself from liability to its own clients, which clearly violates public policy and may further violate Charles Schwab's regulatory duty to observe high standards of commercial honor and just and equitable principles of trade.

Abshure points out that Schwab's move on class-action lawsuits was an attempt to "flaunt" Financial Industry Regulatory Authority (FINRA) rules. Schwab claims that customers are better off using arbitration than going through the court system to settle claims. Anybody who believes that spin has never dealt with mandatory, binding arbitration.

Source: reuters.com and investmentnews.com

GE Settles Crisis-Era Shareholder Lawsuit For $40 Million

General Electric Co has agreed to pay $40 million to settle a shareholder lawsuit accusing the conglomerate of misleading investors about its health and exposure to risky debt during the 2008 financial crisis. The lawsuit alleged that GE, Chief Executive Jeffrey Immelt and Chief Financial Officer Keith Sherin were responsible for investor losses in a six-month period when GE's stock price fell as much as 77 percent, wiping out about $200 billion of market value. Shareholders, led by the State Universities Retirement System of Illinois, accused the world's largest maker of jet engines and electric turbines of hiding billions of dollars of troubled subprime and other loans at its GE Capital unit.

It was also alleged that General Electric misled the investors about its ability to generate earnings and pay its dividend, and failed to make necessary disclosures when conducting a $12.2 billion stock offering in October 2008. GE in March 2009 lost its "AAA" credit rating from Standard & Poor's and cut its dividend 68 percent. This was GE's first dividend reduction since 1938, despite having received $3 billion from Warren Buffett's Berkshire Hathaway Inc in late 2008. The settlement requires court approval.

The lawsuit sought class-action status for shareholders who held GE common stock between September 25, 2008 and March 19, 2009. GE shares bottomed at $5.87 on March 4, 2009, after beginning the class period at $25.68, according to Reuters data. The case is In *re: General Electric Co Securities Litigation,* in the U.S. District Court, Southern District of New York.

Source: *Reuters*

$250 Million Verdict For Appriva Investors In Contract Fight

A Delaware state court jury awarded $250 million last month to Appriva Medical Inc. shareholders who were claiming that medical company ev3 Inc. and private equity backer Warburg Pincus had refused to make $175 million in milestone payments ev3 had promised when it bought Appriva and its groundbreaking stroke-prevention technology. The jury found that ev3 had never planned to make good on the promised payments, as reflected by internal documents from April 2003 showing the Minnesota company had never had them on the books. The jury found further that ev3 didn't act in good faith when pursuing the milestones, breaking the stated terms of its merger agreement.

In April 2009, Appriva shareholders sued ev3, claiming breach of contract, fraud and other allegations. The lawsuit sought damages in accordance with the companies' merger agreement. During the trial, lawyers for the plaintiffs showed through ev3's internal documents that the company had never intended to distribute any of the promised milestone payments.

The jury found that ev3 had breached its 2002 merger agreement and that the Appriva shareholders were entitled to all the promised milestone payments related to the development of the device. In addition to the $175 million in milestone payments, the jury awarded the Plaintiffs an additional $75 million to $80 million in interest payments dating back to 2005.

Source: *Insurance Journal*

Guilty Plea In $400 Million ArthroCare Securities Fraud Scheme

A former senior executive of Texas-based ArthroCare Corp., a publicly traded medical device company, has pleaded guilty for his role in a scheme to defraud the company's shareholders and members of the investing public by falsely inflating ArthroCare's earnings. Acting Assistant Attorney General Mythili Raman of the Justice Department's Criminal Division and U.S. Attorney Robert Pitman for the Western District of Texas made the joint announcement relating to the plea.

David Applegate pleaded guilty to two counts of a superseding information which charges him with conspiracy to commit securities, mail and wire fraud and with a false statements violation. Applegate, who was the senior vice president in charge of ArthroCare's Spine Division, admitted that he and other co-conspirators inflated falsely ArthroCare's sales and revenue through a series of end-of-quarter transactions involving ArthroCare's distributors. He also admitted that he and other co-conspirators caused ArthroCare to file a Form 10-K for 2007 with the U.S. Securities and Exchange Commission that materially misrepresented ArthroCare's quarterly and annual sales, revenues, expenses and earnings.

Between December 2005 and December 2008, ArthroCare's shareholders held more than 25 million shares of ArthroCare stock. On July 21, 2008, after ArthroCare announced publicly that it would be restating its previously reported financial results from the third quarter 2006 through the first quarter 2008 to reflect the results of an internal investigation, the price of ArthroCare shares dropped from $40.03 to $23.21 per share. The drop in ArthroCare's share price caused an immediate loss in shareholder value of more than $400 million.

Source: The U.S. Department of Justice Release

XIII. INSURANCE AND FINANCE UPDATE

Wells Fargo To Pay $19 Million In Force-Placed Insurance Lawsuit

In a settlement involving a *force-placed insurance lawsuit*, the huge financial firm Wells Fargo has agreed to pay $19 million to settle claims about its force-placed insurance practices. The force-placed insurance class action was filed in 2011 against Wells Fargo on behalf of Florida homeowners. The lawsuit alleged Wells Fargo forced coverage on them when their homeowners' insurance policies lapsed. That coverage, provided by QBE Insurance, had extremely high premiums. The homeowners, who paid insurance premiums of approximately $75 million, claimed that Wells Fargo insurance agents received a commission for business sent to QBE.

The homeowners, who did not miss any mortgage payments, and were otherwise current, had their homes foreclosed on because the monthly insurance payments were too high and they couldn't pay them. This was because of the high cost of the force-placed insurance. One of the plaintiffs in the lawsuit reportedly had monthly payments of $20,000 a month because of force-placed insurance fees. Approximately 24,000 homeowners were included in the class action, which was scheduled to go to trial in July.

Wells Fargo is not the first company to face consequences for force-placed insurance. For example, Assurant Inc agreed to pay $14 million in penalties earlier this year for its force-placed insurance practices. The penalties will be paid to the State of New York, which launched an investigation into the company's practices. Force-placed insurance is put on homes where homeowners insurance has lapsed, but it comes with high premiums, making it difficult for homeowners who are struggling financially to pay their bills. But insurance companies claim that force-placed insurance, also referred to as lender-placed insurance, is vital to keeping homes insured. While that may be true, the rates should be reasonable.

Many homeowners have been forced into foreclosure because of the high premiums on force-placed insurance. In some cases, force-placed insurance can cost up to 10 times a voluntary insurance policy, but with much less coverage. This is a prime example of price-gouging, with insurance companies profiting off people's financial woes. It's quite evident that the commissions and fees banks receive when they assign force-placed insurance to homeowners can be most unreasonable. Homeowners are fighting back against what they say are unethical and illegal policies by filing lawsuits such as the one against Wells Fargo. Meanwhile, insurance regulators should take action to make sure consumers are protected.

Source: *The Claims Journal*

Allstate And Citigroup Settle Mortgage Securities Lawsuit

Allstate Corp. and Citigroup Inc. have settled a lawsuit filed by the insurer in a New York state court. The bank was accused of fraudulently selling hundreds of millions of dollars of mortgage-backed securities. Allstate, the largest publicly traded U.S. home and automobile insurer, sued Citigroup in State Supreme Court in Manhattan in 2011, along with banks including Deutsche Bank AG, Bank of America Corp. and Morgan Stanley. The Northbrook, Illinois-based insurer, said in the suit that it bought more than $200 million of securities from New York-based Citigroup that were backed by residential mortgages.

Allstate and Citigroup settled the case on "mutually agreeable terms," according to Daniel L. Brockett, a lawyer with Quinn Emanuel Urquhart & Sullivan, who represented Allstate. The court had denied motions by Morgan Stanley, Deutsche Bank and Bank of America to dismiss Allstate's claims. In the case against Morgan Stanley, the court rejected an argument that the lender is shielded from liability because offering materials disclosed that representations about the loans were based on information from originators. The case is *Allstate Insurance Co. v. Citimortgage Inc.*, in the New York State Supreme Court, New York County (Manhattan).

Source: *The Claims Journal*

XIV. EMPLOYMENT AND FLSA LITIGATION

GOP Seeks Alternative To Overtime Pay

Recently, the GOP introduced legislation to change the Fair Labor Standards Act of 1938 (FLSA), which requires covered employees to receive overtime pay at a rate of time-and-a-half for every hour worked in excess of 40 hours per week. The Republican-pushed legislation would change the 75-year-old law to give workers who work more than 40 hours per week the option to take paid time off or comp time instead of receiving overtime pay. The proposal would allow workers to bank 160 hours, or four weeks, of comp time per year that could be used to take off for any reason. A provision in the Fair Labor Standards Act already provides this option for federal and state government workers, but it does not apply to the private sector.

The proposed law also prohibits coercion by the employer against the employee in any way. However, it is extremely hard to enforce this provision of the proposed law. If coercion is done verbally it is nearly impossible to prove. Since the majority of American workers are "at-will" employees, a worker can be fired for any reason at all, as long as the firing is not done for discriminatory reasons. An employer can simply fabricate a non-discriminatory reason to fire an employee if the employer was displeased with the way the employee chose to be compensated for overtime.

While Republicans promote the bill as being "pro worker," opponents, including worker advocacy groups, unions and Democrats, vigorously oppose the proposed law. Opponents point out that the bill provides no guarantee that workers would be able to take the time off when they want to do so. Also, worker advocacy groups claim that the true purpose of the bill is to provide businesses a backdoor way to skimp on paying overtime.

Judy Lichtman, senior adviser to the National Partnership for Women and Families, contends that the GOP measure would open the door for employers to pressure workers into taking compensatory time off instead of overtime pay.

The comp time program was created in the public sector in 1985 to save federal, state and local governments money, not to give workers greater flexibility, according to Mrs. Lichtman. Many workers in federal and state government are unionized or have civil service protections that give them more leverage in dealing with supervisors, she added. Those safeguards don't always exist in the private sector, where only about 6.6 percent of employees are union members. Phil Jones, a 29-year-old emergency medical technician in Santa Clara, Calif., is wary of how the measure would be enforced. Jones, who regularly earns overtime pay, observed:

> *Any time there's a law that will keep extra money in an employer's bank account, they will try to push employees to make that choice. I know how we get taken advantage and I think this bill will just let employers take even more advantage of us.*

Democrats in Congress are even more skeptical of the proposed legislation than is Mr. Jones. They say the bill is simply a repackaged GOP proposal from 1997. Rep. Donna Edwards, (D-Md.) made this observation:

> *They've dressed up an old idea in order to be family friendly. Let's look at the history. I mean, the GOP has gone after Medicare. The GOP has tried to privatize social security. The GOP fights labor organizing and collective bargaining agreements that employees could benefit from. And now here they are cutting away at the 40-hour work week. The 40-hour work week has been with us for 75 years, and it's there for a reason. It's there to make sure employees aren't abused by their employers.*

The bill passed the Republican-controlled House by a vote of 223-204, largely along party lines. At present, it appears the bill is not getting any traction in the Senate, which is unlikely to even take this bill up. But if it did happen to pass, the White House has threatened to veto it.

Source: Associated Press

Wet Seal To Pay $7.5 Million To Settle Race Discrimination Suit

Wet Seal will pay $7.5 million to settle a racial discrimination lawsuit that accused the teen retailer of firing black employees to present a blond-and-blue-eyed front in its stores, according to the NAACP Legal Defense and Educational Fund. The firm represented Plaintiffs in a national class-action effort filed against the struggling Foothill Ranch company in July in federal court in Santa Ana. The lawsuit alleged that former top Wet Seal executives denied equal pay and promotion opportunities to black store managers or removed them outright, replacing them with white employees. In December, the U.S. Equal Employment Opportunity Commission (EEOC) found that company honchos had discriminated against Nicole Cogdell by removing her from her manager's role at a Pennsylvania store. The EEOC's three-year investigation determined that Wet Seal sought an "Armani look" featuring workers who looked more like "Barbie" and "Ken" than Ms. Cogdell, who is black.

Much has changed in the last year for the company and its 526 Wet Seal and Arden B. stores. Amid sliding sales, Wet Seal purged its board and replaced Chief Executive Susan McGalla in January with John D. Goodman. The new leadership team has agreed to pay out $7.5 million to settle the lawsuit. At least $5.58 million of the amount will go into a fund to cover damages to black current and former Wet Seal managers. The company has also agreed to make "numerous changes," promising to track applications to ensure hiring diversity, expand its human resources department to allow for better investigation of discrimination complaints and maintain a council of advisors for guidance on equal employment tactics, according to NAACP LDF. Sherrilyn Ifill, director-counsel of the NAACP firm, had this to say:

> *With this settlement, Wet Seal is attempting to right its wrongs. The fight for equality in the workplace is far from over in America.*

Sad to say, this is an accurate appraisal of the situation. We still have a great deal of discrimination and inequality in the workplace in this country. Hopefully, that will change and soon. There is much to do to level the playing field in the workplace.

Source: *Los Angeles Times*

FLSA Suits Hit New Record High In 2013

Federal wage and hour lawsuits have reached a record high. So far in 2013, cases filed under the Fair Labor Standards Act (FLSA) have continued to increase sharply. There were 7,764 FLSA cases filed in 2013, up 10 percent from 2012, which saw 7,064 cases filed, according to data from the Federal Judicial Center. Claims forming the bulk of the filings include misclassification of employees, alleged uncompensated "work" performed off the clock and miscalculation of overtime pay for non-exempt workers. Both employees and employers must follow the law. Neither group should expect anything but fairness in the judicial system.

Source: *Claims Journal*

XV. PREMISES LIABILITY UPDATE

Propane Gas Fire Case Settled

Our firm settled a wrongful death case last month in an Alabama State Court. The case involved a propane gas fire. We represented the family of William Pipkin, Jr., who died in the fire that occurred on February 13, 2012. The fire started at the propane gas heater in the Pipkin home and it spread rapidly throughout the structure. Mr. Pipkin's burned body was found in his bedroom closet. The lawsuit was filed by the Pipkin family against Inergy Propane, which had supplied gas to the home for approximately 10 years, and Ferrellgas, which had taken over the account in January, 2012. No employee of Inergy had ever performed a safety inspection of the appliances and fuel lines located inside the home to make sure they were in good, safe working condition. Such an inspection was required by the company's safety policies for all new customers.

Mr. Pipkin became a new customer of Ferrellgas just a few months prior to the fire. An in-house inspection for all new customers should have been performed as part of the Ferrellgas system check. Unfortunately, no such inspection was ever done. Propane gas is highly flammable and, as a result, most dangerous. A small leak can result in tragic consequences. A few months prior to the fire, Mr. Pipkin had reported a gas leak at the heater location in his home.

We settled the case with both Defendants during the week prior to the scheduled trial date. The amount of the settlement with each defendant is confidential. We expected to prove at trial that each of the Defendants was at fault and failed to properly maintain and service the gas delivery system at the Pipkin home. Had a basic safety inspection been conducted by a trained employee of either defendant, any defects or deficiencies would have been identified and corrected in the gas system. It would have resulted in the gas wall heater being taken out of service at that time. The gas tank was located too close to the house, which violated code requirements. In addition, a regulator on the tank was outside the manufacturers' recommended service life. A proper inspection by either defendant would have found these problems, which would have required that the interior of the house be inspected.

This was a tragic case arising from an event that could have easily been avoided. Had even one of the two companies carried out the required inspections of the propane gas system, there would not have been the need for a lawsuit since Mr. Pipkin would still be with his family and friends.

LaBarron Boone from our firm was the lead lawyer in this case. He did a tremendous job working up the case and getting it ready for trial. Another of our lawyers, Greg Allen, along with Shane Seaborn and Myron Penn, from the Union Springs firm of Penn & Seaborn, were also involved in the case. Dana Taunton from our firm handled all of the briefing and the summary judgment issues. Dana argued the motions successfully prior to the settlement.

Workers And Families Settle Lawsuits Over Garage Collapse

The families of nine men killed or injured in the collapse of a South Florida community college parking garage last year have settled lawsuits against the general contractor and several subcontractors. The terms of the settlements are confidential. The wrongful death and injury lawsuits were filed by relatives of the four workers who lost their lives—Jose Calderon, Robert Budhoo, Samuel Perez and Carlos Mendoza—and five severely injured workers—Christian Ramirez, Francisco Castaneda, Frank Stankus, Anslim Antoine and Mark DiBacco. The Defendants were general contractor Ajax Building Corp. and several subcontractors.

The five-story, $20 million concrete garage, located on Miami Dade College's west campus, collapsed on October 10, 2012. The body of one worker was not recovered for more than a week because the accident site was so unstable. Last month, the Occupational Safety and Health Administration (OSHA) penalized Ajax and four other companies more than $38,000 combined for the collapse. OSHA found evidence of missing welds and grout in some support columns, failure to properly brace columns and failure to inspect 18 columns as required. OSHA also said contractors didn't follow project drawings and instructions. The result, according to the citations, was a failure to provide a workplace "free from recognized hazards that were causing or likely to cause death or serious physical harm to employees."

The 1,855-space garage project involved use of pre-cast concrete construction, a common method in which massive concrete pieces are created off-site and slotted into place by workers often using large cranes. The first floor was to have office and classroom space. Stuart Z. Grossman, Ervin Gonzalez and Alan Goldfarb, all lawyers from different firms in Miami, Florida, represented the Plaintiffs in this case. They did a very good job in this case.

Source: *Miami Herald*

Amusement Rides Hurt 4,400 Children A Year

A recent study shows that roller-coasters, carnivals and "kiddie rides," while providing lots of fun during the summer, also carry a downside to the thrill. A massive study of hospital injury records reveals that 4,400 children a year get hurt on these rides. While most of the injuries are not real serious, about 67 children a year, or 1.5 percent, are injured badly enough to be hospitalized. The analysis of data from the National Electronic Injury Surveillance System (NEISS), which includes reports from about 100 nationally representative hospitals, is the most in-depth study to date. It tracks 20 years of injuries that occurred at fixed-site amusement parks, mobile carnivals and fairs, and coin-operated rides at places like malls, stores and restaurants.

Dr. Gary A. Smith, who conducted the research for Center for Injury Research and Policy at Nationwide Children's Hospital in Columbus, Ohio, says about 20 children a day are hurt on rides in the peak season between May and September, which is "one every two hours." Such harm—and the most in-depth study to date on ride injuries—highlights the need for more awareness, better education and increased tracking and oversight. Dr. Smith made this observation:

> *In the past, the discussion has always been on roller-coaster injuries and the bigger rides. The message here is that these injuries occur across a broad spectrum of types of rides and across many locations.*

Overall, Dr. Smith's team found that some 92,885 children ages 16 and younger were injured on amusement rides between 1990 and 2010. Researchers conducted a case-by-case review of more than 5,626 narratives from the NEISS reports. Officials with the International Association of Amusement Parks and Attractions (IAAPA) said that about 297 million people—adults and children—safely rode 1.7 billion rides in the U.S. in 2011.

The most serious injuries are deaths, but the new report didn't include how many children died. That's because fatalities aren't tracked by hospital injury reports. Fifty-two deaths tied to amusement rides were logged between 1990 and 2004, according to a 2005 report by the Consumer Product Safety Commission. Unfortunately, there are no later figures available. More girls than boys were hurt on rides—55.5 percent versus 45.5 percent—which was a surprise because boys are typically more injury-prone in such studies, according to Dr. Smith.

Most children were hurt during falls, with nearly 32 percent of injuries caused by falling in, on, off or against rides. The head and neck was the most common body part hurt, 28 percent, and soft tissue injuries were the most common kind, accounting for 30 percent of the harm, the study showed. Big, fixed-site amusement parks appeared to account for about 33 percent of the injuries, with mobile carnivals responsible for about 30 percent. That's an uncertain figure, though, because in about 25 percent of cases the particular site was unknown. It was rather surprising that nearly 12 percent of injuries reportedly were caused by rides at malls, stores, restaurants or arcades. The youngest children, those aged 0 to 5, were most likely to be hurt on those rides, and they were more than twice as likely to suffer concussions and 1.76 times more likely to suffer cuts.

The big problem with amusement park rides involves uncertain regulation. The CPSC oversees mobile rides used for carnivals and fairs, but currently the agency has no jurisdiction over fixed-site rides at big parks or small malls. Instead, various state and local authorities are responsible for those rides, so even limited common standards often aren't followed. That issue, combined with spotty tracking of injuries and deaths, means that it's impossible to tell exactly which attractions are responsible for most harm, or whether it's getting worse over time.

Dr. Smith says that his mission is to inform the public, the industry and policymakers, adding that "we want to inform the people who have the ability to keep kids safe." Those people include the owners of the places where the attractions are located and the owners and operators of the various rides as well as parents. But most parents are entitled to rely on the industry to keep children who use the rides as safe as possible.

Source: *NBC News*

Lawsuit Settled For $10.9 Million Arising Out Of Fall At Norfolk Hotel

A lawsuit over head injuries to a toddler who fell from a hotel walkway in Norfolk, Va., has been settled for $10.9 million. Elijah Clayton, who was almost 3 years old, fell on Sept. 4, 2011, at the Ramada hotel in Norfolk. The railing on the second-floor walkway was missing a spindle, and the toddler went through the opening, falling to the pavement below. He suffered permanent brain injuries. The child's mother sued the hotel owner, Pride Group LLC. A payment plan and special trust for the child were set up as part of the settlement.

Source: Pilotonline.com

XVI. WORKPLACE HAZARDS

Workers Compensation And Third Party Claims

Workplace injuries and deaths make up a large part of litigation handled by personal injury attorneys. According to the Secretary of Labor, Hilda Solis, every year nearly 4 million people suffer a workplace injury, from which some may never recover. The Occupational Safety and Health Administration (OSHA), published statistics from 2011 documenting 4,609 deaths at a place of employment, which equated to almost 90 a week and 13 deaths every day. Given the large number of workplace deaths and injuries it is important for those affected by these incidents to understand the applicable laws.

Workplace injuries and deaths are primarily covered by state workers compensation laws. States require most employers to obtain workers compensation insurance. Workers compensation insurance provides for the payment of the injured employee's medical bills associated with the injury, compensates the injured employee with a portion of their regular pay while that employee is off work recovering from the injury, and provides compensation for any permanent total or partial disability as a result of the injury. For minor injuries, workers compensation insurance is close to perfect when it comes to fairly compensating the injured employee.

When it comes to serious injuries like the loss of a limb, or a death, workers compensation is not adequate to fairly compensate the family that lost a loved one or the injured employee. In the event of a death, workers compensation does not compensate the family for the loss of their loved one. In the event of a serious injury like the loss of a limb, workers compensation does not compensate the employee for pain, suffering, mental anguish or loss of enjoyment of life. Additionally, any award for future lost income is capped. When faced with an on-the-job death or serious injury, special attention should be paid to whether or not a third party—whether it be a person or an entity—is legally responsible for the death or injury. In the event that a third party is solely or partly responsible, any claim against the third party can be brought outside of the workers compensation allowing the family or injured employee to recover damages that are not allowed under the workers compensation statute.

In the event of a death or a serious injury in the workplace, it is imperative that third party claims are fully explored. It's been the experience of our lawyers that every family who lost a loved one, or every employee who sustained a serious injury on the job, has been surprised at the inadequacy of the benefits available through workers compensation. The existence of a third-party claim can allow the family or injured employee to be fully compensated for their losses. Lawyers in our firm have pursued third party claims against co-employees, machine designers, manufacturers, installers and modifiers. However, even if a third party claim exists, the lawyer can't ignore the workers compensation claim. In the event a third party is sued and a recovery is made, the workers compensation carrier is entitled to recover a portion of money paid to the injured employee or their family. Knowing this, we often engage the insurance carrier/employer to assist with our investigation as it not only benefits our client, but it also benefits the carrier/employer. And more importantly, if we are engaged early in the process we can more effectively negotiate the amount the family or injured employee has to repay. At times, we have been able to get the entire amount waived. A good understanding of the workers compensation laws and how those laws interact with general personal injury is essential when representing clients. That allows our lawyers to obtain just and fair compensation for the clients. If you need additional information on the subject, contact Kendall Dunson, a lawyer in our Personal Injury/Products Liability Section, at 1-800-898-2034 or by email at Kendall.Dunson@beasleyallen.com.

OSHA Rule Extends To More Construction Workers

More construction workers will be covered by a final Occupational Safety and Health Administration (OSHA) rule intended to prevent workplace death and injury from hoisting cranes and derricks. The rule, issued recently by OSHA, extends a 2010 standard to underground construction workers and workers who perform demolition work. It took effect on May 23.

The earlier rule identified four main dangers workers face in using cranes and derricks — electrocution, getting crushed by equipment, getting hit by the equipment or its load, and falling — and required employers to take certain safety measures, including inspection of all parts before a crane is assembled, use of safety equipment when cranes are put up and taken down and certification of crane operators. Dr. David Michaels, Assistant Secretary of Labor for Occupational Safety and Health, said in a news release:

> *It is important that construction workers in these [additional] sectors receive the same safety protections as other construction workers. Extending this rule to demolition and underground construction work will help save lives and prevent injuries.*

Hopefully, this new rule will help to cut down on workplace deaths and injuries. It certainly appears to be a step in the right direction. OSHA should be commended for this good work and perhaps there will be more to come.

Source: LawyersUSAOnline.com

Landmark EEOC Verdict In Iowa Sends Message

A historic $240 million verdict was returned by an Iowa jury in favor of 32 mentally disabled men who faced decades of abuse by a Texas company. The jury awarded $7.5 million to each of the former employees of Henry's Turkey Service. The trial exposed the deplorable conditions the men faced living in a rural eastern Iowa bunkhouse while working at a turkey processing plant. They were forced to work a very hard job through injuries, were verbally and physically abused by supervisors and lived in a filthy, century-old building. It was reported that jurors wanted to compensate the men for their suffering and also punish the company and hold it accountable for the mistreatment. This is the largest verdict ever obtained by the U.S. Equal Employment Opportunity Commission (EEOC). The jurors agreed that the company had violated the Americans with Disabilities Act in numerous ways.

State officials in 2009 started to investigate the bunkhouse, which they closed. The men were taken into custody. West Liberty Foods paid Henry's $500,000 annually for the men's work. Sue Gant, an expert witness for EEOC, prepared a report showing one of the men was routinely forced to carry heavy weights as punishment, locked in his room and called derogatory names — like the other workers. When the bunkhouse was shuttered, the employee was underweight and in need of mental health treatment, the report said. He has since had surgery for a hernia and takes sleep medicine because he suffers from nightmares about the abuse.

Lawyers will file briefs before U.S. Senior Judge Charles Wolle, who will enter a judgment in coming weeks. Judge Wolle has already ordered Henry's to pay $1.3 million in back wages because the company paid workers $65 monthly — 41 cents per hour — after excessively docking their paychecks and Social Security benefits for the cost of their care. Henry's, now defunct, isn't expected to have the resources to pay. Canino said he will seek to collect as much as possible by going after assets, including 1,000 acres of Texas ranchland. It was reported that Texas officials promoted the company in the 1970s for training the mentally disabled. Henry's reportedly sent hundreds of men to labor camps in Iowa and elsewhere.

It appears Henry's founder, T.H. Johnson, actually lived at the bunkhouse in Atalissa, Iowa, about 35 miles from the Illinois border, until his 2008 death. It was reported that with Mr. Johnson's death conditions started to really deteriorate. When the sister of one of the men reported the horrible situation to state officials in 2009, the state started the investigation. Within days, they shut down the former schoolhouse after the fire marshal declared it uninhabitable. It was infested with mice and cockroaches and had a leaky roof, boarded-up windows that failed to keep out cold and fire hazards that included space heaters as the only source of heat. Hopefully, this sort of thing won't happen again.

Source: *New York Times*

XVII. TRANSPORTATION

Tragic Trucking Accident Resolved Against Shipper

On October 3, 2008, seven young men tragically died in a fiery crash of a van on an Alabama highway. The van's driver was transporting six job applicants for training, and as the van was approaching a curve, two 18 wheelers were approaching from the opposite direction. One of the 18-wheelers, owned by Lewis Trucking Company, was improperly passing another 18-wheeler in a no-passing zone, resulting in a head-on collision between the van and the Lewis vehicle. The collision and the subsequent fire resulted in the tragic deaths of all seven occupants of the van.

After reaching a settlement, on a pro tanto basis, with the two trucking companies, we pursued the remaining claim against American Timber and Steel (ATS). Lewis Trucking had been hired by ATS to transport a load of timber from Texas to Florida. When getting ready to send the load to Florida, ATS set a very low fee of $2,000 to transport the load. Following ATS' internal protocol, the company sent its notice of the type of load to be transported and the proposed fee to the trucking companies that ATS normally used. None of those trucking companies accepted the load at that price.

The notice of the load and the fee paid to transport the load was then forwarded to other trucking companies. But again, no trucking company was willing to carry the load for that price. Finally, the load was listed on Getloaded.com, a website where shippers can list their load and payment details to be viewed and accepted by potential motor carriers. The only company to respond to the ATS listing was the Lewis Trucking Company. After Lewis Trucking inquired about the load, ATS followed its policy and investigated the company's background. Using Lewis Trucking's DOT number, ATS' traffic manager referenced a database maintained by the Federal Motor Carrier Safety Administration which, among other things, provides a number known as the "SEA value" for each carrier.

All of the ratings provided for Lewis Trucking were "deficient," meaning the company was unsafe. ATS understood that the ratings for Lewis Trucking indicated the company was unsafe. The Alabama State Troopers who investigated the accident testified in depositions they had never before seen a company with such unsafe safety ratings. In fact, Lewis Trucking was in the top one-and a half percent of the worst companies in the U.S. from a safety perspective.

ATS also had access to Lewis Trucking's snapshot safety rating. Lewis Trucking had a "conditional rating" at the time it was hired to transport the ATS load. A conditional rating means the carrier has multiple deficiencies and the motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standards. ATS' own hired expert testified that he would not have hired a trucking company with a conditional rating. The expert admitted that he recommends that his shipper clients avoid hiring motor carriers with a conditional rating.

Armed with this information, ATS had a choice. It could hire an unsafe trucking company or it could increase the price for the load and re-engage ATS' normal carriers. ATS chose to ignore that dismal safety record of Lewis Trucking and allowed Lewis to carry the load. The crux of Plaintiffs' claim against ATS focused on the knowledge and recognition that Lewis Trucking was an extremely unsafe motor carrier.

Despite all of the evidence to the contrary—all of the red flags—ATS contended that it had no duty to investigate Lewis Trucking and that the available information was insufficient to put it on notice that Lewis Trucking was unsafe. But ATS' traffic manager conceded that it was ATS' responsibility to investigate the safety of a motor carrier and that he clearly understood the information he had on Lewis Trucking indicated it was an unsafe company. In fact, he even admitted that, looking back on the incident, he should not have hired a trucking company with such poor safety ratings.

ATS had sufficient information to put it on notice that Lewis Trucking should not have been hired. ATS ignored all of the "red flags" and the end result was the fiery collision caused by the unsafe driving by the driver for Lewis Trucking Company. With less than a week left before the trial was to start, ATS agreed to settle all seven of the death claims. The amount of the settlement, which was approved by the trial judge, was confidential.

Unfortunately, crashes involving motor carriers are very common on our roads. Shippers have a responsibility to investigate the safety ratings of the motor carriers they hire. Under the right facts and circumstances, shippers can be and should be held liable when they hire unsafe and unfit motor carriers to transport their loads. Safety ratings are collected and published for one reason, and one reason only, and that is to inform the public, including shippers, that some motor carriers are unfit. Many shippers simply hire a motor carrier without doing any background checks and that can't be tolerated.

Our clients finally have closure, knowing that the company responsible for hiring an unsafe motor carrier that collided with the van carrying their loved ones has settled the cases. Additionally, as a matter of significant interest, federal officials revoked Lewis Trucking Company's carrier authority, forcing its closure after the crash. Kendall Dunson was the lead lawyer from our firm in this most important case. A number of lawyers from other firms were also involved. Those included Shane Seaborn; Myron Penn; Walter McGowin; Frank Wilson; Lynn Jinks; and Michael Rutland. All of the lawyers did a good job and contributed to the results reached for the families involved.

Passenger Car Drivers More Likely To Die In Crashes With SUVs Regardless Of Safety Ratings

It was reported recently that most consumers who are shopping for a new car depend on good crash safety ratings as an indicator of how well the car will perform in a crash. While I really hope that's true, a new University at Buffalo (UB) study of crashes involving cars and sport utility vehicles has found those crash ratings are a lot less relevant with folks than vehicle type. The study was presented May 16 at the annual meeting of the Society of Academic Emergency Medicine in Atlanta.

The researchers found that in head-on collisions between passenger cars and SUVs, drivers in passenger cars were nearly 10 times more likely to die if the SUV involved had a better crash rating. Drivers of passenger cars were more than four times more likely to die even if the passenger car had a better crash rating than the SUV. Dr. Dietrich Jehle, MD, UB professor of emergency medicine at Erie County Medical Center and first author, had this to say:

> *When two vehicles are involved in a crash, the overwhelming majority of fatalities occur in the smaller and lighter of the two vehicles. But even when the two vehicles are of similar weights, outcomes are still better in the SUVs. Because in frontal crashes, SUVs tend to ride over shorter passenger vehicles, due to bumper mismatch, crushing the occupant of the passenger car.*

When crash ratings were not considered, the odds of death for drivers in passenger cars were more than seven times higher than SUV drivers in all head-on crashes. In crashes involving two-passenger cars, a lower car safety rating was associated with a 1.28 times higher risk of death for the driver and a driver was 1.22 times more likely to die in a head-on crash for each point lower in the crash rating. The UB researchers conducted the retrospective study on severe head-on motor vehicle crashes in the Fatality Analysis Reporting System (FARS) database between 1995 and 2010. The database includes all motor vehicle crashes that resulted in a death within 30 days and includes 83,521 vehicles involved in head-on crashes.

Dr. Jehle said that "along with price and fuel efficiency, car safety ratings are one of the things that consumers rely on when shopping for an automobile." These ratings, from one to five stars, are based on data from frontal, side barrier and side pole crashes that compare vehicles of similar type, size and weight. The one to five star safety rating system was created in 1978 by the National Highway Traffic Safety Administration (NHTSA). Dr. Jehle notes that after manufacturers addressed the roll-over problem with SUVs that plagued these vehicles in the 1980s and 1990s, rollover crashes are now much less common in SUVs. He made this interesting observation:

> *Currently, the larger SUVs are some of the safest cars on the roadways with fewer rollovers and outstanding outcomes in frontal crashes with passenger vehicles.*

Dr. Jehle says that prior studies on frontal crashes have found that compared to passenger cars with a 5-star crash rating, cars with a rating from one to four stars have a 7-36 percent increase in driver death rates. He added:

> *Passenger vehicles with excellent safety ratings may provide a false degree of confidence to the buyer regarding the relative safety of these vehicles as demonstrated by our findings. Consumers should take into consideration the increased safety of SUVs in head-on crashes with passenger vehicles when purchasing a car.*

Co-authors with Dr. Jehle, all from UB, are: Albert Arslan and Chirag Doshi, MD candidates in the School of Medicine and Biomedical Sciences; Joseph Consiglio, data manager/statistician for the UB Department of Emergency Medicine and a graduate student in the Department of Biostatistics in the School of Public Health and Health Professions; Juliana Wilson DO, a post-doctoral scholar in the Department of Emergency Medicine; and Christine DeSanno DO, a resident in the UB Department of Emergency Medicine.

Source: *Claims Journal*

No Safety Inspections Are Required For Smaller California Limousines

The limousine that burst into flames and killed five women in Northern California last month wasn't required to undergo a state safety inspection. The limousine burst into flames on the San Mateo Bridge on a Saturday night. Four passengers and the driver survived the fire. The women were headed into San Francisco to celebrate the wedding of Neriza Fojas, who died in the blaze. The cause of the fire, which was captured on camera, is still under investigation. The four survivors managed to get through the partition in the vehicle between the driver and passenger. The driver had pulled over and climbed out of the vehicle. The women killed were found pressed up against the partition.

The state Public Utilities Commission (PUC) had authorized the vehicle to carry eight or fewer passengers, but it had nine on the night of the deadly fire. Officials say it's too early in the investigation to say whether overcrowding may have been a factor. The PUC is looking into whether the operator of the limo, Limo Stop, willfully misrepresented the seating capacity to the agency. If so, Limo Stop could be penalized $7,500 for each day it was in violation. Limo Stop, which is licensed, has seven vehicles with a seating capacity of up to eight passengers listed with the commission. There had been no previous enforcement actions against the owner.

The CPUC requires that all carriers have a preventive maintenance program and maintain a daily vehicle inspection report. Carriers also certify that they are have or are enrolled in a safety education and training program. Requirements for emergency exits only apply to buses. Limousines are not required to have fire extinguishers. Like most stretch limos, the 1999 Lincoln Town Car involved in this incident had been modified — cut in half, its fuel and electrical lines severed and rebuilt with a large passenger compartment in the middle. But since the car was licensed to carry fewer than 10 people, California doesn't require routine safety inspections. Such inspections are required every 13 months for larger limousines, airport shuttles and buses.

Sources: *San Jose Mercury News* and *Insurance Journal*

$15.6 Million Settlement In Drunk Driver Lawsuit

The family of a 7-year-old girl who was killed by a drunk driver after he left a Pittsburgh restaurant has reached a $15.6 million settlement in the case. German Hofbrauhaus, a German-themed establishment, has also agreed to attempt to reduce customer intoxication and drunk driving. The parents had charged that the restaurant was responsible for their daughter's death in December 2010. The little girl was killed instantly when her mother's car was struck by a Ford Mustang driven by a drunk driver. That driver pleaded guilty to homicide by vehicle and was sentenced to six to 12 years in prison. The lawsuit was filed against both Hofbrauhaus and the drunk driver, whose insurance will be responsible for paying $100,000 of the settlement.

Sources: *The Pittsburgh Post-Gazette* and *The Insurance Journal*

Settlement Reached In Deadly New Mexico DWI Crash

A wrongful death lawsuit has been settled in the case of a girl killed when her family's van was hit by a vehicle driven by a Santa Fe surgeon. The family of 4-year-old Yuliana Aremi Reyes Vasquez filed the lawsuit against Dr. Deborah Aaron and her insurance company in April 2012. The settlement has been approved by the court with the amount being confidential.

Authorities said Dr. Aaron's vehicle hit the passenger side of the family's van on Dec. 30, 2011, killing the little girl. Her mother and 3-year-old sister were injured. Blood-alcohol tests showed Dr. Aaron was legally drunk at the time of a crash. Witnesses couldn't agree which driver ran a red light before the crash, but a drunk driver would be a good probability. Dr. Aaron pled no contest to driving while intoxicated. The civil case was settled.

Source: *Claims Journal*

Progress Sought On Drunken Driving Deaths

Transportation safety officials are exploring ways to eliminate drunken driving deaths, which account for about a third of the nation's more than 30,000 annual traffic fatalities—a share that has remained stubbornly unchanged since the late1990s. The National Transportation Safety Board met last month to hear recommendations on ways to meet its goal of zero alcohol-related driving deaths. Experts said at a two-day information-gathering forum the board held last year that dramatic progress was made in the 1980s through the mid-1990s after the minimum drinking age was raised to 21 and the legally allowable maximum level of drivers' blood alcohol content was lowered to .08. But they said progress has largely stagnated during the last decade and a half, requiring a fresh approach. Lowering the number to .05 would be a step in the right direction and would save lives.

Source: *Claims Journal*

XVIII. HEALTHCARE ISSUES

National Nursing Home Chain Accused Of Billing For Excess Care

It was reported recently that Americans spend hundreds of billions of dollars each year on unnecessary medical tests and treatments. Many experts believe that's one reason why health care costs are so high. In recent months, "CBS This Morning" has been looking into the rehab practices of Life Care Centers of America, the third largest nursing home chain in the country. It has more than 30,000 beds in 28 states. A number of former employees told CBS that the company has been giving patients rehab they don't need, and billing the government for money they are not entitled to. Helen Toomey, a former assistant manager and speech therapist at the company's Plymouth, Mass., facility, blew the whistle on Life Care. She said that "the mission statement" that Life Care has "is no longer true." She said the mission had been "to serve their residents in a Christian based atmosphere" and that it has changed dramatically.

Among other services, Life Care provides speech and physical therapy. But Ms. Toomey, who worked at multiple Life Care locations between 1998 and 2012, says by the time she left, 40 percent of the work she was being told to administer was not reasonable or necessary. Ms. Toomey had this to say:

> *They felt that no one was watching them and so every patient that came through the building they could charge the highest rate of reimbursement, regardless of their diagnosis or need.*

Ms. Toomey told CBS that it got so bad that she resigned. But on her way out, she took some patient notes with her. They show how Life Care would not let patients leave, so the company could continue to bill Medicare, according to Ms. Toomey. On Dec. 30, 2011, for example, they indicate that Ms. Toomey tried to discharge four patients and that all four of those requests were denied. It was reported that a copy of the notes have been provided to CBS.

It was reported that the day after Ms. Toomey resigned, she got a phone call from a Life Care supervisor. Fortunately, she let the call go to voicemail and saved the message. The tone of the message, which is set out below, indicated apprehension on the part of LifeCare:

> *I was calling to see if you might have by mistake taken the communication book, the spiral book. They had it in the office at noon time and thought you may have just grabbed it by mistake when you were leaving.*

Ms. Toomey says the supervisor knew exactly what was in the notebook and didn't want the contents revealed. The good news is that the FBI also knows now what is in the notebook. According to CBS, Ms. Toomey has already spoken with federal agents. The Justice Department is currently suing Life Care centers nationwide for Medicare fraud.

Investigators found that from 2006 to 2011, Medicare paid Life Care $4.2 billion. It was reported that in 2008, Life Care "billed nearly 68 percent of its Medicare rehabilitation days at the highest level, which was almost double the nationwide average of 35 percent. The Justice Department wrote that the wrongdoing came from the top, saying:

> *Cathy Murray, Life Care's former Chief Operating Officer...frequently told her employees, their job was to make money for Forrest Preston, the founder, sole shareholder, and Chairman of the Board of Life Care.*

Unfortunately, this story isn't just about one company. The latest report from the Inspector General found industry-wide, a quarter of all Medicare payments to nursing homes are made in error, costing taxpayers $1.5 billion a year. The problem is Medicare rarely checks if the care is necessary. Jodi Nudelman, regional inspector general at the U.S. Department of Health and Human Services, has been sounding the alarm on this for years. She says it is a growing and serious problem, and Medicare has yet to take significant action. Ms. Nudelman added:

> *All of us are paying the cost. Until you create incentives to bill for the right care, and not for the most care, the problem will continue.*

The federal government says that fraud in the Medicare program is unacceptable and that it's constantly ramping up efforts to stop it. That's good to know and hopefully there will be follow-up. As for the Life Care case, the Justice Department is currently sorting through hundreds of patient records to estimate the total amount that taxpayers are owed.

Source: *CBS News*

FDA Limits Duration And Usage Of Samsca

The U.S. Food and Drug Administration has determined that the drug Samsca (tolvaptan) should not be used for longer than 30 days and should not be used in patients with underlying liver disease. That's because it can cause liver injury, potentially leading to liver transplant or death. The FDA has worked with the manufacturer to revise the Samsca drug label to include new limitations.

Samsca is a selective vasopression V2-receptor antagonist indicated for the treatment of clinically significant hypervolemic and euvolemic hyponatremia, including patients with heart failure and Syndrome of

Inappropriate Antidiuretic Hormone (SIADH). An increased risk of liver injury was observed in recent large clinical trials evaluating Samsca for a new use in patients with autosomal dominant polycystic kidney disease (ADPKD).

The FDA has recommended that Samsca treatment should be stopped if a patient develops signs of liver disease. The agency says treatment duration should be limited to 30 days or less, and use should be avoided in patients with underlying liver disease, including cirrhosis. Patients should be made aware that Samsca may cause liver problems, including life-threatening liver failure. They should contact their health care professional to discuss any questions or concerns about Samsca.

Source: FDA MedWatch

XIX. ENVIRONMENTAL CONCERNS

Wal-Mart Pleads Guilty

Wal-Mart plead guilty last month to a series of environmental crimes. The giant retailer will pay $81.6 million for its unlawful conduct. Federal officials alleged that Wal-Mart did not have a program in place and failed to train its employees on proper hazardous waste management and disposal practices at the store level. As a result, hazardous wastes were either discarded improperly at the store level—including being put into municipal trash bins or, if a liquid, poured into the local sewer system—or they were improperly transported without proper safety documentation to one of six product return centers located throughout the United States. Ignacia S. Moreno, Assistant Attorney General for the Justice Department's Environment and Natural Resources Division, had this to say:

> *By improperly handling hazardous waste, pesticides and other materials in violation of federal laws, Wal-Mart put the public and the environment at risk and gained an unfair economic advantage over other companies. Wal-Mart acknowledged responsibility for violations of federal laws and will pay significant fines and penalties, which will, in part, fund important environmental projects in the communities impacted by the violations and help prevent future harm to the environment.*

Wal-Mart owns more than 4,000 stores nationwide that sell thousands of products which are flammable, corrosive, reactive, toxic or otherwise hazardous under federal law. The products that contain hazardous materials include pesticides, solvents, detergents, paints, aerosols and cleaners. Once discarded, these products are considered hazardous waste under federal law.

In addition to the civil penalties, Wal-Mart is required to implement a comprehensive, nationwide environmental compliance agreement to manage hazardous waste generated at its stores. The agreement includes requirements to ensure adequate environmental personnel and training at all levels of the company, proper identification and management of hazardous wastes, and the development and implementation of Environmental Management Systems at its stores and return centers. Compliance with this agreement is a condition of probation imposed in the criminal cases.

Source: *Corporate Crime Reporter*

XX. THE CONSUMER CORNER

Consumer Advocacy Group Calls for a Recall of 5 Million Jeep Grand Cherokees

The Center for Auto Safety has asked top officials at the Chrysler Group and its parent company, Fiat, to recall about five million vehicles. The nonprofit consumer advocacy group said that "children are dying in Jeeps in rear-impact fires." In a letter to John Elkann on Wednesday, Fiat's chairman, the center cited the deaths of three children since 2006 in fires that occurred when the Jeeps in which they were riding were struck from the rear. The Center for Auto Safety has also been urging a recall of 1993-2004 Jeep Grand Cherokees since 2009, saying the vehicles have two problems:

- The first is a gas tank behind the rear axle and somewhat below the bumper, in an area that safety engineers call a crush zone. Chrysler moved the tank in front of the rear axle when it redesigned the vehicle for the 2005 model year, but a company spokesman said the move was not related to concern about fires.
- The second problem is a fuel filler pipe positioned so that it can rip away from the tank in a rear impact, allowing gasoline to escape from the tank.

Chrysler has repeatedly denied that the Grand Cherokee posed a fire risk, noting that the vehicles met federal safety standards. The automaker issued a statement last month reconfirming its own analysis of the Grand Cherokee models called into question by the center, saying the SUV's "are neither defective, nor do their fuel systems pose an unreasonable risk to motor vehicle safety in rear impact collisions." But, almost a year ago, the NHTSA said its investigation of the center's allegations were reason enough for the agency to upgrade its investigation to an engineering analysis.

NHTSA, in what appeared to be a direct rebuttal of Chrysler's continuing claims, said its study found that "rear-impact-related tank failures and vehicle fires are more prevalent in the J.G.C. (Jeep Grand Cherokee) than in non-Jeep peer vehicles." The safety agency said it was expanding the investigation to include 1993-2001 Jeep Cherokees, as well as 2002-7 Jeep Libertys. In 2011 the center released the results of crash tests it commissioned, showing that other SUV's of the same vintage fared far better in rear-impact crashes than did the Jeep Grand Cherokee.

The center says it has reports of 157 deaths in which Grand Cherokee crashes resulted in a fire. That tally includes rear impacts as well as rollovers in which the filler hose might have ripped loose, Clarence Ditlow, the center's executive director, said in an interview. The safety agency listed 15 fire deaths, but Mr. Ditlow said it was strictly looking at rear-impact crashes.

One of the child deaths mentioned in the center's letter was that of Cassidy Jarmon, a 4-year-old who was riding in her family's 1993 Grand Cherokee in February 2006 in Cleburne, Texas. Her mother was stopped on a two-lane highway, trying to make a left turn, when her Jeep was hit from behind by a 2001 Chevrolet Lumina. Cassidy, who was in a child restraint, survived the impact but couldn't be easily freed from the seat because the fire happened so quickly. She died two days later from burns and smoke inhalation. The police investigation concluded that the gas tank had been punctured by the Jeep's trailer hitch. The deaths of the two other children occurred in 2011 and 2012. NHSA's investigation is still under way.

Source: *New York Times*

High Failure Rate In New SUV Crash Test

For the first time, the Insurance Institute for Highway Safety (IIHS) has conducted crash tests on small SUVs to measure front-corner impact, which accounts for about 24 percent of injuries and deaths from frontal crashes. It was reported that only two of the

13 vehicles tested received passing grades. That's not good and should get the attention of NHTSA, as well as automakers.

Eleven SUVs received "marginal" or "poor" ratings, with the lowest rated being the Ford Escape. It was reported that the Escape had poor structural performance, with there being a lot of intrusion into the occupant compartment. Joining the Escape in the "poor" category were the Buick Encore, Hyundai Tucson, Jeep Patriot and Kia Sportage. The BMW X1, Honda CR-V, two-door Jeep Wrangler, Mazda CX-5, Nissan Rogue and Volkswagen Tiguan were placed in the "marginal" category.

In the test, the vehicle hits a barrier at 40 miles per hour with just one-quarter of its front bumper. The impact occurs on the left side, just in front of the driver's seat. This concentrates crash forces in a small area that's outside of the strong crash safety structures built into most new vehicles. About a quarter of the serious and fatal injuries in frontal crashes are caused by "small overlap" impacts similar to this, according to IIHS. These crashes can also cause severe foot and leg injuries as the car's front wheel is pushed back into the passenger compartment. Real small overlap crashes often happen when vehicles leave the road and hit trees or utility poles.

The small overlap test is just one of several crash tests performed by the Institute. Most vehicles already do well in the other crash tests. In defense of their vehicles' overall safety, Chrysler, General Motors and other manufacturers pointed out that their SUVs earned the Institute's Top Safety Pick award. Ford Motor Co. said in a statement:

> *Ford takes seriously every industry development related to vehicle crash performance. This is the first time IIHS has conducted this type of test on small SUVs. We are reviewing its findings in the context of our current design evaluations.*

It should be noted that the progress by automakers when it comes to safety is appreciated. Joe Nolan, the Institute's vice president for vehicle research, observed:

> *With the redesigned Forester, Subaru's engineers set out to do well in our new test, and they succeeded. This is exactly how we hoped manufacturers would respond to improve protection for people in these kinds of serious frontal crashes.*

When breaking down the test results into more specific units, such as the crash protection provided by a vehicle's body and how well the crash test dummy's movements were controlled, the Institute pointed the Rogue out as an example of poor structural protection. After the crash test, the Rogue's door frame was almost touching the driver's seat, according to the Institute.

Small overlap crashes are dangerous, in part, because the vehicle spins violently after impact, causing an occupant to move sideways, away from areas that are protected by airbags. Also, the vehicle itself can be contorted so that airbags end up not being in the proper locations to protect passengers. For instance, in the Jeep Patriot, the steering wheel moved up and to the right allowing the crash test dummy's head to slide off the airbag.

Sources: *ABC News* and CNN.com

Safety Regulators Probe Ford Truck Steering Issue

NHTSA is investigating complaints that problems with steering-gear boxes are causing a loss of control in some Ford trucks. The probe by NHTSA covers an estimated 340,000 F250 and F350 Super Duty Trucks from the 2008 model year. The agency says it has gotten five complaints from owners that an internal failure of the steering-gear box made them completely unable to steer the trucks. No death or injuries have been reported. But one driver said a loss of control led to a crash into a parked vehicle. Investigators will check whether there is a defect in the steering box and decide if a recall is needed.

Source: *Claims Journal*

Chrysler And Dodge Models Investigated For Engine Stalling

NHTSA is investigating complaints that the engines can stall without warning in three Chrysler and Dodge brand cars. The probe covers more than 192,000 Chrysler 300C luxury cars, Dodge Charger muscle cars and Dodge Magnum wagons from the 2006 model year. The cars have 5.7-liter or 6.1-liter V-8 engines. Stalling can result in serious safety issues.

NHTSA says it has 54 complaints from owners that engines stalled while the cars were being driven. In all cases the stalling happened after the cars were refueled. Forty-eight of the owners said they had several stalling incidents, and seven said they had trouble restarting the cars, according to documents posted on the NHTSA website. Chrysler is cooperating in the investigation and says that it has no reports of any crashes or injuries related to the stalling. But he says that if customers suspect a problem, they should contact a Chrysler dealer. Investigators are checking the fuel vapor recovery system for possible failure, according to documents posted on NHTSA's website.

NHTSA said the number of complaints is increasing, with more than half coming in the past eight months. In one complaint, a driver told NHTSA that on April 3, a 2006 Charger stalled while the car was in the center lane of a freeway during peak traffic hours. The driver put the Charger in neutral and tried to restart it, moving to the slow lane to get off the highway. The driver wrote in the complaint:

> *Car died two more times until I was off the freeway. I will not drive on the freeway with this car until it's fixed.*

Investigators at NHTSA will check how often the problem happens and determine if a recall is needed. The investigation is in its early stages and at press time no defect had been identified.

Source: *CBS News*

Mazda Door Latch Problem Under Investigation

NHTSA is investigating complaints that doors won't close properly on more than 39,000 cars made by Mazda. The probe affects Mazda 6 cars from the 2009 model year. NHTSA says it has received four complaints that the doors failed to latch. In one case, a passenger door opened while a car was being driven. The agency says the owners complained that some of the door-latch mounting screws were missing. NHTSA will check to see if the problem is big enough to cause a recall. It also will determine if the doors have caused any crashes or injuries.

Source: *Claims Journal*

Ford F 150 Pickups Being Investigated For Engine Issue

NHTSA is investigating Ford F-150 pickups with EcoBoost engines after drivers reported that the engines lost power during acceleration. The agency estimates around 400,000 F-150 pickups from the 2011 through 2013 model years are involved. NHTSA says it has received 95 reports of engines losing power during hard acceleration, such as when passing. The incidents often occurred in rainy or humid weather. The agency has no reports of crashes or injuries.

According to NHTSA, Ford told dealers how to fix the issue but hasn't alerted owners. NHTSA investigations often lead to recalls. Ford owners in Ohio and Louisiana recently sued Ford in federal court, claiming the EcoBoost engine is defective because it loses power during acceleration. The Dearborn, Mich., automaker says it's cooperating with the investigation.

Ford Vans Being Monitored For Rust Signs

NHTSA is monitoring about 100,000 Ford and Mercury minivans that were not covered by a recall issued earlier this year for rust problems. Ford recalled about 230,000 Ford Freestar and Mercury Monterey minivans in March to fix rust in the wheel wells that can cause the third-row seats to come loose. The vans from the 2004 through 2007 model years were sold or registered in 20 cold-weather states and Canada, where salt is used on roads in the winter.

In documents posted on NHTSA's website the agency says it's watching vans that are outside the salt-belt areas and were not covered by the recall. But NHTSA says the problem seldom occurs if the vans aren't exposed to salt. NHTSA is aware of only one rust complaint from an owner outside the recall areas. Although NHTSA will monitor vans outside the recall areas, the agency has closed its investigation into the problem. Any owner not covered by the recall can contact Ford and ask for repairs if their van shows signs of rust in the wheel wells, according to NHTSA.

Ford has said that rust can weaken the mounting brackets that hold the removable seats to the van floor. The company says no crashes or injuries have been reported from the problem. Dealers will install new brackets, placing them outside of the area that can rust. They will also install panels above the rear wheels to prevent water from entering. The recall covered 196,500 minivans in the U.S. and another 33,500 outside the U.S., mainly in Canada.

Source: *CBS News*

Porsche 911 Being Investigated For Coolant Leaks

NHTSA is investigating coolant leaks in Porsche 911 sports cars that could cause roadway spills and send vehicles careening out of control. The probe, announced last month by NHTSA, affects about 10,000 models with the GT1 engine from the 2001 through 2007 model years. Documents posted the agency's website indicated that a hose fitting can fail and cause rapid coolant leaks without warning. The coolant can cover the road and cause drivers to lose control of their cars.

The agency says it has 10 complaints of coolant leaks. One driver said a leak caused a 911 to lose rear tire traction, sending the car into a spin and off the road. The driver wrote in a complaint to NHTSA that it was fortunate that the car didn't hit anything, and that the coolant spill didn't affect other drivers. "My research indicates that this is a common, systemic problem with this model engine and appears to be a dangerous defect in the engine construction," the complaint said. NHTSA says its investigators will determine if the problem has caused any injuries and if it's bad enough to cause a recall. Porsche says it is cooperating with NHTSA.

Source: *Claims Journal*

GM Says Supercomputers To Keep Recalls In Check

General Motors says a new supercomputer data storage center and efforts to write its own software are paying off. The company formally opened a giant data center last month in the Detroit suburb of Warren, Mich. GM says the changes are examples of how it's moving faster to cut costs and serve customers better. The automaker says it formerly hired outside companies to handle 85 percent of its computer work. But the company now wants 90 percent of the work in-house in the next five years.

GM says its own people developed software to check dealer service records worldwide and spot problems. Data stored in Warren, according to GM, should help the company limit the size of future recalls. GM says the software "can spot problems before they get too big, and engineers are quickly assigned to fix faulty parts." It will be very interesting to see how this development plays out. Hopefully, it will be good for both GM and the owners of GM vehicles.

Source: *Claims Journal*

Wells Fargo Ordered To Pay $203 Million In Overdraft Case

A federal judge has again ordered Wells Fargo to pay $203 million to settle class action litigation accusing it of imposing excessive overdraft fees on checking account customers, reviving an award that had been thrown out last year. U.S. District Judge William Alsup reinstated on May 14 a penalty he first imposed in August 2010, saying the fourth-largest U.S. bank violated a California law that protects consumers against fraudulent misrepresentations. Richard McCune, a partner at McCuneWright in Redlands, Calif., representing about 1 million current and former Wells Fargo customers in that state, said in an interview:

> *Wells Fargo was profiting off its most vulnerable customers, and this holds the bank accountable. We think it's the right decision.*

A Wells Fargo spokesperson said the San Francisco based bank plans to appeal. It should be noted that the lawsuit is separate from nationwide litigation still pending in a Miami federal court against about 20 lenders, including Wells Fargo, over alleged excessive overdraft fees. Consumers often incur the roughly $25 or $35 fees when they overdraw their checking accounts through debit card purchases.

Wells Fargo had been accused of maximizing overdraft fees by processing such purchases from the largest to the smallest rather than chronologically since 2001. It has since changed its account posting practices, as have many rivals. In December, the 9th U.S. Circuit Court of Appeals threw out the original $203 million award, saying federal law preempted part of a California law on which Alsup had relied in imposing an injunction to stop improper fee practices. But the 9th Circuit said federal law did not displace California consumer law with respect to fraudulent or misleading representations and directed Alsup to review the case again.

In reinstating the award, Judge Alsup rejected what he called Wells Fargo's effort to "slice its resequencing scheme" into multiple parts, reducing its overall liability. The award punishes Wells Fargo "for affirmatively misleading the class as to what (its) practice was, namely engaging in a practice likely to mislead the class to believe that processing would be done in chronological order." Judge Alsup added:

> Because Wells Fargo misrepresented the posting order and overdraft charges to its customers, the appropriate form of restitution is to restore the unexpected charges to Wells Fargo's customers.

Judge Alsup also permanently barred Wells Fargo from further misleading customers about the posting of transactions. The judge will consider fees for the customers' lawyers at a later date. Bank of America paid $410 million and JPMorgan Chase paid $110 million to settle their portions of the nationwide litigation. Those settlements won final court approval in 2011 and 2012, respectively. Both banks have also changed their overdraft fee practices. The case is Gutierrez et al v. Wells Fargo Bank NA, in U.S. District Court, Northern District of California.

Source: *NBC News*

Apple Settles iPhone Warranty Lawsuit For $53 Million

Apple has agreed to pay $53 million to settle a class action accusing the company of failing to honor warranties on iPhones and iPod Touches. The settlement provides cash payouts to potentially hundreds of thousands of iPhone and iPod Touch consumers who found Apple unwilling to repair or replace their faulty phones under Apple's one-year standard or a two-year extended warranty. Apple chief litigation counsel Noreen Krall signed the agreement for the company. The settlement, which comes in a lawsuit filed in a San Francisco federal court, will need court approval.

According to allegations in several lawsuits combined in the San Francisco court, no matter what the problem, Apple refused to honor warranties if a white indicator tape embedded in the phone near the headphone or charging portals had turned pink or red. However, the tape's maker, 3M, said humidity, and not water contact, could have caused the color to at least turn pink. Affected devices include the original iPhone, iPhone 3G, iPhone 3GS, and the first-, second and third-generation iPod Touch. Payouts are around $200 and could be less or double based on the number of claims submitted. Jeffrey Fazio, who is with the firm Fazio Micheletti, located in San Roman, California, represents the Plaintiffs in the case. He did a very good job in a most interesting case.

Source: Wired.com

Skechers $40 Million Settlement Approved By Court

A federal judge has approved the $40 million class-action settlement filed by the Federal Trade Commission, which requires Skechers USA to reimburse customers who purchased shoes from their "Shape Up" sneakers line between 2008 and 2012. As we reported in the May issue, the lawsuit charged Skechers with false advertising. U.S. regulators said that the shoe company claimed that "Shape-Ups" could help customers tone their legs and lose weight, despite scanty scientific evidence. David Vladeck, director of the FTC's Bureau of Consumer Protection, announced the court's approval of the settlement last month:

> *Skechers' unfounded claims went beyond stronger and more toned muscles. The company even made claims about weight loss and cardiovascular health. The FTC's message, for Skechers and other national advertisers, is to shape up your substantiation or tone down your claims.*

More than 500,000 customers who purchased the shoes can receive refunds for $40 to $84 worth of shoes from the "Shape Up" line. The FTC and Skechers actually reached the settlement agreement last year, but it took several months to bring it to where it could receive court approval.

Source: UPI.com

5 Myths About Home Fire Sprinklers

The Insurance Institute for Business & Home Safety (IBHS) is helping to dispel five common myths about fire sprinklers. IBHS highlighted the benefits of home sprinklers to kick off Fire Safety and Awareness Week, which was part of National Building Safety Month in May. I am setting out below some good information relating to home fire sprinklers made available from IBHS.

5 MYTHS ABOUT HOME FIRE SPRINKLERS

- **When one sprinkler goes off, all the sprinklers activate.**
  - The sprinkler heads react to temperatures in each room individually, allowing only the sprinkler closest to the fire to activate. In fact, 90 percent of fires are contained by the operation of just one sprinkler.
- **A sprinkler could accidentally go off, causing severe water damage to a home.**
  - Records show that the likelihood of this occurring is very remote. In addition, residential fire sprinklers are designed and tested to minimize such accidents.
- **Water damage from a sprinkler system will be more extensive than fire damage.**
  - The sprinkler system will limit a fire's growth. Therefore, damage from a residential sprinkler system will be much less severe than the smoke and fire damage if the fire had continued unabated, or the water damage caused by firefighting hose lines.
- **Home sprinkler systems are expensive.**
  - The cost of installing home fire sprinklers averages $1.61 per square foot for new construction, according to the Home Fire Sprinkler Cost Assessment report produced by the Fire Protection Research Foundation. To put the cost of a sprinkler system into perspective, that is roughly the same amount people pay for carpet upgrades, a paver stone driveway or a whirlpool bath—none of which save lives.
- **Requiring residential fire sprinklers will inhibit new home construction.**
  - A 2009 study conducted on behalf of the National Fire Protection Association (NFPA) compared residential home construction in four counties in Maryland and Virginia—two with sprinkler mandates and two without. The study concluded the presence of sprinkler mandates did not have a negative effect on the number of homes being built.

A residential fire occurs every 87 seconds, according to the U.S. Fire Administration (USFA), with half of all home fire deaths occurring between 11 p.m. and 7 a.m. Residential fire sprinklers can contain a fire and may even extinguish it before firefighters arrive, according to the Home Fire Sprinkler Coalition. This provides valuable extra time to get everyone out of the house. Sprinklers reduce civilian fire deaths by an estimated 83 percent, reduce direct property damage by more than two-thirds per fire and are responsible for an estimated 65 percent reduction in firefighter injuries, according to the NFPA.

The District of Columbia adopted a fire sprinkler installation building code requirement for all residences built after Jan.1, 2011. The result—fire deaths declined in the District from 33.4 in 2009 to 8 in 2011 and 2012 combined. Maryland's fire sprinkler requirement in newly built, multi-family dwellings is cited as a significant factor in the 22 percent drop in fire-related deaths in the state in 2012. Julie Rochman, IBHS president and CEO, stated:

> *There is no disputing the fact that residential fire sprinklers can save lives and prevent significant property damage. To that end, IBHS urges state lawmakers to protect the lives, safety and welfare of their constituents by adopting a residential fire sprinklers requirement for all new homes in their state building code.*

All states should have up-to-date fire sprinkler installation building codes. Those that don't have existing codes should enact codes. This is a matter of safety and an important matter for all homeowners and business owners.

Source: *Claims Journal*

TILA Bans Mandatory Arbitration Provisions In Mortgage Loans

It should be noted that the Truth in Lending Act (TILA) ban on mandatory arbitration provisions in certain mortgage loans takes effect this month. The prohibition — affecting loans with applications received on or after June 1, 2013 — applies to consumer credit transactions secured by dwellings, including home equity lines of credit secured by principal dwellings.

Although this prohibition does not affect arbitration provisions in existing documents, few mortgage lenders currently use arbitration agreements. There is a reason for that and it's not because the lenders believe arbitration is a bad thing. Several years ago, both Fannie Mae and Freddie Mac stopped purchasing any loans containing mandatory arbitration provisions, which discouraged lenders from including such provisions. But this ban will prevent all lenders from including mandatory arbitration provisions in certain mortgage loans. That's good news for consumers.

Source: www.cfpbmonitor.com

XXI. RECALLS UPDATE

As you will see a very large number of safety-related recalls are being reported in this issue. We have included some of the more significant recalls that were issued in May. 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.

BMW Recalls 220,000 Vehicles In Widening Airbag Issue

BMW has recalled about 220,000 vehicles worldwide from model years 2002 and 2003 as part of a wider recall affecting airbags made by supplier Takata Corp. The latest recall includes BMW's popular 3-Series sedans, coupes, convertibles and station wagons. Last month, 3.4 million vehicles worldwide made by Toyota Motor Corp, Nissan Motor Co, Honda Motor Co and Mazda Motor Corp were recalled because of the airbags made by Takata, the world's second-largest manufacturer of airbags and seatbelts. About 1.3 million of those vehicles are in the United States.

In the United States, said 42,080 BMW vehicles will be recalled. BMW said that it was not aware of any injuries or accidents related to the issue, nor of any improper deployments of the airbags in its vehicles. In each of the recalls, the Takata-made airbags for the front passenger seat may not inflate correctly because of a manufacturing defect in the propellant used in the airbag inflator. As a result, there is a risk of fires starting or of passengers being injured by metal fragments shooting up toward the windshield or down into the passenger foot well.

In addition to the 3-Series models from 2002 and 2003, BMW M3 Coupe and M3 Convertible models are involved in the recall. The Takata airbags involved in the BMW recall were made from April 2000 to September 2002 at Takata's plant in Moses Lake, Wash., BMW's NHTSA report said. At that plant, propellant components in the airbags may have been produced with an insufficient compaction force, according to NHTSA. The NHTSA report also said inflator propellant components made from October 2001 to October 2002 at Takata's plant in Monclova, Mexico, may have been exposed to an uncontrolled environment with too much moisture. If either of these conditions occur, over time the inflator propellant could degrade, which could create a condition of excessive internal pressure within the airbag system when the bag deploys, NHTSA's report on BMW said.

In April Takata said it learned of the problem from an automaker it did not identify in October 2011 after an airbag deployment in Japan. It learned of a Honda accident in Puerto Rico the following month, according to documents filed with NHTSA. From February 2012 through June last year, Takata could not reproduce the problem in testing, but that autumn the supplier was alerted to three additional incidents—two in Puerto Rico and one in Maryland—according to the documents filed with NHTSA. BMW said that including all five manufacturers with cars involved in the massive Takata recall, only about a dozen or so improper deployments of airbags have been reported among more than 3.4 million vehicles.

Chrysler Recalls Almost 470,000 Jeep SUVs

Chrysler Group LLC has recalled 469,000 Jeep SUVs worldwide because they can shift into neutral without warning on startup. The recall affects 2005 to 2010 Grand Cherokees and 2006 to 2010 Commanders. U.S. safety regulators say cracks in a circuit board can cause a faulty signal as the SUVs are being started. If the vehicles shift into neutral they can roll away, increasing the risk of crash and personal injury. Chrysler says the problem has caused 26 crashes and two injuries.

Chrysler is notifying owners and dealers will update software to take care of the problem. Chrysler found cracks in a circuit board that turns the four-wheel-drive system on and off. Repairs will be made at no cost to owners. The recall covers 295,000 vehicles in the U.S., 28,500 in Canada and 4,200 in Mexico. The remaining 141,000 are outside North America. The company says in documents filed with the National Highway Traffic Administration (NHTSA) that it began looking into the problem after a customer complained that an SUV rolled away in January of 2012 after being started remotely.

Chrysler Recalls Certain Jeep Wranglers

Chrysler Group LLC also has recalled certain model year 2008-2012 Jeep Wrangler right-hand drive vehicles manufactured February 1, 2007, through October 10, 2011. The affected vehicles have airbag clockspring assemblies that could experience broken airbag circuits. In the event of a crash necessitating airbag deployment, a broken electrical circuit in the airbag clockspring wiring assembly can lead to non-deployment of the driver-side frontal airbag, not properly protecting the driver, increasing the risk of injuries.

Chrysler will notify owners, and dealers will replace the clockspring and add a steering wheel dust shield, free of charge. The recall was to have begun in May 2013. Owners may contact Chrysler at 1-800-247-9753. This recall supercedes NHTSA recall 11V-528. Chrysler's recall campaign number is M31. Owners may also contact the National Highway Traffic Safety Administration Vehicle Safety Hotline at 1-888-327-4236 (TTY

1-800-424-9153), or go to www.safercar.gov.

Chrysler Recalls 2013 RAM 1500 Trucks

In another recall, Chrysler Group LLC recalled certain model year 2013 RAM 1500 trucks manufactured June 25, 2012, through December 12, 2012. In the affected vehicles, the coolant bypass valve may stick in a position that does not allow coolant to flow into the heater core. These vehicles fail to conform to the requirements of FMVSS No. 103, "Windshield Defrosting and Defogging Systems." Without a properly working windshield defrosting system, a buildup of mositure or ice could limit the driver's ability to see, increasing the risk of a crash.

Chrysler will notify owners, and dealers will replace replace the suspect coolant valves along with an updated calibration, free of charge. The recall is expected to begin this month. Owners may contact Chrysler at 1-800-247-9753. Chrysler's recall campaign number is N25. Owners may also contact the National Highway Traffic Safety Administration Vehicle Safety Hotline at 1-888-327-4236 (TTY 1-800-424-9153), or go to www.safercar.gov.

GM Recalling Some 27,000 Cadillac SUVs

General Motors Co. has recalled more than 27,000 Cadillac SUVs worldwide because the wheels can fall off. The company says the recall affects the 2013 Cadillac SRX with 18-inch wheels. Canadian safety regulators say the wheel nuts may not have been tightened enough at the factory. GM says the problem hasn't caused any crashes or injuries, and no wheels have fallen off vehicles. Dealers will rotate tires and tighten the nuts at no cost to the owners. The recall affects almost 19,000 SUVs in the U.S. and another 913 in Canada. The rest were exported to other countries.

GM Recalls Vehicles For Battery Fire Risk

General Motors has recalled Chevrolet Malibu Eco and Buick LaCrosse and Regal sedans that have the eAssist mild hybrid system because of a problem with the system control electronics that can create a fire risk. The recall covers 38,197 cars—2013 Malibu Ecos and the Buicks from the 2012 and 2013 model years. According to documents on the NHTSA website, the "Generator Control Module" circuitry in the trunk may malfunction, causing gradual loss of battery charge and an indicator light to go on. The documents say that "if the vehicle is continued to be driven, the engine may stall and/or the vehicle may not start. In addition, there may be a burning or melting odor, smoke and possibly a fire in the trunk." The stalling problem could create a safety hazard.

The battery drain affects the vehicle's conventional 12-volt battery and not the lithium-ion battery that's part of the hybrid system. GM is notifying owners. Dealers will test the GCM and replace it, as necessary. Owners should not drive the car with the warning light on and should take the car to a GM dealer. More information is available from GM at 800-521-7300 (the GM recall number is 13136) and from NHTSA's safety hotline at 888-327-4236 (TTY 800-424-9153), or go to www.safercar.gov.

Nissan Recalls 841,000 Vehicles Due To Steering Wheel Glitch

Nissan Motor Co Ltd has recalled about 841,000 vehicles worldwide including the Micra compact car, also known as the March, as a result of a steering wheel glitch. Nissan is recalling certain models of the Micra compact car produced in Britain and Japan between 2002 and 2006, as well as the Cube, produced in Japan around the same period. It is pulling back vehicles in Japan, Europe, Asia, Oceania, Africa, Latin America and the Middle East.

The bolt used in the steering wheel of these cars may not have been properly tightened and at worst the steering wheel may not function, Nissan said in a statement filed with the Japanese transport ministry. No accidents, injuries or deaths have been reported, a Nissan spokeswoman said. Nissan will fix the glitch by either tightening the bolts or replacing the steering wheel with a new one. The repair will take about 40 minutes, according to the company.

Nissan Recalls More Than 123,000 Altimas For Spare Tire Issue

Nissan Motor Co Ltd has also recalled more than 123,000 Altima sedans in the United States to adjust the inflation of the spare tires, which could be over- or under-inflated. About 123,308 Altimas from model year 2013 are affected by the recall. Due to a production issue, which the carmaker says it has corrected, the spare tires in some of the recalled cars may have too much or not enough air in them. In some cases, National Highway Traffic Safety Administration (NHTSA) said the over inflation may have been significant enough to hurt the tires' structural integrity, causing them to fail and increasing the risk of a crash.

According to Nissan, there were no reports of accidents or injuries related to the issue. The problem was discovered by a dealer and an investigation by Nissan found the problem was caused by a malfunctioning pressure regulator at its Canton, Miss., plant, according to NHTSA. Nissan will check the spare tires and adjust the inflation as needed. If after further investigation by Nissan the tire pressure exceeded a certain threshold, the spare tire would be replaced. The recall was to begin on May 3 and from all indications it did.

Subaru Recalls Certain Vehicles For Steering Column Disengagement

Subaru has recalled certain model year 2013 Outback and Legacy vehicles manufactured from February 15, 2012, through June 15, 2012. In the affected vehicles, the inner and outer shafts of the steering column assembly may become disengaged from one another. If the shafts become disengaged, the driver would lose the ability to steer the vehicle, increasing the risk of a crash.

Subaru is notifying owners, and dealers will replace the steering column assembly with a new one, free of charge. The recall began on May 14, 2013. Owners may contact Subaru at 1-800-782-2783. Subaru's recall campaign number is WQI-45. Owners may also contact the National Highway Traffic Safety Administration Vehicle Safety Hotline at 1-888-327-4236 (TTY 1-800-424-9153), or go to www.safercar.gov.

Mercedes-Benz Recalls Certain Cars

Mercedes-Benz USA, LLC has recalled certain model year 2013 GL350 BlueTEC, GL450 4MATIC, GL550 4MATIC and GL63 AMG vehicles manufactured May 15, 2012, through October 4, 2012. The second row seat belt anchor fitting bolts may not be properly torqued. If the bolts are not properly torqued, the seat belt anchor bolts may continue to loosen and, in the event of a crash, the belted occupant may not be properly restrained, increasing the risk of injury.

Mercedes is notifying owners. Dealers will check and tighten the bolts of the seat belt anchor fittings as necessary, free of charge. The recall campaign began last month, in May 2013. Owners may contact Mercedes at 1-800-367-6372. Owners may also contact the National Highway Traffic Safety Administration Vehicle Safety Hotline at 1-888-327-4236 (TTY 1-800-424-9153), or go to www.safercar.gov.

Elite Trailer Recalls Trailers

Elite Trailer Manufacturing has recalled certain model year 2012 Livestock Gooseneck trailers manufactured November 17, 2011, through January 17, 2012. These vehicles are equipped with Carlisle hydraulic brake actuators. One of the rotating components in the hydraulic brake pump missed a heat treating operation causing the actuator to wear at a higher than normal rate. As a result, the hydraulic pump could fail and result in a loss of braking ability in the trailer. Loss of braking ability can lead to loss of control of the trailer, increasing the risk of a crash, serious injuries, or property damage.

Elite Trailer has notified all affected owners and reportedly, dealers have replaced all of the defective actuators. Owners can contact Elite Trailer at 1-800-657-7305. Customers can also contact the National Highway Traffic Safety Administration's Vehicle Safety Hotline at 1-888-327-4236 (TTY: 1-800-424-9153); or go to http://www.safercar.gov.

Triumph Recalls Motorcycles

Triumph Motorcycles America, LLD has recalled certain model year 2012-2013 Speed Triple ABS motorcycles manufactured June 2012, through January 2013. The transmission on some motorcycles may have been built with an incorrect detent spring. As a result of the incorrect spring, the transmission may inadvertently shift out of gear while the motorcycle is moving, increasing the risk of a crash.

Triumph will notify owners, and dealers will install a revised detent spring, free of charge. The recall is expected to begin this month. Owners may contact Triumph at 1-678-854-2010 for more information. Customers may contact the National Highway Traffic Safety Administration's Vehicle Safety Hotline at 1-888-327-4236 (TTY: 1-800-424-9153); or go to http://www.safercar.gov.

More Motorcycles Recalled By Triumph

Triumph Motorcycles America, Ltd. has also recalled certain model year 2012-2013 Explorer and Explorer XC motorcycles. The Gross Vehicle Weight Rating data on the certification label is incorrect. The motorcycles fail to comply with the requirements of Part 567, "Certification." The incorrect label could cause the operator to overload the motorcycle, which may result in handling issues and/or tire failure, increasing the risk of a crash.

Triumph is notifying owners and will replace the labels with corrected GVWR data, free of charge. At press time, the manufacturer had not provided a notification schedule. Owners can contact Triumph at 1-678-854-2010 for more information. Owners can also contact the National Highway Traffic Safety Administration Vehicle Safety Hotline at 1-888-327-4236 (TTY 1-800-424-9153), or go to www.safercar.gov.

Surly Bikes Recalls Bicycle Forks Due To Fall Hazard

About 975 Surly Pugsley Bicycle Forks have been recalled by Surly Bikes, of Bloomington, Minn., a wholly owned brand of Quality Bicycle Products, Inc. The bicycle fork can bend above the disc brake mount, posing a fall hazard to the rider. This recall involves Surly Pugsley 100mm and 135mm bicycle forks made of tubular chromoly steel. "Surly" is printed on both legs of the fork. "Pugsley" is printed on the fork's packaging and on the frame of bikes with the recalled forks. Surly Pugsley 100mm bicycle forks were sold individually only. They are black, have triple water bottle mounts on each side, rack/fender mounts on the top and bottom and have date code 2012 03 20 stamped on the steerer tube.

Surly Pugsley 135mm bicycle forks were sold individually and as part of 2013 model year complete bicycles. The 135mm forks are black, yellow or red and are stamped with date code 2012 06 19 on the steerer tube. Model number FK3175, FK3181 or FK0706 is printed on the packaging for forks sold individually. Surly Pugsley bicycle models FM3110-3114, FM3175-79, BK3110-14 and BK3175-79 were sold with the recalled forks as original equipment. The bicycle's model number is printed on the bicycle's packaging.

Surly Bikes says it has received one report of a fork bending above the disc brake mount. It says no injuries have been reported. Bicycle stores nationwide and various websites sold the bikes from May 2012 through February 2013 for about $100 individually or on Surly Pugsley bicycles for about $1,750. Consumers should immediately stop using bicycles equipped with the recalled Surly bicycle fork and contact a Surly dealer for a free inspection and replacement or a full refund. Contact Surly Bikes toll-free at 1-877-946-9333 from 8 a.m. to 6 p.m. CT Monday through Friday, or online at www.surlybikes.com; click on the Safety Recall button for more information. Photos are available at http://www.cpsc.gov/en/Recalls/2013/Surly-Bikes-Recalls-Bicycle-Forks/

Dometic USA Recalls RV Power Awning Kits

Dometic USA, a manufacturer of high-quality products for the RV industry, has recalled RV power awning kits. The company announced that it has identified a potential condition related to its 9100 Power Awnings, Weatherpro Awnings and Motor Service Kits and initiated the recall and replacement of all the affected power awning units. In April 2013, the Company had determined that if an important step was bypassed in the installation of the power awnings, this could potentially damage the awning's motor. As a result, if damage does occur to the motor, the awning can unfurl unexpectedly, while the coach or vehicle is at rest or in transit.

This potential condition affects only the power awning products manufactured between February 13, 2013, through April 9, 2013. The serial numbers appear on a label on the right underside of the fabric and on the roller tube. On the power awning field Motor Service Kit, the serial number appears on the end cap of the shipping tube.

Dometic notified NHTSA on April 19, 2013 and a NHTSA campaign number of 13E-019 was assigned. All RV manufacturers that purchased power awning units included in the recall are also expected to issue notification to NHTSA in accordance with federal regulations. Once Dometic investigated early reports in April, the company says it was able to reproduce a failure mode only after changing the sequence of installation steps in the power awning installation process. After this discovery, the company notified its extensive OEM and dealer base of the problem and provided specific instructions on how to handle it and secure a replacement unit.

The company says it has identified 27,098 affected units. It started replacing units with new awning motor kits before the official recall notice was issued. The company has advised its OEMs and aftermarket dealers to call a toll-free number at 1-888-943-4905 for specific replacement instructions. End-user customers are still being notified directly by the company's dealers. Dometic has also told its aftermarket dealers to instruct their end-user customers not to drive their RVs if the recalled power awnings have been installed on their vehicles. End-user customers who believe their RV may be affected by this recall can obtain specific instructions on how to make the determination or obtain repair by calling the toll-free number 1-888-943-4905.

Kumho Tire Recall

Kumho Tire U.S.A., Inc. (Kumho) has recalled certain Kumho Solus KH25 passenger car tires, size 225/45R17, produced in the weeks of 3411 through 2512 (August 21, 2011 through June 23, 2012). The affected tires could develop cracking in the sidewall, which could result in air loss. Rapid air loss while the vehicle is in use may result in a tire failure that could cause a crash.

Kumho is notifing owners by mail, instructing them how to return the tires and receive reimbursement. The safety recall began May 6. Owners may contact Kumho at 1-909-428-3999. Owners may also contact the National Highway Traffic Safety Administration Vehicle Safety Hotline at 1-888-327-4236 (TTY 1-800-424-9153), or go to www.safercar.gov.

Toro Recalls Zero-Turn Riding Mowers Due To Fire Hazard

The Toro Co., of Bloomington, Minn., has recalled its Toro® Z Master® Riding Mowers. The idler pulley can rub against the mower's fuel tank, posing a fire hazard. This recall involves 2012 and 2013 Toro Z Master Commercial 2000 Series ZRT riding mowers. The mowers are red and black. "Toro" and "2000 Series" are printed on the side and "Z Master Commercial" on the front of the mowers. When viewed from the operator's seat, the model and serial numbers are on a metal plate located at the front of the mower, below the seat, on the right-hand side. The following models and corresponding serial numbers are included in this recall: model number 74141 with serial numbers ranging from 312000101 to 312000784 and 313000101 to 313000364; model number 74143 with serial numbers ranging from 312000101 to 312000881 and 313000101 to 313000432; and model number 74145 with serial numbers ranging from 312000101 to 312001178 and 313000101 to 313000443. Toro has received six reports of incidents. No injuries have been reported.

Consumers should stop using the recalled mowers immediately and contact a Toro dealer to schedule a free repair and/or to check if the repair has already been made to the mower. Toro has contacted registered owners of the recalled mowers. Contact Toro toll-free at 1-855-493-0090, from 8 a.m. to 5 p.m. CT Monday through Friday, or online at www.toro.com; click on Product Recall Information on the bottom right-hand side of the page for more information.

Insolroll Recalls Roller Shades With Solar And Rechargeable Motors Due To Fire Hazard

About 1,500 Insolroll Solar Powered and Rechargeable Motor Roller Shades have been recalled by Insolroll Window Shading Systems, of Louisville, Colo. The motor of these roller shades has a built-in lithium battery that can overheat while being charged, posing a fire risk. The recall includes Insolroll roller shades available with a solar powered motor (model #IN-SOL-R) or rechargeable motor (model #IN-RCG-R). The model numbers are printed on the body of the motor located inside the roller tube. These rechargeable motors on Insolroll interior solar screen and blackout shades have built-in lithium ion batteries that are used with a solar panel charger or plug-in charger.

The 18-inch width by 1-5/16-inch high solar panel charger is white on the interior side and black toward the exterior. The plug-in charger is black and measures about 3 inches high by 1-5/8 inch wide by 1-1/16 inch deep with a 13-foot cord. The motors raise and lower the shades controlled by a hand-held remote control or surface-mounted wall switch. The manufacturer's name is printed on a sticker on the roller tube that can be seen by taking down the shade and removing the fabric completely. Insolroll has received one report of the motor on the shade overheating and creating a fire. No injuries have been reported, according to the company.

The shades were sold at Insolroll independent window covering installer retailers nationwide from June 2012 through March 2013 for between $400 and $700 per window shade. Consumers should immediately unplug the solar panel charger or unplug the plug-in charger and contact their Insolroll dealer to receive a free replacement motor and installation instructions. If the dealer is unknown, consumers may contact Insolroll for a list of dealers at 1-800-447-5534 from 8 a.m. to 5 p.m. MT Monday through Friday or online at www.Insolroll.com and click the Product Recall button for more information.

Nourison Recalls Rugs Due To Fire Hazard

About 1,400 Area Rugs have been recalled by Nourison Industries Inc., of

Saddle Brook, N.J. The rugs fail to meet federal flammability standards, posing a fire hazard to consumers. This recall involves Nourison-branded I-CANDI collection polyester shag rugs. They were sold in one color, denim, consisting of a mix of dark blue, light blue and grey shades. The rugs measure 5-by 7-feet and 7-feet 6-inches by 9-feet 6-inches. "ICANDI COLLECTION" and "Nourison" are printed in black on a label affixed to the back of the rug.

The rugs were sold exclusively at The Home Depot stores in the following regions: Washington D.C.; San Diego, Calif.; San Francisco, Calif.; Las Vegas, Nev. and Houston, Texas in September 2012 for between $179 and $389. Consumers should immediately stop using the recalled rugs and contact Nourison for instructions on how to return the rug for a full refund or replacement, including shipping. Consumer Contact: Nourison at (800) 223-1110 ext. 2358 from 9:30 a.m. to 4:30 p.m. ET Monday through Friday or online at www.nourison.com, then click on Recall Information at the bottom of the page for more information. Photos are available at http://www.cpsc.gov/en/Recalls/2013/Nourison-Recalls-Rugs/.

MTD Products Recalls Cub Cadet Commercial Lawn Mowers

About 2,100 Cub Cadet 2011 Commercial Zero Turn Mowers have been recalled by MTD Products Inc, of Cleveland, Ohio. Fuel can leak from the vent valve grommet on top of the fuel tank during operation, posing a risk of fire. This recall involves eight 2011 model Cub Cadet commercial zero-turn lawn mowers. Models included in the recall are: M54-KH, M60-KH, M60-KW, M72-KW, S6031-KW, S7237-KW, TANK L48 and TANK L60. Mowers included in the recall were manufactured between January 2011 and December 2011. A label located on the frame under the foot rest lists the model number and the month and year date of manufacture (DOM). Cub Cadet has received 106 reports of fuel leaking or seeping from the top of the tank, including one report of a fire. No injuries have been reported.

The lawnmowers were sold at Independent Cub Cadet dealers nationwide from January 2011 through January 2013 for between $7,700 and $18,700. Consumers should immediately stop using the recalled mowers and contact an authorized Cub Cadet service dealer for a free repair. Cub Cadet is contacting its customers directly. Cub Cadet can be contacted toll-free at 1-888-848-6038, from 8 a.m. to 5 p.m. ET Monday through Friday, from 9 a.m. to 5 p.m. ET Saturday, or online at www.cubcadet.com; click on "Product Recalls" for more information.

Family Dollar Stores Recalls Optimus Tower Quartz Heaters

About 19,640 portable heaters were recalled by Family Dollar Services Inc., of Matthews, N.C. The heaters can overheat, posing a fire hazard. Optimus Tower Quartz Heaters are portable electric tower heaters that are about 10 inches wide, 25 inches tall and 9 inches deep. The heaters have a white metal casing with a white plastic top, a wire cage protecting the heating elements and vent slits at the bottom. The front section of the top has the brand name Optimus, a power light, a caution light and two dials. One dial turns the heater on or off and selects the power of either 750 watts or 1500 watts. The other control knob selects the heat range between high and low.

The rear section of the top has fire, high temperature and shock warnings and diagrams of the heater being used in 750 watt mode and 1500 watt mode. Model number "H-5232" is on a silver sticker on the bottom of the heater below the words "Optimus" and "Quartz Heater." Family Dollar Stores has received 10 reports of overheating, including some reports of temperature knobs melting. The firm has not received reports of injury, fire or property damage.

The heaters were sold exclusively at Family Dollar Stores from September 2012 through December 2012 for about $35. Consumers should immediately unplug and stop using the heaters and return the product to any Family Dollar Stores location for a full refund. Contact Family Dollar Stores at 1-800-547-0359 from 8:30 a.m. to 5 p.m. Monday through Friday, or online at www.familydollar.com, then click on Product Recalls in the Help section at the bottom of the page.

Meijer Recalls Touch Point Baseboard Convection Heaters Due To A Fire Hazard

About 4,560 Touch Point Portable Baseboard Convection Heaters have been recalled by Meijer Distribution Inc., of Grand Rapids, Mich. The heaters can overheat, posing a fire hazard to consumers. This recall involves Touch Point brand portable, electric baseboard convection heaters with model BBC-1500 and date code 0611. "Touch Point" can be found on the front of the product and the model and date code can be found on a silver sticker on the back side of the product. The heaters were manufactured in June 2011. The heaters are black and measure approximately 30 inches long by 6 inches deep by 12 inches high. Meijer has received two reports of overheating incidents, including one report of a fire that resulted in minor property damage. No injuries have been reported.

The heaters were sold exclusively at Meijer stores from September 2011 through February 2013 for about $50. Consumers should immediately stop using the recalled heaters and return the product to a Meijer customer service desk for a full refund. Contact Meijer at 1-800-927-8699 anytime, or online at www.meijer.com and click on Product Recalls under the Help section.

Optimus Recalls Portable Electric Heaters Due To Fire Hazard

About 355,000 Portable Infrared Radiant Quartz Electric Space Heaters have been recalled by Optimus Enterprise Inc., of Anaheim, Calif. The heater design can fail to prevent ignition of nearby combustible materials that come in contact with the unit, posing a fire hazard to the consumer. This recall involves two models of Optimus Infrared Quartz Radiant heaters with model numbers H-5210, produced in 2011, and H-5211, produced in 2012. The model number and the year of production appear on a label on the back of the heater. The recalled heaters are white and are approximately 12 inches wide by 13 inches tall by 6 inches deep. "Optimus" is printed on the top left of the heater. The control knob is located on the top right side of the heater.

Consumers should immediately stop using the recalled heaters and contact Optimus to request a free replacement heater. Consumers have the option of a comparable ceramic heater or new model quartz radiant heater, model H-5510, which will be available after August 2013. Contact Optimus Enterprise Inc. toll-free at 1-888-672-5832 from 10 a.m. to 12:30 p.m. and 1:30 p.m. to 3 p.m. PT Monday through Friday, or online at www.optimusent.com. Click on "recall" for more information. Consumers can also email Optimus at return.optimus@gmail.com.

LEM Products Distribution Recalls 5-Tray Food Dehydrators

LEM Products Distribution, LLC of West Chester, Ohio, has recalled its 5-Tray Dehydrator with Digital Timers. The fan can fail, causing the unit to overheat and pose a fire hazard. This recall involves 5-tray food dehydrators. The dehydrators are gray and are made of plastic and metal. The model number 1009 is on a label located on the back panel with the company's contact details. The "LEM" logo is embossed on the top of the unit, which has a panel with the digital timer, the on/off switch and a temperature control knob. The UPC code is printed on the bottom of the packaging and reads 734494010091. LEM Products Distribution says it has received two reports of fan failure, both resulting in fire in the units. In one incident the consumer was close by and prevented a fire by carrying the unit outside. There were no injuries reported.

The products were sold by Bass Pro Shops, Gander Mountain, Sportsman's Warehouse and other mass merchandisers and retailers nationwide and online at Amazon.com and www.lemproducts.com from August 2010 through February 2013 for about $160. Consumers should immediately stop using the dehydrator and contact LEM Products Distribution for instructions on free shipping and repair of the recalled product. LEM is offering a one-year warranty extension and a $10 discount coupon, which can be used toward a LEM catalog or online purchase, to all consumers who return their recalled units for repair. Contact LEM Products Distribution toll free at 1-877-536-7763 from 8 a.m. to 5 p.m. ET Monday through Friday or online at www.lemproducts.com and click Warranty and Recall at the bottom of the page for more information.

Avon Recalls Microwave Popcorn Maker Due To Burn And Fire Hazards

Okay Enterprise Co., Ltd., of Kunshan City, Taiwan, has recalled about 54,700 microwave popcorn makers. When cooked too long, the popcorn can overheat in this popcorn maker and ignite, posing a fire or burn hazard to consumers. This recall involves Avon's Microwave Popcorn Maker sold in the U.S. with item number 474-105 in Avon's brochures and on its website. The recalled plastic popcorn maker consists of a clear tub and a yellow vented lid. The tub is 6 inches high and measures 7.5 inches in diameter and has three feet at the base. "DO NOT REMOVE WITH BARE HANDS. HOLD UNIT WITH GLOVES" is molded into the plastic of the lid and "USE IN MICROWAVE OVEN ONLY" is molded into the underside of the bowl. "Made in Taiwan" is printed on an adhesive label located on the underside of the bowl. Avon says it has received 20 reports of the popcorn makers overheating, including two incidents involving fires that resulted in damage to microwave ovens. No injuries have been reported, according to the company. The makers were sold through independent Avon sales representatives and online at www.avon.com from October 2012 through February 2013, for about $13.

Consumers should stop using the popcorn maker immediately and contact Avon to receive a copy of the updated instructions on how to safely use the microwave popcorn maker. The new instructions can also be obtained from independent Avon representatives and on Avon's website under the Product Recall section. Contact Avon Products, 1-800-367-2866 from 8 a.m. to 8:30 p.m. ET Monday through Friday, or online at www.avon.com. Click on Product Recall at the bottom of the page for new instructions and more information.

Lea Industries Recalls Children's Beds Due To Fall Hazard

Lea Industries, High Point, N.C., has recalled Lea Panel, Loft and Bunk Beds. The beds' side mattress support rails can break, posing a fall hazard. This recall involves the side rails on 34 different Lea children's bed collections, including loft, bunk and panel styles in twin, full and queen sizes. The wooden beds were sold in various wood finishes and paint colors, including black or white. The beds have two side mattress support rails connecting the headboard to the footboard and slats or a Bunkie board to support the mattress. Item numbers and purchase order numbers included in this recall are listed below. The date code, rail item number and purchase order number are located on a white label on the inside of one of the side rails. Date codes between August 2008 and March 2013, shown as 8-2008 through 3-2013, are included in this recall. Platform beds manufactured since 2010 are not included in this recall.

There have been 22 reports of incidents involving the recalled beds in the U.S. since 2009 and one in Canada. Two injuries were reported. In a 2009 incident in Madison, Wis., an 11-year-old girl was placing a fitted sheet on the top bunk when the child, mattress and bed supports collapsed on her 6-year-old sister in the bed below. The 6-year-old was treated at a hospital emergency department for a head injury involving a cut to her face.

The beds were sold at Direct Buy stores and furniture stores nationwide, and online at Amazon.com and various other websites from August 2008 through March 2013 for between $400 and $3,000. Consumers should immediately stop using the beds and contact Lea Industries to receive free replacement side rails for the beds toll-free at 1-888-770-7116, from 8 a.m. to 7 p.m. ET Monday through Friday, or online at www.leaindustries.com; click on Recall for more information.

Louisville Slugger OneX Fastpitch Softball Bats Recalled

About 13,000 Louisville Slugger® OneX Fastpitch softball bats have been recalled by Hillerich & Bradsby Co. of Louisville, Ky. The bat's barrel can separate from the handle during use and strike people nearby. The recalled bats include all OneX style bats. The composite bat has a white and grey shell with blue and yellow lettering. "Louisville Slugger oneX" appears twice on the barrel, in yellow in one place and in blue lettering on the other side. The "X" is yellow in both places. Approximately 170 bat handle separations have been reported to the company. The company is aware of one report of a barrel from a broken bat hitting a player in the shin. The bats were sold nationwide at sporting goods and other retail stores and distributed to college amateur competitive softball teams from approximately May 2012 through February 2013 for about $350.

Consumers should immediately stop using the bat and contact Hillerich & Bradsby for a free replacement bat and the choice of an additional free item. Contact Hillerich & Bradsby at 1-800-282-2287 from 8 a.m. to 6:30 p.m. ET Monday through Friday or online at www.slugger.com; click on Recall for more information.

Powell Company Recalls Anywhere Lounger Bean Bag Chairs Due To Suffocation And Strangulation Hazards

About 6,300 Anywhere Lounger Bean Bag Chairs have been recalled by Powell Company, of Culver City, Calif. Bean bag chairs without a permanent zipper closure allow young children to unzip, ingest or inhale the small beads inside of the bean bag chair, posing a suffocation and strangulation hazard. The recalled Anywhere Lounger bean bag chairs are 100 percent polyester or 100 percent cotton and measure about 51 inches in height with a 43 inch wide base. Recalled colors include purple (item 199-B004), chocolate (item 199-B005), bayou blue (item 199-B006), pink (item 199-B007), lime green (item 199-B008), denim (item 199-B009), black and white (item 199-B012), striped black and white (item 199-B014), natural (item 199-B016) and camo (item 199-B017). The item number is printed on the product packaging and Powell Company is printed on the label on the bean bag chairs.

The bags were sold at furniture stores nationwide including W.S. Badcock, Value City Furniture, Nebraska Furniture Mart, and online at www.Groupon.com from June 2012 to February 2013 for about $100. Consumers should immediately take the Anywhere Lounger away from young children, inspect the bean bag chair to see if the exterior zipper can be opened. If the zipper on the chair can open, contact Powell Company to receive a free Safety Enhancement Repair Kit at (800) 622-4456 from 8 a.m. to 5 p.m. PT or online at www.powell-company.com. Click on Anywhere Lounger Safety Enhancement Kit for more information.

Symbios Medical Products Recalls GOPump And GOBlock Kits

Symbios Medical Products has recalled GOPump Rapid Recovery System kits and GOBlock Kits manufactured with flow control components assembled prior to July 2012. These products have been found to potentially cause excessively high flow rates, which presents a risk of patient toxicity and serious injury (e.g., seizure, dysrhythmia, death) due to the rapid influx of medication particularly in patients with low body mass or advanced age. To date, there have been five complaints received, two of which involved serious consequences. There have been no patient deaths reported. The root cause is understood and processes have been put in place to address the issue, according to the company.

This recall affects the entire United States and the District of Columbia. Distributors and clinical provider sites using these Symbios Medical Products have been notified of the affected product codes and lot numbers. Symbios is working to secure all affected product and have it returned. Products subject to this recall were distributed between April 1, 2011 and April 30, 2013. Recall action was begun immediately upon the knowledge of the product related issues.

Consumers or using customer sites with questions may contact the company via telephone at 1-317-225-4447, ext. 25, between the hours of 8 a.m. and 4 p.m. EST. Customers may also contact the company via e-mail at jcarty@symbios-medical.com. Adverse reactions or quality problems experienced with the use of this product may be reported to the U.S. Food and Drug Administration (FDA) online at http://www.fda.gov/MedWatch/report.htm or download a reporting form at http://www.fda.gov/MedWatch/getforms.htm (form available to fax or mail); or call FDA 1-800-FDA-1088

Dolls Recalled

The Land of Nod of Morton Grove, Ill., has recalled about 2,500 plush dolls because their hands can detach, posing a choking hazard. The recall involves plush handmade baby dolls in five styles and colors with the following names: Clara, Eleanor, Hannah, Lila and Rose. The all-fabric dolls measure about 12 inches tall. They are dressed in a one-piece printed floral fabric outfit with a white-lace trimmed hood over the head of the dolls. They were sold at Land of Nod stores and online at www.landofnod.com from October 2012 to March 2013 for about $30. Consumers should return the dolls to The Land of Nod for a merchandise credit. For more information, contact The Land of Nod at 1-800-933-9904 from 8:30 a.m. to 5 p.m. CT Monday through Friday or online at www.landofnod.com.

FDA Inspection Triggers Recall By Florida Pharmacy

The Food and Drug Administration has warned doctors and pharmacists to avoid drugs made by a Florida specialty pharmacy called The Compounding Shop, due to potential safety problems uncovered by health inspectors. The St. Petersburg, Fla.-based pharmacy has agreed to recall all of its sterile drugs and is in the process of notifying customers, the FDA said in a statement. The agency said health care professionals should quarantine drugs from the company and not administer them to patients. The Compounding Shop is a compounding pharmacy, which means it mixes custom formulations of drugs to meet doctors' specifications. The FDA has been cracking down on compounding pharmacies across the country, triggering several national recalls.

The wave of inspections was the result of the nationwide fungal meningitis outbreak last year tied to contaminated drugs from a Massachusetts pharmacy. As has been widley reported, the outbreak sickened more than 700 Americans and killed more than 50 others. The FDA said a recent inspection of The Compounding Shop raised concerns about sterility problems with company drugs that could lead to bacterial contamination. "If an injectable drug product that is intended to be sterile is contaminated, it could result in a life-threatening infection in patients," said Janet Woodcock, director of FDA's drug center, in a statement. Patients who received products from the pharmacy and have concerns should contact their doctor.

Abbott Recalls FreeStyle InsuLinx Blood Glucose Meters

Abbott has recalled FreeStyle Insulinx Blood Glucose Meters in the United States. At extremely high blood glucose levels of 1024 mg/dL and above, the FreeStyle InsuLinx Blood Glucose Meter will display and store in memory an incorrect test result that is 1024 mg/dL below the measured result. Blood glucose levels at 1024 mg/dL and above are very rare. However, if high blood glucose levels of 1024 mg/dL and above occur, they are a serious health risk that requires immediate medical attention. The FreeStyle InsuLinx Blood Glucose Meter measures sugar (glucose) in blood drawn from the fingertips of people with diabetes to monitor blood sugar levels. On April 15, 2013, Abbott Diabetes Care sent an Urgent Product Recall letter to all its affected customers. The FreeStyle InsuLinx Blood Glucose Meters were distributed from April 18, 2012, through April 1, 2013.

Consumers who are using the FreeStyle InsuLinx Meter should immediately take one of the following actions to address this issue with their meter: Access a software update to install on their meter to resolve the issue at www.freestyleinsulinx.com/swupdate. The software update will allow settings and historical data to be maintained on the meter. Consumers can contact Abbott Diabetes Care Customer Service at 1-866-723-2697 to expedite return and replacement of the FreeStyle InsuLinx meters at no charge. Replacements are available, and Abbott will send a meter immediately upon request. Health care professionals who have FreeStyle InsuLinx Blood Glucose Monitoring Kits were told to immediately discontinue dispensing them to patients.

To arrange for product return and replacement, call Abbott Diabetes Care customer service at 1-866-723-2697. Health care professionals and patients are encouraged to report adverse events or side effects related to the use of these products to the FDA's MedWatch Safety Information and Adverse Event Reporting Program: Complete and submit the report online at www.fda.gov/MedWatch/report.htm. Download form or call 1-800-332-1088 to request a reporting form, then complete and return to the address on the pre-addressed form, or submit by fax to 1-800-FDA-0178.

Once again, there has been an extremely 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.

XXII. FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

WENDI LEWIS

Wendi Lewis joined Beasley Allen in February 2008 as a Conversation Architect, writing and managing content for a website about mesothelioma. The blog-style website, myMeso.org, is designed to raise awareness about this asbestos-related cancer. The firm eventually added additional websites to provide the public with information about a variety of cases we handle. They were combined into a new site, RightingInjustice.com. This site provides information about many of the important cases our lawyers are currently working on, as well as information about consumer products, recalls, access to justice, and other issues to help educate consumers about their legal rights.

Wendi currently serves as Communications Director for the firm, acting as content manager, copy writer and editor for the firm's primary website, beasleyallen.com, and associated websites. She also helps to promote the firm through social media channels including Facebook, Twitter and YouTube.

Wendi graduated from Auburn University Montgomery with a Bachelor's Degree in English. She authored a coffee-table book, *Montgomery: At the Forefront of a New Century*, published in 1996. Wendi is married to Dr. Eric Lewis, a veterinarian. They have one dog, Reef, and three cats, Ico, Tito and Groucho. In her spare time, Wendi enjoys reading, traveling and running. Wendi is a very good employee, who provides a valuable service, not only to the firm, but to the public. We are fortunate to have her with us.

DONNA PUCKETT

Donna Puckett, who has been with the firm since February of 2001, is a Legal Assistant working on the hip and knee litigation in our Mass Torts Section. Donna received her paralegal certification from Auburn University in 1995. She and her family attend Church of the Highlands in Montgomery. Donna and her husband John have been married since 1991. They have three children—a son, Dylan, who attends Highlands College in Birmingham, has a heart for God and a love for music, and plans to be a worship leader; and twin daughters, Leslie and Preslie, who are each in nursing school. Leslie cheers at Jacksonville State University in Jacksonville, Ala. Preslie will be attending Troy University in Montgomery this fall.

Donna loves to spend time with her family, cooking out by her pool and watching football. She is a very good, hardworking employee, who is dedicated to the clients she works for and to their cases. We are blessed to have Donna with the firm.

HELEN TAYLOR

Helen Taylor has been with the firm since December 2008. She serves as the Public Relations Coordinator for the firm, working closely with news media outlets to help promote firm events, charitable giving and community service. She also reports on significant cases that the firm is handling. Helen also assists with special events such as the annual Beasley Allen Legal Conference, Seat Check Saturday and the recent Child Safety Helmet Giveaway.

Helen graduated from Auburn University Montgomery. She is married to Jason Taylor and together they have a 14-year-old daughter, Catie, and a 6-year-old son, Sam. Helen enjoys keeping up with Sam, gardening, and spending time with her family. They recently added a 1 ½-year-old black lab puppy, Petey, to their family, who joins 14-year-old Chiweenie, Hannah. Helen, another very good employee, has excellent "people skills." She represents the firm extremely well. We are fortunate to have Helen with the firm.

STEVE YOUNGBLOOD

Steve Youngblood, who works in our Information Technologies Department as the Network Support Technician, has been with the firm for 12 years. In this role, Steve handles all new and former employee accounts and hardware in the Firm. He also keeps up with the security systems, phone system and much more.

Steve is married to Kimberly Youngblood, who is also an employee with the firm. They have two sons, Stephen Jr., who is a police officer in Millbrook, and Christopher, a firefighter for City of Montgomery. Stephen is married to Rachel Youngblood, another firm employee. Stephen and Rachel have one son, Stephen the 3rd, who will be called SKY. Steve's hobbies include playing with their grandchild, fourwheeling, and taking their car to "car shows." In fact, I understand that's how Steve and Kimberly met. Steve also enjoys, according to friends, playing with the two family Rottweilers in the pool. Steve does a very good job for the firm. We are fortunate to have him with us.

XXIII. SPECIAL RECOGNITIONS

Tire Age And Safety Featured On "12 News Defenders"

One of our lawyers, Rick Morrison, sat down with WSFA-TV12 News reporter Mark Bullock last month to discuss the important topic of tire safety. The interview was shown on a recent episode of the station's "12 News Defenders" program. Rick shared safety information that will help consumers determine the age of their tires. The tire industry now recommends that consumers keep tires no longer than six years, due to concerns about wear and breakdown from environmental factors. Air, heat and sunlight can cause the rubber in tires to break down.

Rick explained where to find the tire manufacturers' code and how to read it to determine a tire's age. Mark and the WSFA news team also conducted an undercover camera investigation to see how old some tires actually are that are on retailer's shelves to be sold. Rick noted that sometimes tires can be held in a warehouse for months or even years before being sold, reducing the lifespan of the tire once it reaches the consumer. An old tire, even though it appears to be perfectly good, can be an "aged tire" and defective. That means the tire has the real potential to fail. Tire failure can result in a serious car crash and even a vehicle rollover accident, causing serious injury or even death to vehicle occupants. If any of our readers would like more information on this subject, contact Rick Morrison at 1-800-898-2034 or by email at Rick.Morrison@beasleyallen.com.

XXIV. FAVORITE BIBLE VERSES

Bryan Kelly, who is with Common Ground Ministries in Montgomery, sent in a message from the Gospel of Mark for this issue. Bryan says that central to Jesus' message to this young, successful ruler was a desire to make him put his life in the proper perspective. Jesus wanted the man to be truly free, according to Bryan, so that he would know God and really love others. Bryan points out that "it's amazing that we are loved by a God who pays detailed attention to us, even in our places of unhealthy attachments."

Jesus looked at him and loved him. "One thing you lack," he said. "Go, sell everything you have and give to the poor, and you will have treasure in heaven. Then come, follow me." At this the man's face fell. He went away sad, because he had great wealth.

Mark 10:21, 22

John Gibbons, who serves as State Director for the Fellowship of Christian Athletes in Alabama, sent in a verse for this issue. John and all of the folks at FCA do a tremendous job of spreading the gospel message in our schools and ministering to thousands of students in our state.

Then he said to his disciples, "The harvest is plentiful, but the workers are few. Ask the Lord of the harvest, therefore, to send out workers into his harvest field."

Matthew 9:37-38

Chris Turner, a lawyer in Abbeville, Ala., also sent in a verse this month. Chris, a cancer survivor and a very strong Christian, says the verse means a great deal to him. He is also a native of Blue Springs, Ala. Chris and I have been good friends for a long time.

God will keep in perfect peace all who trust in God, whose thoughts are fixed on God.

Isaiah 26:3

Another long-time friend from Barbour County, Gracelyn Graves, sent in her favorite Bible Verse. Gracelyn, who lives in Eufaula, says the verse has been especially meaningful to her through the highs and lows of her life. Having known Gracelyn for a number of years, I can tell our readers that she is a very special person.

The Lord is my light and my salvation; whom shall I fear? The Lord is the strength of my life; of whom shall I be afraid?

Psalm 27:1

XXV. CLOSING OBSERVATIONS

During the past two months, the American people experienced three tragic occurrences that caused a great deal of hurt, misery and grief to thousand of people. Each of these events were felt deeply by all Americans. The first was the tragic and senseless bombing in Boston; the second was an explosion at a fertilizer plant in West, Texas; and the third was the series of severe tornadoes in Oklahoma, that did tremendous damage. At press time there were 24 confirmed deaths and more than 275 injuries from Moore, Okla., which was hit the hardest. It was amazing that more people in Moore weren't killed. The tornado that hit Moore was two miles wide and stayed on the ground for 40 minutes. The destruction in its path was devastating. Neighborhoods and business areas in Moore looked like a war zone.

The American people responded to each of these tragic occurrences as we in this country have come to expect. Tragic events always bring folks together and that's a tribute to the people from all walks of life who make up our great country. Regardless of the type tragedy, everybody pitches in with their time, efforts, money and prayers to help the victims in every possible manner. When tragedy happens, it brings out the best in folks. That's the "American way." We are most fortunate and blessed to live in the United States of America and we should never take that for granted.

A Monthly Reminder

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

2Chron7:14

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

XXVI. PARTING WORDS

We live in a highly competitive world and as a result of that we are constantly being "graded" on our efforts. We learn early in life to strive for "good grades" in our schools, in our work, in sports and in many other areas. While that can quite often cause problems, it's a fact of life that we must deal with. There is nothing wrong with competition—or with being competitive—but we must go about it in the right way. As a trial lawyer, I have had to be a competitor and I get performance -graded by juries on a regular basis.

Lots of folks in this country place their hopes on education, science and human progress. Knowledge in these areas is certainly to be desired and is very important. We are certainly on the right path when we encourage the obtaining of knowledge. But knowledge alone, without more, is not enough. We must pay strict attention to the spiritual aspect of knowledge. The Bible tells us that the beginning of real knowledge is "the fear of the Lord," and that's exactly where we need to start our search for knowledge. It's only when God is actually put first in our lives that we can gain access to and take advantage of the wisdom, understanding and knowledge that comes from a personal relationship with Him. That's a most reassuring reality that we can depend on.

The Bible tells us that God wants us to have peace, hope and joy. God wants to open our hearts and minds and reveal more of His wonders and insights. But we also have a role to play and that too is critically important. We must seek God first, believe in Him, and then totally depend on His promises. If we want more of God and His knowledge, we must be willing to trust Him and follow His lead in our lives. God's promises are true and available for each of us. But it's up to us to take advantage of what God offers. This is my personal prayer for knowledge:

Lord, I know that I can't place my hope in other people or in the things of this world. I must depend on You and the guidance that comes from the Holy Spirit. I seek You above all else. Thank You for making available to me Your knowledge. In Jesus' name, in the power of the Holy Spirit I pray. Amen.

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218 COMMERCE STREET (36104)
POST OFFICE BOX 4160
MONTGOMERY, ALABAMA 36103-4160
(334) 269-2343
TOLL FREE
(800) 898-2034
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Jere Locke Beasley, founding shareholder of the law firm Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. is one of the most successful litigators of all time, with the best track record of verdicts of any lawyer in America. Beasley's law firm, established in 1979 with the mission of "helping those who need it most," now employs over 50 lawyers and more than 200 support staff. Jere Beasley has always been an advocate for victims of wrongdoing and has been helping those who need it most for over 30 years.

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