



THE
JERE BEASLEY REPORT AUGUST 2013

Beasley Allen

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I. CAPITOL OBSERVATIONS

The nationwide celebrations on July 4th focusing on our nation's birth and rich history were especially meaningful this year. On July 2, 1776, 237 years ago, the Continental Congress unanimously approved our independence. Two days later, on July 4, 1776, the document was amended and adopted declaring the 13 American colonies as independent states. The Constitution begins with these words:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Thus the United States of America was created. Often referred to as one of "the most potent and consequential words in American history," Thomas Jefferson penned these words when the 48 delegates from the 13 colonies declared their independence:

We hold these truths to be self-evident, that ALL MEN ARE CREATED EQUAL, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

It took great courage for our forefathers to make this declaration. They had to realize the consequences of what they were doing and yet forged ahead. It's an absolute necessity that we all continue to work daily to protect the precious rights and individual obligations we were all given. In spite of all of the trials and tribulations that come with a form of government such as ours, we have prevailed.

The United States of America has experienced, through the years, a bloody and lengthy civil war, a major depression, racial prejudices, riots, violent storms, political unrest, presidential assassinations, two world wars, other wars of even greater magnitude, 9/11 and the list goes on. Yet, even with all of this, we have survived as a nation. But I have to wonder what the signers of the Declaration of Independence would think about the state of affairs in the country they founded today if they were still around. For starters, they would see a nation as badly

divided politically as it has ever been, an economy that is still struggling, cities and countries in bankruptcy, and politicians who put their own personal interests above those of the people they are elected to represent.

Even so, I believe men like Thomas Jefferson would find a silver lining among all the very dark clouds. That's because the American people will eventually demand that our leaders "wake up," see the "light" and start doing the "right thing." The common interest must prevail over the special interest.

America is still the home of the free and the land of the brave. But until "these rights" guaranteed by our Constitution and Bill of Rights are in fact inalienable for all, we will never be the nation that we should be. We still have a long way to go. Hopefully, the day will come—and soon—when every American citizen will be able to fully enjoy the rights and obligations that come with citizenship in the greatest country on the face of the earth.

Sources: *USA Today*, *New York Times*, Human Rights Campaign, NPR

APPROVING CORDRAY WAS A MAJOR VICTORY FOR U.S. CONSUMERS

When the U.S. Senate finally confirmed Richard Cordray as director of the Consumer Financial Protection Bureau (CFPB), it was a major victory for U.S. Consumers. For two years, a bloc of Senate Republicans held up Cordray's confirmation with a filibuster threat based, not on their dislike of Cordray, nor on his qualifications, but instead on their opposition to the very consumer protection agency he was nominated to lead. Sen. Tom Coburn—one of the obstructionists—even praised Cordray during his nomination hearing earlier this year, when he said: "I think you have done a wonderful job so far in carrying out your duties."

Grassroots pressure from activists all around the country, led by Public Citizen, proved to be too much for this obstructionist bloc. The American people refused to let up in calling for Cordray's confirmation. Seventeen Senate Republicans, led by Sen. John McCain, finally broke the obstructionist blockade and voted to allow Cordray to come up for a floor vote. In the end, 12 Republicans joined the 54 Democrats in voting for Cordray's confirmation. Now that Cordray is confirmed, he can serve as director for a full term of five years starting last month.

The CFPB, under Cordray, can do a whole lot of good for consumers in five years. It was just three years ago when President Obama signed the Dodd-Frank Wall Street

Reform and Consumer Protection Act, which created the CFPB and initiated numerous other financial reforms into law.

Under Cordray, who was acting under an interim appointment, the CFPB has been unafraid to flex its regulatory muscle and intervene to stop the unfair and reckless practices of corporate financial interests. In just two years, the CFPB has made several important contributions to the lives of average Americans. For example, it has:

- Returned nearly half a billion dollars to consumers cheated by credit card companies;
- Moved to end the era of mortgages designed to rake in up-front fees before they self-destruct;

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- Stood up for students and families trapped in high-cost private education loans;
- Protected military families against illegal foreclosures and deceptive lending practices; and
- Begun to investigate forced arbitration clauses in contracts for consumer financial products or services.

The American people clearly support efforts to protect consumers from abusive practices by financial institutions, and by moving forward with Cordray's nomination, and confirming him, the Senate has now allowed the CFPB to do its job. Of course, Wall Street's greediest and most predatory offenders won't pick up and just go away. Bank lobbyists will "lick their wounds" and move on to the next battle. It's up to the American people—Democrats, Republicans and Independents—to make sure that the CFPB remains intact and able to carry out its very badly needed responsibilities.

THE ZIMMERMAN TRIAL

The George Zimmerman trial in Florida has caused many in this country to question the state of "justice" in the United States. When the jury handed down a decision that a self-appointed neighborhood watchman did not commit second-degree murder, or at least manslaughter, when he shot and killed an unarmed teenager, lots of folks began to question the system. Trayvon Martin, who was 15 years old, was walking through the neighborhood "guarded" by Zimmerman. As it turned out, the teenager was simply walking home to his father's house. The fact that Trayvon happened to be black brought into focus an issue, racial prejudice, that many Americans want to ignore. Unfortunately, this is a most serious problem that must be dealt with, but in a responsible manner.

The case, without a doubt, opened up the nation's still-festering wounds of racial discrimination and added fuel to the fire in the argument over gun control legislation. But a jury heard from both sides in the Zimmerman trial and rendered their decision. I don't question the jury's verdict because I wasn't there and really didn't watch any of the trial on television. Based on media reports, however, it seems to me that the defense lawyers did a very good job of creating doubt in the minds of the all-female jury.

Some say their decision was a miscarriage of justice. Others, including former President Jimmy Carter, urged the American people to trust the system we have put in place, and to believe the jury "made the right

decision." He said that we should respect the jurors' judgment and I agree with him. President Carter told Atlanta news station WXIA:

I think the jury made the right decision based on the evidence presented because the prosecution inadvertently set the standard so high that the jury had to be convinced that it was a deliberate act by Zimmerman and that he was not at all defending himself. It's not a moral question. It was a legal question and the American law requires that the jury listens to the evidence presented.

My hope and prayer is that the result in this case won't further divide the American people. But that doesn't mean that we should ignore the issues that were put in strong focus because of the incident, the trial and subsequent events. We must all work extremely hard to bring about racial harmony in this country. That will require active involvement by our political leaders. Wouldn't it be good if we lived in a world where George Zimmerman, upon seeing a teenager walking in the dark alone, would have offered to walk the young man home to make sure he got there safely? And where Trayvon Martin would have seen this offer as a kind and helpful gesture from an adult, instead of a threat from a potential predator? Unfortunately, that's not the world we live in and that's very sad!

II. A REPORT ON THE GULF COAST DISASTER

FACTS THAT BP WANTS EVERYONE TO IGNORE

Over the course of the last six weeks, there have been a number of news articles discussing BP's ongoing dispute with Judge Carl Barbier over the interpretation of the Business Economic Loss (BEL) calculation procedures referred to as "the settlement." Having failed to convince the judge of its new proposal for "matching" and "smoothing" revenues and expenses, and having failed to convince the Appellate Court to enjoin payments, BP has now gone completely over the top and has definitely crossed the line. BP has been carrying on a direct advertising "Publicity Campaign" and direct letter campaign threatening claimants and their lawyers and indirectly the courts.

All of these actions are a thinly veiled attempt to intimidate businesses and their lawyers who have properly filed and been paid according to the terms that BP agreed to under the Settlement Agreement last year. BP has even set up a fraud and "corruption" hotline—even though one already exists and is overseen by a Federal Judge—to further try to intimidate businesses along the coast from filing legitimate claims.

It's time for everyone to understand the facts. There are facts that BP wants the American people to forget. BP wants folks to forget where the oil giant and its lawyers were in 2010 and 2011 when the Settlement was being negotiated. At the time, BP was very concerned, over its conduct and the potential for claims. It was facing governmental, legal, and public attack for the total absence of corporate integrity that led to the worst oil spill that the world has ever seen. The death of 11 men, still unknown environmental damage, and destruction of the Gulf Coast economy can't be ignored. BP was guilty of at least gross negligence and had to determine how best to reduce its very large exposure.

Facing potential failure under the weight of the private claims and other potential economic impacts of the spill, BP worked hard to negotiate a satisfactory resolution and one was reached. It was a resolution that BP's Board was told would cost billions of dollars, but secure the financial survival of the company. As Rick Godfrey, the lead counsel for BP, told Judge Barbier when he was seeking approval of the Economic Settlement:

Like any settlement, the settlement that has been reached to resolve this litigation is a compromise, a yielding of the highest hopes in exchange for certainty and resolution. The Settlement stands alone, however, in its substantive generosity to the Class Members and in its procedural fairness

The formulas were negotiated at length by the Parties' counsel, assisted and informed by experts and colleagues with specialized knowledge of various aspects of the litigation and the array of claims categories. These experts, who included economists, accountants, and real estate experts, among others, analyzed and responded to questions posed by both BP and the PSC throughout the negotiation process.

BP got predictability, eliminated uncertainty and gave the people of the Gulf economic aid when they needed it the most, not

10 years from now. This was a negotiated settlement. Prior to the settlement, claimants had the right to seek damages extending beyond 2010, and punitive damages. They gave up that right and agreed to the settlement.

The Settlement was intended to be applied exactly as it was written, which is exactly what Pat Juneau has done and what Judge Barbier confirmed on three separate occasions. The fact that a Business Economic Loss is based on a pure revenue analysis, subject to the timing of the receipt of the revenue, is exactly what the document says. This is what was intended, expressly negotiated for and agreed to by BP when it was seeking financial protection. Under the settlement, the Class Geography extends to virtually all businesses throughout the entire states of Louisiana, Alabama and Mississippi—all the way to the Arkansas and Tennessee lines. Mr. Godfrey, BP's chief lawyer, made it very clear in his letter to the lead negotiators for the class, when he said:

The compensation framework is not the "causation test," which determines eligibility to claim that there was a loss caused by the oil spill. Rather, once the causation test has been satisfied (or presumed, as in Zone A for example), the Compensation Framework is designed to determine the compensation amount for the post-spill loss.

The economics or accounting for determining a compensation amount for a post-Spill loss is, in simple terms, to compare the actual financial results during the defined loss period measured against the profit that the claimant might or should have been expected to earn in the comparable post-spill period of 2010.... Put simply: The claimant has the right to select three or more consecutive months from the period May to December 2010 as the Compensation Period. Thus, if the claimant selects the months of June, July, and August 2010 as the Compensation Period, for example, then that 3-month selected period is measured against the "comparable months of the Benchmark Period" i.e., June, July and August of the pre-spill Benchmark Period.

This is exactly what the Agreement says, how it was interpreted by the professional accounting firms that were hired by the Program, and how it was interpreted by Pat Juneau. Incidentally, BP nominated Juneau for the position of Claims Administrator. It was correctly interpreted by the Court in the

same manner. For BP to now seek to take the benefit of the bargain away from the people of the Gulf, and yet keep the economic comfort they received from the Settlement, is incredible and very wrong.

Indeed, Mark Holstein, BP's Counsel, wrote two letters to Mr. Juneau, in his capacity as Claims Administrator, in September of 2012. In those letters, BP agreed that:

One of the cornerstones of the Settlement Agreement is the use of transparent, objective, data-driven methodologies designed to apply clearly defined standards to a claimant's contemporaneously maintained financial data submitted in compliance with documentation requirements. These methodologies and requirements were carefully negotiated by the parties and are set forth in the Settlement Agreement as mandatory requirements. Among other reasons, these methodologies and requirements were negotiated in response to concerns voiced by some that the prior GCCF (Gulf Coast Claims Facility) process was too dependent on accounting judgments that were not transparent.

.... Because the claimant's actual monthly results are the foundation for the causation and compensation evaluations under the BEL framework, use of allocated proxy rather than actual data could severely distort the resulting outcomes.

....If the accurate financial data establish that the claimant satisfies the BEL causation requirement, then all losses calculated in accord with Exhibit 4C are presumed to be attributable to the Oil Spill.

Nothing in the BEL Causation Framework or Compensation Framework provides for an offset where the claimant firm's revenue decline (and recovery, if applicable) satisfies the causation test, but extraneous non-fictional data indicate that the decline was attributable to a factor wholly unrelated to the Oil Spill. Such "false positives" are an inevitable concomitant of an objective quantitative, data-based test.

How can BP now complain about Pat Juneau and Judge Barbier agreeing with BP's own description of how the Settlement was supposed to be applied to business claims? BP generates almost \$400 billion a year. The oil giant is crying "foul" when BP is projected to pay a very small fraction of its earnings to compensate the families and businesses for the Deepwater Horizon disas-

ter. It's ironic that BP talks about people "getting something for nothing" when that's exactly what BP is trying to do.

While BP was facing a trial on the merits and felony charges, it agreed to the Economic Class Settlement and, initially, promoted the Settlement Program, encouraging many claimants to file. Now that the felony charges have been resolved, (BP using the settlement as a basis for reduced criminal fines and penalties), and now that the Phase One Liability Trial has concluded, laying bare BP's gross negligence, and exposing the company to billions more in additional civil fines and damages, BP is looking for a way to save some money.

BP waited until after the three-year anniversary of the Spill, after the class was locked in, and after the criminal charges were resolved before setting off on this anti-Settlement (and anti-Class Member, anti-Claims Administrator, anti-Small Business, anti-Lawyer and anti-Gulf Coast) campaign. It's the old "bait and switch" game carried to the extreme.

Every claimant who receives an Eligibility Determination must sign an individual release that BP co-drafted and insisted upon for its benefit. This release says that (with some express reservations), the claimant forgoes all other rights, claims or benefits under any other laws and agrees to be bound by the Claims Administrator's determination. Shouldn't BP be bound by that same determination since it agreed to it? Judge Barbier believes that it should and I believe the 5th Circuit will agree.

BP SLAMMED FOR TRYING TO STOP PROCESSING OF CLAIMS AND MEDIA CAMPAIGN

In connection with BP's trying to back out of its settlement, the oil giant, with no justification, has mounted an enormous media campaign fueled by misinformation, exaggeration and, in many cases, complete fabrication of facts. All of this in a blatant attempt to twist public opinion in the oil giant's favor. The company has apparently started to believe its own statements, as BP filed an emergency motion seeking to enjoin all payments (again) in the Deepwater Horizon Settlement Facility. As expected, Judge Barbier immediately denied BP's motion after oral argument and without taking the motion under advisement.

Judge Barbier did not appear to be very happy with BP's media campaign and character attacks on Administrator Pat Juneau, having this to say in open court:

[I]t's really disappointing when so many basic, fundamental misrepre-

sentations get reported and then somebody has to try to go around correcting these things...Unfortunately, it seems to the Court that there has been a great deal of misinformation widely reported that has contributed to creating confusion by conflating two entirely separate issues.

BP's arguments centered on recent allegations that two staff attorneys in the program shared referral fees with private attorneys who represented a limited number of claimants previously represented by the staff attorneys. The two staff attorneys were immediately terminated and all potentially impacted claims placed on hold. But BP attempted to create a story of widespread fraud and lawlessness in the Facility to gain favor with public opinion and the Fifth Circuit. However, BP produced no evidence in court to back up its claims. The Facility's internal interim report revealed no improper calculations by the two staff attorneys, or any potential to influence calculations or payments based on the multi-layered settlement administration process. Judge Barbier had this to say:

BP has not produced any evidence that would warrant the Court taking the drastic step of shutting down the entire claims program ... It would be unfair to those claimants to stop all claim payments based on BP's unsubstantiated suspicions or allegations of some type of widespread misconduct. When a lot of misinformation is spread by ... someone involved in the case, it's troubling.

The night before oral argument, BP CEO Bob Dudley ripped Pat Juneau and accused him of "hijacking" the settlement. Judge Barbier responded during the hearing in court saying: "I find the recent attacks on Mr. Juneau's character are highly offensive and inappropriate." Judge Barbier added that Mr. Dudley's comments were "especially offensive and inappropriate ... coming from of all things the CEO of a party to this Settlement Agreement, a party who not only proposed Mr. Juneau for this appointment, but gave great praise to his dedication and work up through and including the final fairness hearing and final approval of the Settlement Agreement. These personal attacks, hyperbole, and use of such language in my opinion crosses the line ... [and] should stop."

Corporate conduct should be judged harshly—just as it would be if it were conduct by a person—when the corporation utilizes outright lies and deception in an effort to sway a judicial decision and the outcome of an agreed-upon settlement. I

believe the American people will see through all of what BP is doing and refuse to be swayed.

BP ADDS \$1.2 BILLION TO DEEPWATER HORIZON COMPENSATION FUND

As a matter of interest, BP has increased its total compensation fund for the oil spill disaster to \$42.4 billion. The company also stated that the total cost of claims is likely to go higher due to the fact that "a significant number of business economic loss claims have been received but have not yet been processed, and further claims are likely to be received."

BP initially set aside \$20 billion for compensation claims following the explosion. Now the overall provision for the disaster was increased to \$42.4 billion. When you consider all of the claims, including those as a result of the settlement referred to above, and the claims by the federal and state governments, I don't believe the increased amount is adequate.

Source: *The Guardian*

DEADLY BACTERIA LURK IN DEEPWATER HORIZON TAR BALLS

Nearly two years after the Deepwater Horizon disaster gushed millions of barrels of oil into the Gulf of Mexico, tar balls from the spill are still turning up on Alabama's shores after storms. One researcher has recommended that folks steer clear of these tar balls after studies find them "chock-full of potentially deadly bacteria."

In research published online November 2011 in the journal *EcoHealth*, Auburn University microbiologist Cova Arias and colleagues discovered that Deepwater Horizon tar balls found months after the spill contained high levels of bacteria, including 10 times the level of *Vibrio vulnificus* as found in the surrounding sand. This finding was first reported by the Associated Press. For the uninformed, *V. vulnificus* is the **leading cause** of seafood-borne disease **fatalities** nationwide. It has a fatality rate of 20 to 30 percent when it infects skin wounds. Dr. Arias says:

We don't know what the real risk is at this point. But to be safe, beachgoers should avoid handling the tar balls.

We have to remember that about 5 million barrels of oil (205 million gallons), spilled from a riser pipe in the seafloor after the Deepwater Horizon rig exploded and sank in late April 2010. Some of that oil persists in

the Gulf in the form of tar balls. Dr. Arias and her colleagues collected tar balls from beaches in Alabama and Mississippi from July through October 2010, shortly after the spill was capped. They found between 20 and 40 tar balls per about every 11 square feet, with each tar ball about 1.2 inches across. The team also collected sand and water samples.

Analyses of these samples showed a surprisingly high number of total bacteria in the tar balls—between 5.1 million and 8.3 million colony-forming units per gram, much higher than in sand or seawater. Most alarmingly, *V. vulnificus* numbers in tar balls were 10 times that in nearby sand and 100 times higher than numbers in seawater samples. Dr. Arias said the finding was surprising, but that it makes sense that bacteria would thrive in carbon-rich tar balls. She added that the *V. vulnificus* live off the byproducts of other carbon-eating bacteria in these oily chunks. Obviously, this is a most serious problem and one that can't be ignored. If you need more information on this matter, contact Sandra Walters in our Toxic Torts Section at 800-898-2034 or by email at Sandra.Walters@beasleyallen.com and she will have one of our lawyers in the Section respond.

Source: *NBC News*

BP REPORT SAYS GULF OIL SPILL WAS ONLY HALF AS BIG AS GOVERNMENT CLAIMS

BP has consistently disputed the amount of oil spilled from the blown out Macondo well in 2010. That is to be expected from BP and based on what we have learned during the litigation they can't be trusted. The U.S. government says the total came to 4.9 million barrels. But a report authored by a British engineer, hired by BP, claims that the total volume is more like 3.3 million. When taking into account the 800,000 barrels that BP managed to capture as it gushed out, the government figures 4.1 million barrels actually escaped into the Gulf of Mexico. BP's hired engineer calculated that 2.46 million barrels actually made it into the Gulf.

The figures come from a 209-page report by London petroleum engineer Martin J. Blunt, a professor at Imperial College in London. Interestingly, this is the first time that BP's internal flow rate estimates have been made public. The actual number of barrels will determine just how many billions of dollars BP ultimately has to pay out to satisfy Clean Water Act penalties. In the worst case scenario, if U.S. District Judge Carl Barbier finds that BP was grossly negligent in causing the spill and accepts the government's spill figures, BP could be

responsible for paying out as much as \$17.6 billion. If the court accepts Blount's figures, that would reduce the amount by almost one half.

Source: *Forbes*

BP OIL SPILL CLEANUP WORKERS HAVING HEALTH PROBLEMS

While all the media attention has largely focused on the economic aspects of the damages caused by the oil spill, there have also been significant health issues. For example, a good number of response workers are still having health problems linked to cleanup efforts after the 2010 BP oil spill disaster. For many workers with limited resources to find medical help, there remains a need to have concerns about resulting medical conditions addressed, even three years after the spill. The Life Care Solutions Group has developed a resource for response workers and volunteers who have questions about how to receive medical and legal help if they have health problems linked to participation in the oil spill cleanup.

Many individuals involved in the BP oil spill cleanup were migrant workers, service industry workers and Gulf Coast residents who volunteered in the effort, and lacked health care coverage or other means to pay for proper medical care. Thousands of workers spent months working to clean up oil, applying chemical dispersants and completing other tasks in an attempt to restore the Gulf Coast to a safe environment for residents, businesses, tourists and ecosystems, not knowing the extent of exposure to toxic chemicals they were subjected to.

The BP Gulf Oil Spill Help Desk is available for those who have been plagued with health problems including conditions of the stomach, skin, respiratory system and more. For those who still have questions about whether they are eligible to receive compensation for their injuries from funds set aside by BP for the damage caused, the help desk can also address their inquiries. A free medical review is being offered to those who visit the help desk and contact the Life Care Solutions Group today.

The BP Gulf Oil Spill Help Desk is a resource, developed by the Life Care Solutions Group, made available to support workers who have been left with health problems attributable to Gulf Coast cleanup efforts. The Life Care Solutions Group is comprised of a network of medical and legal experts who assist individuals in need of information regarding their legal rights in a BP oil spill settlement or medical options after sustaining a serious injury. Individuals

can visit the BP Gulf Oil Spill Help Desk online today to request a free medical assessment or assistance with a BP gulf oil spill claim. For more information about the BP Gulf Oil Spill Help Desk, you can visit <http://disasters.lifecare123.com>.

Source: *Wall Street Journal*

HALLIBURTON PLEADS GUILTY TO DESTROYING GULF OIL SPILL EVIDENCE

Halliburton Co. has agreed to plead guilty to destroying evidence related to the 2010 Gulf of Mexico oil spill. The U.S. Department of Justice said Halliburton's guilty plea is the third by a company over the spill and requires the world's second-largest oilfield services company to pay a maximum \$200,000 statutory fine. Halliburton also agreed to three years of probation and to continue cooperating with the criminal probe into the explosion of the Deepwater Horizon drilling rig. Court approval of the agreement is required. Houston-based Halliburton also made a separate, voluntary \$55 million payment to the National Fish and Wildlife Foundation, according to the U.S. Justice Department. As you may recall Halliburton owned 65% of the Macondo oil well. Prior to the explosion, Halliburton had earlier provided cementing services to help seal the well. Halliburton recommended to BP that the Macondo well contain 21 centralizers, metal collars that can improve cementing, but BP chose to use six. During an internal probe into the cementing after the blowout, Halliburton ordered workers to destroy computer simulations that showed little difference between using six and 21 centralizers. Efforts to locate the simulations forensically were unsuccessful.

You will recall that BP and Transocean Ltd., which owned the drilling rig, previously entered guilty pleas over other aspects of the oil spill, and agreed to pay respective criminal fines of \$1.26 billion and \$400 million. Halliburton, BP and Transocean are defendants in the federal civil trial that will apportion blame and set damages for the oil spill. The first witness for Halliburton, cementing service coordinator Nathaniel Chaisson, had testified in the first phase of the trial that he was concerned about BP's use of just six centralizers. The second phase will resume in September.

Source: *Insurance Journal*

TRANSOCEAN WILL HAVE TO HAND OVER DOCUMENTS ON ITS SPILL PROBE

Transocean Deepwater Drilling Corp. lost a round in its fight to avoid handing over documents to the U.S. Chemical Safety and Hazard Investigation Board which is investigating the 2010 Deepwater Horizon oil rig explosion. Transocean is appealing a federal court order enforcing a subpoena for the documents issued by the Board. The 5th Circuit Court of Appeals last month refused to stay the document handover while the appeal is pending. Dr. Daniel Horowitz, CSB's managing director, had this to say:

We are extremely pleased with the court's decision. After years of litigation, it paves the way for the CSB to finally conclude its Deepwater investigation, which we believe holds lessons for all the energy industry.

The documents were collected by a Transocean internal investigation team. The 5th Circuit said Transocean failed to justify anything that would delay the safety board's report on the explosion. The opinion by a three-judge panel of the 5th Circuit said:

Transocean has resisted the subpoenas for thirty-one months, of which twenty-one were consumed by litigation. An appeal in this court could take anywhere from one to three years. By the time the subpoenas' enforceability is finally determined, a delay in the documents' release may cause the CSB to have missed the opportunity to prevent another accident of the type that occurred on the Deepwater Horizon, which itself resulted in eleven deaths.

As noted previously, Transocean owned the Deepwater Horizon drilling rig. The ruling was needed and is certainly a good one for the Board as it works to complete its investigation and issue a report.

Source: therepublic.com

III. DRUG MANUFACTURERS FRAUD LITIGATION

MEDICARE PAYS MILLIONS FOR UNAUTHORIZED PRESCRIPTIONS

A new study by the Inspector General of the U.S. Department of Health and Human

Services reveals that Medicare pays millions of dollars for unauthorized prescriptions each year. In 2009 alone, Medicare paid for more than 417,000 unauthorized prescriptions written by health care related professionals who lacked authority to write prescriptions under Medicare's rules. The prescriptions were written by athletic trainers, massage therapists, dietitians, physical therapists, counselors, and veterinarians just to name a few. Estimates show that Medicare has paid more than \$31 million for unauthorized prescriptions to date, leading Senator Tom Carper, Chairman of the Homeland Security and Governmental Affairs Committee, to observe that this "cost is a threat to Medicare's fiscal stability."

One of the most effective ways to fight back is through whistleblower or qui tam actions brought under the False Claims Act (FCA). Individuals referred to as "whistleblowers," who are aware of fraud being committed against the government, like submitting unauthorized prescriptions to Medicare, are encouraged to file claims under the FCA and will be entitled to a portion of the recoveries. If any of our readers are aware of this type fraud or any kind of fraud being perpetrated on the government, they are encouraged to contact our firm.

Lawyers in the Consumer Fraud Section at Beasley Allen have prosecuted this type of fraud for more than 30 years and would welcome the opportunity to talk with you about potential claims. Contact Chad Stewart, Archie Grubb or Andrew Brashier, lawyers in the section, at 1-800-898-2034 or email Chad.Stewart@beasleyallen.com Archie.Grubb@BeasleyAllen.com or Andrew.Brashier@beasleyallen.com.

Source: <http://www.propublica.org/article/not-authorized-to-prescribe-drugs-medicare-pays-anyway>

J&J AGREES TO PAY \$22.9 MILLION TO SETTLE ON DRUG RECALLS

Johnson & Johnson, the world's largest maker of health care products, has agreed to pay \$22.9 million to settle a lawsuit claiming it misled investors about quality-control failures that led to recalls. The proposed settlement, filed on July 15 in federal court in Trenton, N.J., would resolve claims that the failures led to the largest recall of over-the-counter children's medicine in U.S. history, a plant closing and a congressional probe. The class-action settlement requires court approval.

The case focused on recalls of over-the-counter drugs made by J&J's McNeil Consumer Healthcare division in Las Piedras, Puerto Rico, and Fort Washington, Penn.

Investors claimed that J&J and its executives made misleading statements about details of the recalls and that they suffered stock losses after the true reasons for the recalls became public.

If you guessed that "J&J will make no admission of wrongdoing," you are 100 percent correct. The settlement would cover buyers of J&J shares between Oct. 14, 2008, and July 21, 2010. It came after mediation by a retired judge, Daniel H. Weinstein. The case is *Monk v. J&J* in the U.S. District Court, District of New Jersey (Trenton).

Source: *Bloomberg*

BAYER AGREES TO \$74 MILLION SETTLEMENT IN CIPRO PAY-FOR-DELAY CASE

Bayer has agreed to a \$74 million settlement in a case where Plaintiffs alleged the drug maker violated antitrust laws by participating in pay-for-delay activities surrounding its drug Cipro. A class-action lawsuit charged Bayer Corporation, along with Barr Laboratories and other generic drug companies, with cheating consumers by unfairly restricting competition against its antibiotic prescription drug Ciprofloxacin (Cipro).

The scheme—which is common among Big Pharma companies—blocks consumer access to cheaper, generic versions of drugs by paying generic drug makers not to bring their alternative products to market. Just as the name implies, generic drug makers are paid to delay the debut of their drugs even after the patent on the more expensive brand-name drug has expired. This allows the manufacturer of the brand-name drug to keep raking in profits, while consumers pay for it out of their pocketbooks. In the Bayer litigation, the drug manufacturer paid the generic drug companies close to \$400 million between 1997 and 2003 in exchange for their agreement not to introduce their own, cheaper generic versions of Cipro into the marketplace.

A U.S. Supreme Court decision handed down recently says pay-to-delay arrangements may be a violation of antitrust laws. The Federal Trade Commission (FTC) has been contending for some time that pay-to-delay is "presumptively illegal." The Supreme Court ruling attempts to make a distinction between antitrust laws, which state that a corporation cannot block a rival from competition in the marketplace, and patent laws, which protect a company's product from copycat products.

New brand-name drugs to hit the market are protected from generic competition with a patent for 20 years. As long as the patent remains valid, the brand-name drug company can continue to earn monopoly

profits on the drug. Oftentimes, makers of generic drugs will try to challenge the validity of patents in order to get their copycat drugs on the market and bite into the brand-name profits. Typically the generics are much less expensive than brand name drugs and thus preferred by patients and insurance companies. The patent lawsuits waged by generic companies sometimes lead to the brand-name drug company offering to settle the lawsuits by paying the generic drug company to delay the launch of its copycat drug.

For example, Solvay Pharmaceuticals applied for a patent in 2000 for AndroGel, a topical gel to treat low testosterone levels. The patent protected the gel through 2020; however, the gel's active ingredient—a synthetic testosterone—was not included in the patent. Watson Pharmaceuticals, a generic drug maker, announced it was developing a generic version of AndroGel. Fearful that the generic product would cut \$125 million per year from its profits, Solvay offered Watson \$19 million to \$30 million a year to hold off on its generic product until 2015. The FTC then sued Watson and Solvay claiming the settlement violated antitrust laws. A federal judge and the U.S. 11th Circuit Court of Appeals sided with the drug companies. The U.S. Supreme Court sided with the FTC by a 5-3 ruling.

While the recent Supreme Court ruling doesn't specifically ban pay-for-delay, it does provide a precedent that allows similar lawsuits to be filed on the basis of antitrust violations. On this one, the Supreme Court sided with the consumer and made it a little harder for Big Pharma to increase its bankroll at our expense.

Sources: *Bloomberg*, *Los Angeles Times*, and RightingInjustice.com

WYETH SETTLES OFF-LABEL MARKETING CLAIMS FOR \$490.9 MILLION

Wyeth Pharmaceuticals Inc., a Pfizer Inc. subsidiary, agreed to a \$490.9 million settlement with the U.S. Department of Justice last month to resolve civil and criminal allegations of off-label pharmaceutical marketing abuses. The complaint alleged that Wyeth acquired by Pfizer in 2009, illegally marketed its immunosuppressant drug Rapamune, which is intended to help kidney patients accept transplanted organs. From 1998 through 2009. It was contended that Wyeth instructed sales representatives to promote the drug for unapproved uses to boost sales. Stuart Delery, acting assistant attorney general for the civil division, said in a written statement:

FDA's drug approval process ensures companies market their products for uses proven safe and effective. We will hold accountable those who put patients' health at risk in pursuit of financial gain.

Wyeth pleaded guilty to criminal misbranding under the Federal Food, Drug and Cosmetic Act and will pay a criminal fine of \$157.58 million and forfeit \$76 million. A \$257.4 million civil settlement will go to the federal government and states including Arkansas, California, Delaware, Florida, Hawaii, Illinois, Indiana, Louisiana, Massachusetts, Nevada, New Hampshire, New Mexico, Tennessee, Texas, Utah, Virginia and the District of Columbia.

The complaint, filed in 2005 by whistleblowers Marlene Sandler and Scott Paris, two former sales representatives, accused Wyeth of hyping Rapamune for use in transplants of organs other than kidneys and in place of or in combination with other immunosuppressants. In 2006, the DOJ declined to intervene in the case, a decision it reversed in 2010 following an inquiry by the House Committee on Oversight and Government Reform.

Grant & Eisenhofer director Reuben Guttman and senior counsel Traci Buschner represented Sandler and Paris in this case. Guttman had this to say:

You've got a case that speaks to countless patients whose medical regimens were dictated by marketing schemes and money as opposed to being dictated solely by medical rationale. It's not just about money, it's about people.

It shows the vulnerability of the health care system in the United States. Guttman pointed to additional False Claims Act litigation outcomes, including last year's \$1.5 billion settlement with Abbott Laboratories Inc., as evidence that problems persist in the health care industry.

Source: Law.com

IV. COURT WATCH

ROAD BUILDERS GET IMMUNITY FROM THE ALABAMA SUPREME COURT

The Alabama Supreme Court recently issued an opinion that, if not changed, may well have profound negative implications for the citizens of the State of Alabama. The case arises out of a road construction resurfacing

of highway 84 in Clarke County. In March of 2001, the Alabama Department of Transportation awarded a contract to Weaver and Sons, Inc., a contractor, to resurface approximately eight miles of that highway. The resurfacing project was finished in March of 2002. The Alabama Department of Transportation notified Weaver and Sons that the state would be assuming the maintenance of the resurfaced highway.

In October 2007, there was an accident involving a vehicle operated by Danny Balch that was occupied by two other members of the Balch family. As a result of the collision, Danny, Bernard Balch and Armie Balch died. Claims were brought against Weaver and Sons for the negligent resurfacing of the project. There were numerous deficiencies alleged in the resurfacing of the paving project, including the edge drop-off and highway width. There was evidence at the trial of the case that Weaver lost control of the vehicle because of a significant pavement edge drop-off.

There was expert testimony that reflected that the accident occurred because Weaver did not comply with the road-resurfacing specifications provided by the Alabama Department of Transportation with regard to the cross slope and width of the road. The jury returned a verdict in favor of the Balch personal representatives of the Balch family and against Weaver and Sons for the three deaths.

On appeal, the Alabama Supreme Court, in a split decision, ruled that Weaver had no duty to the Balch family because the Alabama Department of Transportation accepted the road work performed by Weaver. This ruling potentially creates a dangerous precedent. Fortunately, only four of the justices voted to apply the "accepted work" doctrine. Under that doctrine, the road builder is immune from liability when the State accepts the work under the completed contract. While this result takes away the recovery for this family, it does much more. Road builders will hold this opinion up any time there is an injury or death caused by a defective road and claim immunity where the road has been accepted by the State. This ruling does nothing to protect the public. In fact, the implications of this decision may go much further.

The next logical step is that Defendants will now allege that anything accepted by a governmental entity will give immunity to the underlying contractor. The case brings to mind the work that was performed recently in the airport in Birmingham. A young child was killed when a monitor system fell on him shortly after completion of renovation work at the airport. This child was simply walking in the airport with his

family returning from a vacation. He did nothing wrong. Should the contractors be immune because this work was accepted by the Airport Authority? The Weaver case will likely be argued as legal precedent.

There is a motion to reconsider the Weaver case pending before the Supreme Court. Hopefully, a majority of the court will recognize this decision as a decision that is not in the best interest of the people of Alabama, nor is it supported by legal precedent. The Court has recently corrected decisions that were bad for the public. Hopefully, this opinion will be withdrawn and the proper application of Alabama law substituted for a bad decision.

U.S. SUPREME COURT STRIKES DOWN HEART OF VOTING RIGHTS ACT

In a decision described by many of its detractors as "cutting the heart out" of the Voting Rights Act, on June 25, 2013, the U.S. Supreme Court declared key sections of the law unconstitutional in a 5-4 vote. The vote split along ideological lines, with Chief Justice John Roberts writing the majority opinion.

Voting rights were established initially in the 15th Amendment, ratified in 1870 and guaranteeing black Americans the right to vote. However, many states established practices that discouraged or prevented blacks from voting, such as requiring literacy and "character" tests. In 1965, Congress passed the Voting Rights Act, which restated the rights guaranteed by the 15th Amendment.

The Voting Rights Act included strong federal oversight of elections in states and cities with a history of disenfranchising black voters. It has long been considered the most successful civil rights law ever passed. I believe it's one of the most important pieces of legislation ever passed by Congress. Little, if any, good can come from what the high court did.

The Supreme Court ruling struck down Section 4, which set out a formula to determine which states must receive clearance from the Justice Department before enacting changes to their voting procedures. This essentially nullified Section 5, which required nine states—Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas and Virginia—as well as many individual counties and municipalities in other states, to clear with the Justice Department any proposed changes to their voting procedures in advance of implementation, a process called "preclearance."

The case, *Shelby County v. Holder*, was filed by Shelby County, Ala., and challenged the Voting Rights Act—particularly Sections

4 and 5—as unconstitutional. The complaint said the Voting Rights Act formula for deciding which states are covered—traditionally those with a history of racial discrimination or where voting rights were determined to be at risk—was based on old and outdated information. As a result, it was argued that Southern states receive unequal treatment that hampers reforms and creates an unfair and costly burden.

In his opinion, Justice Roberts writes Section 5 of the Voting Rights Act, which “required States to obtain federal permission before enacting any law related to voting” is “a drastic departure from basic principles of federalism” and Section 4 of the Act, which “applied that requirement only to some States—an equally dramatic departure from the principle that all States enjoy equal sovereignty.”

The chief justice notes that the Voting Rights Act, enacted in 1965, was originally scheduled to expire after five years. Despite majority approval renewing the act in subsequent years, Justice Roberts writes “the conditions that originally justified these measures no longer characterize voting in the covered jurisdictions.” I have to wonder how five justices could ignore the obvious attempts to discourage minorities from voting in this country.

However, in her dissent, Justice Ruth Bader Ginsburg pointed out that the focus of the Voting Rights Act has shifted in time from “first-generation barriers to ballot access” to “second-generation barriers,” which she says includes things like redistricting along racial lines or establishing policies that hamper voter registration or voter turnout. She noted the task of ensuring equal rights for all voters is a long process and not yet complete. I concur with Justice Ginsburg’s rationale. We have made progress, but have a long way to go before equal rights for all voters are achieved.

Critics of what the court did note that the crucial danger in gutting the Voting Rights Act comes not so much at the state level as in lower levels of municipal government. There is generally much less scrutiny and fewer legal resources to challenge perceived misconduct at that level. *The New York Times* cited a recent article in *The Yale Law Journal* that noted from 1982 to 2006, more than 85 percent of voting change objections came from jurisdictions below the state level.

Before the Supreme Court decision, the Justice Department blocked redistricting plans proposed by Galveston County, Texas, saying they were created with “discriminatory purpose.” Ken Clark, a commissioner for Galveston County, told the *New York*

Times that even if the Supreme Court struck down Section 5 of the Voting Rights Act, the county would “probably not revive” that redistricting plan.

Less than 48 hours after the Supreme Court ruling, Texas Attorney General Greg Abbott issued a statement that redistricting maps approved by the legislature may take effect without approval from the federal government. He also said the state’s voter ID law will take effect “immediately.” Five other states—Alabama, Arkansas, Mississippi, South Carolina and Virginia—announced plans to immediately move ahead with voter ID laws.

Justices Antonin Scalia, Anthony M. Kennedy, Clarence Thomas and Samuel A. Alito Jr. joined the majority opinion. Justice Ginsburg was joined in dissent by Justices Stephen G. Breyer, Sonia Sotomayor and Elena Kagan. I have real difficulty in believing that this decision is good for America. We should be encouraging our citizens to vote—and ease the restrictions that traditionally have hurt minorities in the U.S.—instead of moving in the opposite direction.

Sources: ProPublica.org, *New York Times*, ThinkProgress.org, NPR

FIVE PRO-BUSINESS SUPREME COURT DECISIONS THIS YEAR

We wrote last month about how big business has fared extremely well in cases decided by the U.S. Supreme Court. *Business Week* recently compiled a listing of five important pro-business decisions issued by the Supreme Court. The result in each of the cases has been considered by most court observers as being good for Corporate America and bad for ordinary citizens. To put it bluntly, U.S. consumers have had a tough time with the current court. A brief summary of each case is set out below.

Damages in Class Action

The case of Comcast v. Behrend was decided earlier this year. In that case, Justice Antonin Scalia wrote that Comcast did not have to face an anti-trust suit filed on behalf of 2 million cable customers because the Plaintiffs hadn’t established a common method to determine monetary damages. This was a 5-4 decision.

Arbitration In Class Actions

In her dissent, Justice Kagan said the ruling could help protect monopolists. Justice Scalia, again writing for the majority, held in *Amex v. Italian Colors*

that merchants seeking to sue American Express en masse were bound by an agreement they signed to pursue claims individually before an arbitrator. This was a 5-3 decision.

Global Tort Suits

In *Kiobel v. Royal Dutch Petroleum*, Chief Justice John Roberts wrote for a unanimous court that multinational corporations generally should not face liability in U.S. courts under the 1789 Alien Tort Statute for alleged human-rights abuses overseas. The law had been used aggressively by rights activists since the 1980s.

Liability In Harassment Lawsuits

In *Vance v. Ball State*, Justice Samuel Alito’s majority opinion put new restrictions on lawsuits claiming on-the-job harassment. By tightening the definition of the word “supervisor,” the ruling limited companies’ liability. This was a 5-4 decision.

Drug Safety

Writing for the majority in *Mutual v. Bartlett*, Justice Alito reinforced obstacles to patient lawsuits against generic-drug manufacturers, overturning a \$21 million award to a woman who suffered injuries after taking a generic painkiller. This was a 5-4 decision. Without question this was a horrendous result for victims of drug company wrongdoing.

Source: *Business Week*

\$18.4 MILLION DAMAGE AWARD UPHELD

Tennessee’s Supreme Court has upheld an award of \$18.4 million in damages against DaimlerChrysler Corp. Two of the five justices dissented. The court ruled that a faulty seat design led to the death of a baby on a Nashville street in 2001. The ruling overturned a Tennessee Court of Appeals decision that threw out an award of \$13.4 million in punitive damages for parents of 8-month-old Joshua Flax. The appeals court concurred with a \$5 million compensatory damage award.

Young Joshua died in a crash that occurred on June 30, 2001. A pickup truck driver rear-ended the 1998 Dodge Caravan doing 70 mph in a 35 mph zone. Joshua Flax was riding in a car seat. The front passenger seat collapsed on top of the baby, who was fatally injured. The parents claimed in their lawsuit that the car maker knew its seats

tended to collapse backward in rear-end collision but did nothing to fix the problem. A former chair of the Minivan Safety Leadership Team at Chrysler testified that his group decided in 1993 to advocate changes in the seats because of the danger. In November 2004, a jury found Defendants jointly liable for the baby's death and imposed total damages of \$105 million, but the trial judge found that amount excessive and reduced it to \$27.5 million.

On appeal, DaimlerChrysler argued that the evidence did not prove that it acted recklessly or intentionally in failing to make the seats safer. The Court of Appeals agreed, throwing out all but the \$5 million in compensatory damages. In its ruling, the Supreme Court affirmed the appeals court in denying \$9.1 million in damages for emotional distress. But the high court reinstated the punitive damages award in its entirety.

Writing for the majority, Justice Janice Holder said there was "a wealth of evidence supporting the jury's verdict." She cited testimony that DaimlerChrysler "had received notice of children injured by yielding seat-backs as early as the mid-1980s." She noted that accidents similar to the one that killed Joshua Flax had injured children on six other occasions.

ALABAMA COURT BARS LAWSUIT IN OKLAHOMA AIRPLANE CRASH

The Alabama Supreme Court ruled last month that a lawsuit involving a deadly 2005 Oklahoma airplane crash is time-barred and must be dismissed. The decision by the court involves the second of two lawsuits filed in that state over the July 24, 2005, crash of a twin-engine airplane in Ada, Okla., that killed three members of a prominent Oklahoma family. Those who died were Harland Brent Stonecipher, a pilot for a company then known as Pre-Paid Legal Services, Inc.; his wife, Tina Lynn Stonecipher; and their 11-year-old daughter, Nicole Ann Stonecipher. Pre-Paid Legal Services is now known as LegalShield.

Representatives of the victims filed a wrongful death and defective product lawsuit in a Mobile, Ala., Circuit Court in 2007 alleging that the cause of the crash was a defective crankshaft in the aircraft's right engine. The engine was manufactured by Teledyne Continental Motors of Mobile. A report by the National Transportation Safety Board (NTSB), which investigated the crash, says both of the aircraft's engines were examined at Continental's manufacturing facility in Mobile on Aug. 17, 2005, less than a month after the crash.

Investigators found that several teeth on the engine's camshaft "were broken, ground down and/or missing," seven teeth were completely sheared off the crankshaft and 14 others were partially sheared off, the report says. The report says: "Examination of the components revealed the crankshaft gear failed due to a fatigue fracture in one of the teeth."

The examination indicated the microstructure of the gear was inadequate and more tests were conducted, but investigators were unable to produce a similar crankshaft failure. Continental spent almost \$5 million to defend and ultimately settle the 2007 lawsuit. It then filed a second lawsuit in 2011 against the gear manufacturers to recover its legal and settlement costs. Continental alleged that the defective crankshaft did not meet the specifications it provided for fabrication and heat treatment of the gear. The crankshaft manufacturer filed a motion to dismiss the lawsuit, contending that it was barred by Alabama's two-year statute of limitations. The trial court judge disagreed, however, ruling that a different six-year statute of limitations that covers contract claims should apply. The Supreme Court ruled that the two-year limit applied and remanded the case to the trial court judge with orders to dismiss the lawsuit.

Source: *Claims Journal*

BUSINESS COALITION ENDORSES ALABAMA JUDGES

A coalition of Alabama business groups has endorsed five incumbent appellate court judges for the 2014 elections. The chairman of the Alabama Civil Justice Reform Committee, Tom Dart, said on July 10 the group endorsed early because all five Republican judges have done a good job and deserve to be elected. Thus far none of them have an opponent. The committee endorsed Justice Greg Shaw for reelection to the state Supreme Court, Judges Bill Thompson and Scott Donaldson for the Alabama Court of Civil Appeals and Judges Beth Kellum and Mary Windom on the Alabama Court of Criminal Appeals.

The only person in the group who hasn't run statewide and won before is Judge Donaldson. Governor Robert Bentley appointed him to the Court of Civil Appeals in January to fill a vacancy. In my opinion, the governor made an excellent choice. No other appellate court seats are up next year. I doubt if any of the judges will have serious opposition either in the primary or in the general election. It's time to put politics aside in judicial races and work to keep our judiciary independent and free of the perceived influence

over the court resulting from political donations.

Once this election is over, the Alabama Legislature should take a good look at how we reelect judges in Alabama and then make some badly needed changes. The first place to start is with campaign financing in judicial races.

Source: *Times Daily*

NEW THREE-YEAR DEADLINE FOR MEDICARE REIMBURSEMENT TAKES EFFECT

The Garretson Resolution Group distributed some timely information last month relating to Medicare claims reimbursement. Effective July 10, 2013, Medicare has three years to claim reimbursement for its subscribers' medical costs. This statute of limitation is mandated by the Strengthening Medicare and Repaying Taxpayers (or SMART) Act which became law early this year.

Until now, there had been uncertainty on the time frame in which Medicare could seek to recoup costs for which another party accepted responsibility (through settlement, judgment, award or other payment). The United States now has a three-year window to file suit in an action to seek repayment, measured from the date of reporting to the Centers for Medicare & Medicaid Services (CMS) as party of the Mandatory Insurer Reporting rules following Section 111 of the Medicare Medicaid SCHIP Extension Act of 2007.

Overall, the SMART Act aims to shorten the Medicare reimbursement timeline and create further clarity concerning the process. But the law's full impact won't be known until its provisions are implemented during the course of the next 18 months. The Garretson Resolution Group provides a great service to lawyers who handle personal injury cases.

Source: Garretson Resolution Group

V. THE NATIONAL SCENE

MORE ON BP TRYING TO GET OUT OF A DEAL IT MADE

As we wrote in the BP section, despite admitting guilt, BP is trying to get out of the settlement agreement it made with Gulf State businesses and individuals. These

people were harmed by BP's gross negligence, and the settlement was devised and agreed upon to help compensate those injured by BP's actions. It was a settlement that BP agreed to after months of negotiations.

However, BP's actions shouldn't be a surprise, because the oil giant is historically a bad corporate citizen. Let's take a look at BP and who they really are. They were responsible for the explosion at their Texas City refinery killing innocent people; they are a convicted felon; they were on probation for three prior disasters at the time of the Gulf blowout; they have been suspended from doing business with the U.S. Government for lack of corporate integrity; they have pled guilty to 11 counts of manslaughter; and they lied to the Federal Government about the Gulf blowout.

If that were not enough, BP has the gall to tell Gulf citizens that it is trying to honor its commitment to the victims of the 2010 *Deepwater Horizon* explosion, sinking and subsequent oil spill. This is really ironic, as it comes even as BP continues to dispute with the Court over the interpretation of the Business Economic Loss (BEL) calculation procedures—procedures BP helped develop and agreed upon.

In fact, BP has started a bought-and-paid-for "Publicity Campaign" and direct letter campaign threatening attorneys and claimants. This is simply a thinly veiled attempt to intimidate businesses and their attorneys who have properly filed and been paid according to the terms that BP agreed to under the Settlement Agreement.

It is important to remember, as much as BP would like you to forget, that in this historic Settlement Agreement, BP got predictability and eliminated uncertainty, while also giving oil spill victims economic aid when they needed it the most—now—not 10 years from now. In return, claimants walked away from the right to seek damages extending beyond 2010, and punitive damages.

How can BP now complain about oil-spill claims administrator Patrick Juneau and the Court agreeing with BP's own description of how the Settlement was supposed to be applied to business claims? The answer is simple; the Settlement—which they agreed to at each and every level of the company—is costing them more than they anticipated. They have what we in Alabama call "buyer's remorse" and they want out of a deal that they themselves signed and agreed to. No matter how you slice it, that is not responsible corporate conduct.

BP generates almost \$400 billion a year. The company is crying "foul," when BP is projected to pay only about three months of earnings to compensate the families and

businesses for the *Deepwater Horizon* disaster.

Governor Robert Bentley and Attorney General Luther Strange have worked diligently to protect the rights of all Alabama citizens. I can tell you firsthand that no one has worked harder to see that Alabama is treated fairly and compensated for this catastrophe than these two men. Attorney General Strange and one of his lawyers, Corey Maze, have spent countless hours working in Court in New Orleans to bring justice and fair compensation to the State of Alabama. Governor Bentley has made it clear, as he should, that Alabama should be compensated just as fairly as the other States, which include Florida, Mississippi, Louisiana and Texas.

Are each of those States attempting to get something for nothing? To say so is absurd and just flat wrong. This blowout was the worst environmental disaster in the history of this country. That is a fact. BP wants the citizens of the Gulf States to forget it ever happened while dodging the misery they caused individuals, businesses and governments to bear.

This is the bottom line—BP struck a deal to compensate businesses and individuals transparently and fairly, so that BP would not be in court with these same businesses for 10 to 20 years. Then BP waited until after the three-year anniversary of the Spill, after the Settlement was locked in, and after the criminal charges were resolved before setting off on this disgusting public relations effort to actually blame the victims!

BP has a habit of saying one thing and doing another. I don't believe the courts will allow it to further harm our citizens and hardworking business owners. Where I come from, a deal is a deal, and commitments are kept. This is exactly what we should demand from a corporate giant like BP.

OBAMA ADMINISTRATION UNDER FIRE FOR DELAY ON CHEMICAL PLANT SAFETY

The Obama administration's lack of action to impose recommended changes to make refineries, chemical factories and sugar plants safer may have gotten public rebuke from the U.S. Chemical Safety Board by the time this is read. The independent investigative agency has said that it will consider labeling as "unacceptable" the inaction of the Occupational Safety and Health Administration (OSHA) on seven recommended moves in the past decade. This issue was to be taken up at a July 25 public meeting. The board will also vote on whether to designate an OSHA standard on combustible dust at

sugar refineries and related factories its "Most Wanted" safety change, the first time it will make that distinction, according to a statement.

For advocates pushing President Barack Obama's administration to act on these and related measures to protect workers and the public, the board's likely condemnation highlights what it calls unnecessary delays. The safety board "has made a number of recommendations to OSHA over the years on life-threatening issues, and OSHA hasn't really responded through the regulatory process," according to Matt Shultz, a senior policy analyst for the Center for Progressive Reform. The safety of chemical plants, refineries and fertilizer factories has taken on a new priority in Washington following several deadly mishaps, including the fire and explosion at a fertilizer depot in West, Texas, in April that killed 14 people.

The board investigates industrial accidents and issues recommendations to regulators, such as the Environmental Protection Agency and OSHA, as well as companies, states and local authorities. The Washington-based agency lacks the authority to force regulators or companies to make changes. Four of the seven recommendations on the meeting agenda would apply to combustible dust, which caused three major industrial explosions in 2003, killing 14. OSHA has been considering a rule to regulate these facilities since 2009, but so far it hasn't submitted even its initial proposal to the White House for review. That is unacceptable.

Ammonium nitrate, which fueled the West explosion, is now regulated by local, state and federal agencies in a "patchwork that has many large holes," board Chairman Rafael Moure-Eraso said at a recent Senate hearing. But interestingly, regulating that chemical wasn't on the agenda for the July 25 meeting. The investigation into that incident continues, and the board hasn't made any recommendations to include on a "most wanted" list, according to Hillary Cohen, a spokeswoman for the board. This issue had to be sent to the printer earlier than usual, so we don't know what happened at the meeting.

Source: *Insurance Journal*

JURY AWARDS \$1.1 BILLION IN LAWSUIT AGAINST NURSING HOME CONGLOMERATE

A jury in Polk County, Florida, returned a \$1.1 billion verdict last month in a case involving what was described as "corporate corruption" and "misconduct" that ultimately led to the death of a nursing home resident. The jury agreed that defendant, Trans Health Care, Inc. (THI), deserved to be

punished for such severe corporate greed that it caused Ms. Arlene Townsend to suffer for years in a nursing home that was short-staffed and under-supplied. The jury awarded \$110 million in compensatory damages and \$1 billion in punitive damages.

The Plaintiff's lawyers presented evidence showing how Ms. Townsend was the victim of a scheme by an enterprise that included: New York real estate investors; financiers General Electric Capital Corporation (GECC) (a private bank) and Ventas, Inc. (a real estate investment firm); and multi-billion dollar Chicago private equity fund GTCR Golder Rauner, LLC. According to trial testimony, this group conspired to run a nursing home chain into insolvency without regard to the harm the nursing home residents would experience. Ms. Townsend was said to have been one of the victims of the Auburndale facility THI managed and operated.

An expert forensic accountant testified that GTCR founded THI in 1998 with a plan to create the largest privately owned nursing home company in the country through a series of mergers and acquisitions. Their Boards of Directors were composed solely of investors and bankers, and did not include a single health care official. From 1999 to 2003, GTCR and THI began acquiring nursing homes with funding from GECC, Ventas and other lenders. THI became one of the nation's largest health care operators with more than 220 facilities and more than a billion in revenue at that time.

THMI was the management company of the \$1 billion GTCR/THI empire. When Medicare money for residents' rent flowed into the THI account, GECC and Ventas took their share before monies were available to cover payroll, supplies, utilities, etc. for the hundreds of nursing homes, according to evidence presented at trial. Insider operators and former employees began suing GTCR/THI over poor management, as did nursing home residents and their families because of what was described as abysmal care. Eventually, to protect itself from financial loss, GTCR/THI agreed to sell THMI for a mere \$100,000 to Fundamental Long Term Care, Inc. (FLTCL), a shell company that had no employees.

In the corporate quagmire of buying, selling and merging nursing home corporations, it was the fragile nursing home residents, such as Ms. Townsend, who were overlooked and ignored and suffered greatly for it. Ms. Townsend was a single mother, who became a nurse, devoting the bulk of her life to caring for others. The latter part of her career was spent tending to the needs of nursing home residents. Shortly after she retired, Ms. Townsend suffered a stroke. She

needed 24-hour care, and her son, Gary Townsend, moved his mother to Auburndale Oaks in 2001.

But during the time she lived there, Ms. Townsend suffered at least 18 falls. The final fall resulted in a hip fracture that went undiagnosed and untreated for a week. She also endured severe infections, including *Clostridium difficile* and cellulitis, as well as chronic stomach pains with fecal impaction, skin tears, malnutrition, and dehydration while at Auburndale Oaks. She died on September 18, 2007, at 69 years old. Trial testimony showed that Auburndale Oaks did not have enough employees or supplies to properly care for all of the residents there, including Ms. Townsend.

The case is *The Estate of Arlene Anne Townsend v. Briar Hill, Inc.* Bennie Lazzara Jr., Joe Ficarrota, and Isaac Ruiz-Carus with the Tampa law firm Wilkes & McHugh, P.A., represented Arlene Townsend's son, Gary Townsend, in the case. For this trial, the jury had to determine damages only, not liability. Auburndale Oaks Healthcare Center is no longer affiliated with Trans Healthcare, Inc. Source: Wilkes & McHugh, P.A.

VI. THE CORPORATE WORLD

BROWNS FERRY ENGINEER NEVER EXPECTED TO BE NUCLEAR PLANT WHISTLEBLOWER

TVA engineer Joni Johnson became a federal whistleblower. She says her world changed when she ran into what she described as a flawed safety culture at the plant where she worked. Mrs. Johnson, 52, was used to going to work at the Browns Ferry Nuclear Plant where she has been employed since 1987. She is a married mother of two sons, with an engineering degree from the University of Alabama in Huntsville. Ms. Johnson worked full-time while finishing school, sometimes putting in 60-hour work weeks while pursuing an electrical engineering degree.

Ms. Johnson's work at TVA has been recognized by her colleagues and managers. She provided good performance reviews, internal awards and plenty of notes from co-workers thanking her for dedication and quality work. Performance reviews note that Johnson "always accepts ownership," has strong technical knowledge, is detail-oriented and "provides excellent guidance."

Raised in a large family in Connecticut, Ms. Johnson is the daughter of an Army

veteran of World War II and the Korean War. Her mother was born and raised in Carbon Hill. Her father worked on nuclear-related projects for the Army in Maryland and New Mexico late in his career. Though engineering was not a booming career field for women in the 1970s, Ms. Johnson's father encouraged her to pursue technical work and she did. But in a male-dominated culture, it wasn't always easy.

Ms. Johnson has been certified as a root cause analyst, charged with figuring out what went wrong with a system, a piece of equipment or process. It was through work on a root cause analysis for a failed cooling system motor at Browns Ferry that Ms. Johnson first encountered what she said was troubling resistance to getting to the bottom of a problem and identifying what went wrong. She had this to say:

It's a very detailed and scientific process. Your conclusions are based in fact and data. You accumulate them based on fact and data. There can be no unvalidated assumptions allowed in the root cause process.

Ms. Johnson said the completion of the root cause report and the issues it cited led to strong pushback from some managers, accusations against her and eventually poor performance reviews. She said a second root cause report she wrote on software problems affecting industrial safety led to similar responses, and her career suffered. Nuclear Regulatory Commission investigators met with Ms. Johnson last fall and agreed to look into her allegation that she was retaliated against by TVA for speaking out about safety concerns.

TVA has embarked on a substantial corrective action plan at Browns Ferry and said it has seen a major turnaround in the improvement of its safety culture. Ms. Johnson filed a discrimination claim, but was unsuccessful in a mediation effort with TVA. Ms. Johnson said her decision to speak out now was spurred by a desire to help ensure the next person who expresses concerns about safety at Browns Ferry will be taken seriously and not "bullied." The whistleblower said she remains "pro nuclear power." She added:

What we do is very important. We control the strongest form of energy on planet earth. I'm raising a family here. I don't take shortcuts when it comes to nuclear power. I'm sorry to have been around others that do.

It's a sad commentary on the times that whistleblowers have had to become so active combating fraud in Corporate America. These men and women who report

corporate fraud perform a tremendous service to their fellow citizen. It's very important that whistleblowers be protected from retaliation by their employers.

Source: AL.com

SEC MODIFIES NEITHER ADMIT NOR DENY

The Securities and Exchange Commission (SEC) has quietly modified its "neither admit nor deny" settlement policy. In a memo to SEC enforcement staff, Enforcement Co-director Andrew Ceresney and Co-director George Canellos wrote:

While the no admit/deny language is a powerful tool, there may be situations where we determine that a different approach is appropriate. We currently do not enter no-admit-no deny settlements in cases in which the defendant admitted certain facts as part of a guilty plea or other criminal or regulatory agreement. Beyond this category of cases, there may be other situations that, after considering the goals set forth above, justify requiring the defendant's admission of allegations in our complaint or other acknowledgment of the alleged misconduct as part of any settlement. In particular, there may be certain cases where heightened accountability or acceptance of responsibility through the defendant's admission of misconduct may be appropriate, even if it does not allow us to achieve a prompt resolution.

We have been in discussions with Chair (Mary Jo) White and each of the other Commissioners about the types of cases where requiring admissions could be in the public interest. These may include misconduct that harmed large numbers of investors or placed investors or the market at risk of potentially serious harm; where admissions might safeguard against risks posed by the defendant to the investing public, particularly when the defendant engaged in egregious intentional misconduct; or when the defendant engaged in unlawful obstruction of the Commission's investigative processes. In such cases, should we determine that admissions or other acknowledgment of misconduct are critical, we would require such admissions or acknowledgment, or, if the defendants refuse, litigate the case.

Ceresney and Canellos said that they recognize that insisting upon admissions in certain cases could delay the resolution of cases, and that many cases will not fit the criteria for admissions. They stated further:

For these reasons, no-admit-no-deny settlements will continue to serve an important role in our mission and most cases will continue to be resolved on that basis. We will also continue to strongly defend our discretion to reach such settlements in response to inquiries from courts. We will be holding a Town Hall in the coming days to further solicit and discuss your views. In the meantime, we encourage you to assess each of your ongoing investigations and pending actions with a view to whether the conduct and circumstances warrant consideration of public acceptance of responsibility by the defendant(s). If you believe admissions may be appropriate, please advise your supervisor and OCC so that we can begin an early dialogue about the case.

I have never liked the no-admit-no-deny settlements and believe the policy has been sending the wrong message to both the corporation involved and to the American people. If a corporation has violated some law or regulation—and has profited from its wrongdoing—that company should be required to admit its wrongdoing. Simply paying a fine—regardless of how large—is simply not enough. Hopefully, this change in policy, while not that far-reaching, is a good sign. We will wait and see.

Source: Corporate Crime Reporter

WHISTLEBLOWER SUIT SAYS HOSPITALS DEFRAUDED MEDICAID

Two large hospital operators paid kickbacks to clinics that directed expectant mothers living in the country illegally to their hospitals and filed fraudulent Medicaid claims on those patients, a federal whistleblower lawsuit unsealed last month said. It was alleged that Naples, Fla.-based Health Management Associates and Dallas-based Tenet Healthcare Corp. and their affiliates entered into contracts with clinics operated by Hispanic Medical Management and Clinica de la Mama and their affiliates. The clinics then referred pregnant women living in the country without authorization to for-profit hospitals operated by HMA and Tenet in exchange for kickbacks from fraudulent Medicaid claims, the lawsuit says.

As we have written previously, paying for or accepting money to arrange for medical treatment under federally funded programs is prohibited by the Medicare and Medicaid Patient Protection Act (the anti-kickback statute).

The federal whistleblower lawsuit, filed by Ralph Williams, a former chief financial officer for HMA, says the kickback scheme went on for more than a decade. The state of Georgia has also joined the lawsuit to recover state Medicaid funds. Georgia Attorney General Sam Olens said in a statement:

These hospitals paid Clinica kickbacks camouflaged as interpreter service payments to funnel emergency Medicaid patients their way and increase their bottom line. As Attorney General, I take seriously my responsibility to protect the integrity of Georgia Medicaid and to ensure that those who defraud the program are held accountable.

The lawsuit alleges that Clinica recruits pregnant women who are in the country illegally to its prenatal clinics using the slogan, "we care about your health, not your immigration status. The clinics then directed these vulnerable patients to the HMA and Tenet hospitals, which pay for the referrals, the lawsuit says. Those in the country illegally are not eligible for regular Medicaid coverage, but hospitals can be reimbursed for treatment of emergency services provided to those in the country illegally, and childbirth is considered an emergency medical condition under Medicaid. According to the lawsuit, Williams began working at HMA in April 2009 and one of his duties was to monitor contracts and approve the payment of bills. The following allegations in the lawsuit states:

- Shortly after he arrived, he discovered a contract between an HMA hospital in Monroe and Clinica for Spanish interpreter services;
- He investigated and found no evidence of interpreter services, but eventually found that Clinica was being paid for referring pregnant women in the country illegally "for government subsidized deliveries.
- Soon after he voiced his concerns about the fraudulent arrangement to company leaders, Williams was fired without reason.

It's alleged in the lawsuit that Williams' direct supervisor had previously worked for Tenet in South Carolina. The lawsuit alleges further that Tenet used a similar scheme in a number of its hospitals, including Atlanta

Medical Center and its south campus in East Point, North Fulton Hospital in Roswell, Spalding Regional Hospital in Griffin, Sylvan Grove Hospital in Jackson, and Hilton Head Hospital in Hilton Head, S.C.

Source: *Claims Journal*

UBS To Pay \$885 Million To Settle U.S. Mortgage Suit

UBS AG, Switzerland's largest bank, has agreed to pay \$885 million to Fannie Mae and Freddie Mac to settle claims that it improperly sold them mortgage-backed securities during the housing bubble. The Federal Housing Finance Agency claimed Zurich-based UBS misrepresented the quality of loans underlying billions of dollars in residential mortgage-backed securities purchased by Fannie Mae and Freddie Mac. The firms have operated under U.S. conservatorship since 2008, when they were seized amid subprime mortgage losses that pushed them toward insolvency.

UBS disclosed last month that it had reached an agreement in principle to settle the suit. The FHFA sued UBS in 2011 over \$4.5 billion in residential mortgage-backed securities that UBS sponsored and \$1.8 billion of third-party RMBS sold to Fannie Mae and Freddie Mac. The suits alleged losses of at least \$1.2 billion plus interest. Fifteen other banks still need to resolve similar lawsuits. Acting Director Edward J. DeMarco said in a statement:

The satisfactory resolution of this matter provides greater clarity and certainty in the marketplace and is in line with our responsibility for preserving and conserving Fannie Mae's and Freddie Mac's assets on behalf of taxpayers.

FHFA sued UBS and 17 other banks in 2011, seeking to recover losses on a total of \$200 billion in mortgage-backed securities sold to the two government-sponsored enterprises. UBS is the third bank to reach an agreement with FHFA. Citigroup Inc. and General Electric Co. each paid undisclosed amounts to settle the regulator's claims.

UBS is seeking to resolve various legal matters as Chief Executive Officer Sergio Ermotti scales down the investment bank to focus on money management. The bank was fined about 1.4 billion francs in December by regulators in the U.S., U.K. and Switzerland for altering its submissions used to set benchmarks such as the London interbank offered rate.

In November, U.S. District Judge Denise Cote, who is overseeing the UBS suit and

most of the other FHFA suits, denied a request by Citigroup, Bank of America Corp. and two other banks to dismiss them. The case is Federal Housing Finance Agency v. UBS Americas Inc., U.S. District Court, Southern District of New York (Manhattan).

Source: *Bloomberg News*

VII. PRODUCT LIABILITY UPDATE

\$53 Million Verdict Against Ford Motor Company

On June 23, 2002, Eileen and Todd Robinson and their 5-month-old son were involved in a single-car collision. Their 1997 Ford Explorer hydroplaned into a guardrail on I-75 near Lake City, Fla. Eileen Robinson, a 28-year old schoolteacher, was in the back-center seat with her seatbelt on, sitting next to her young son. During the crash, the seatbelt and seat-back failed and Mrs. Robinson was ejected headfirst out of the rear windshield of the vehicle. She survived, but sustained a traumatic brain injury and other serious bodily injuries. A product liability lawsuit was filed against Ford, alleging that its 1997 Ford Explorer had a defectively designed and manufactured seat and seatbelt and that the design of the location of the center of gravity in the vehicle made the Explorer defectively unstable.

After a four-week trial, the jury returned a \$53 million verdict, finding Ford strictly liable for all claims. The verdict included damages for Mrs. Robinson's past and future medical expenses, wage loss and loss of earning capacity as well as more than \$41 million in non-economic damages for both Mrs. Robinson and her husband Todd Robinson. The damages award will provide for the future care and treatment of Mrs. Robinson's permanent medical conditions and disability as well as support for the Robinson family.

The Plaintiffs were represented at trial by Gene Odom with the firm Martinez-Odom, located in Brandon, Fla., and John Romano, Elizabeth Zwibel and Geoffrey Schosheim from Romano Law Group, based in West Palm Beach, Fla. They did a very good job in this significant case.

Source: romanolawgroup.com

\$14 Million Verdict Against Hyundai In Airbag Trial

A jury in Virginia has returned a \$14 million verdict against Hyundai Motor Co. in a lawsuit arising out of a car crash. Duncan and his parents sued Hyundai after he sustained serious brain injury when the Hyundai Tiburon he was driving left the road and collided with a tree on the driver's side. Although the car was equipped with side air bags, they did not deploy. Proof at trial indicated the side air bags did not deploy because Hyundai had put its side air-bag sensors in the wrong location. The sensors were placed under the driver's seat, instead of farther out on the car. Hyundai had conducted studies and knew about the potential risks with the sensor location. Hyundai had argued that the car's air-bag system met federal safety standards and had been thoroughly tested and found to be safe. The company said that Duncan rolled his vehicle into a tree, and that a side air bag would not have kept him from being injured.

The jurors found that a defect in the airbag design was responsible for the injuries suffered by Duncan, who sustained traumatic brain damage in the 2010 crash. It was proved that the airbags did not deploy because the sensors had been placed in the wrong location. The automaker's U.S. manufacturing plant, which produces the Sonata sedan and Elantra compact, is in Montgomery, Ala.

A first trial against Hyundai ended in a mistrial in 2012 after jurors deadlocked. The second trial began on June 17 and ran for two weeks. The same air-bag sensor design at issue in the Duncan case was also present in Tiburons from model years 2003 until 2008. Hyundai discontinued the Tiburon after 2008. Ari Casper, a lawyer with Stein, Mitchell, Muse, Cipollone, based in Washington, D.C., represented Mr. Duncan in his case and did a very good job.

Jury Awards \$43 Million To Woman Paralyzed In Auto Crash

A jury in Vermont recently returned a \$43.1 million jury verdict against the manufacturer of a car seat that collapsed on a woman during a 2007 car crash, rendering her a paraplegic. The amount awarded Dzemila A. Heco in her lawsuit against the car seat-maker, Johnson Controls Inc. of Milwaukee is believed to be the biggest jury verdict in state court in Vermont history. The jury reached its verdict after two weeks of trial. Johnson Controls is considering an appeal.

The case arose from an August 4, 2007, accident on a state road in Essex town. Heco's car, a 2000 Dodge Neon, was struck from behind by a vehicle driven by a teenage driver. The teenager fell asleep just before striking the Heco car, which was waiting at a red light to turn into a grocery store parking lot. The striking car was traveling about 35 mph when the crash occurred. The car seat-back collapsed on Ms. Heco when the wreck occurred, causing severe spinal-cord injuries. She was wearing a seatbelt at the time.

The case initially listed 33 defendants when it was filed in 2010. By 2012, all but Johnson Controls and Midstate Dodge has been dismissed. Midstate Dodge settled out of court with the Hecos, according to court records. Johnson Controls, which had operated an automobile battery manufacturing plant in Bennington, shut down in 1994.

Ms. Heco is a refugee from Bosnia who escaped Sarajevo with her two sons after her husband was killed. The woman and her sons made their way to the United States and then to Vermont in 1995. She had worked three jobs for years so her sons could get an education, according to media reports. Robin H. Curtiss, a lawyer with Van Dorn & Curtiss, based in Orford, N.H., represented Ms. Heco. She did a very good job for her in this case.

Source: burlingtonfreepress.com

IIHS VIDEOS PROVIDE BEHIND THE SCENES LOOK AT CRASH TEST DUMMIES

New web videos from the Insurance Institute for Highway Safety (IIHS) offer an insider's look at the Institute's crash test facility in Ruckersville, Va. In "Inside IIHS," engineers at the IIHS Vehicle Research Center explain crash test programs and highlight some of the equipment they use in their research. The videos include:

- Crash test dummies at work;
- Frontal offset testing;
- Measuring roof strength;
- The crash propulsion system;
- Rating children's booster seats; and
- Side testing.

These videos are very good and are instructive. In the latest video, engineers put truck underride guards to the test. Most folks have seen the steel bars that hang from the backs of semitrailers. But lots of them don't realize what they actually are. These underride guards are supposed to keep smaller vehicles from sliding underneath a

large truck in a crash. When the guards don't work, the consequences can be deadly. "Inside IIHS: Understanding underride" explains that IIHS embarked on this program after researchers found that underride crashes continued to kill people in passenger vehicles despite big improvements in crash protection. That's because a passenger vehicle's structure and airbags can't do their job when an underride event occurs. The video shows how the tests were conducted and explains the results, which demonstrated that most trailers still need better guards.

The eight videos in the "Inside IIHS" series are available on its YouTube channel. The Insurance Institute for Highway Safety is an independent, nonprofit scientific and educational organization dedicated to reducing the losses—deaths, injuries and property damage—from crashes on the nation's roads. In my opinion, the IIHS does outstanding work and provides a most important service in the field of auto safety.

Source: *Claims Journal*

PERSONAL WATERCRAFT LIABILITY

Personal watercrafts (PWC), also known as jet skis, are extremely popular in the U.S. but are responsible for far too many on-the-water injuries. The U.S. Coast Guard defines PWCs as jet-propelled boats shorter than 13 feet in length. Although PWCs have been around for decades, the same basic design elements have remained unchanged. The primary difference between a PWC and a traditional powered watercraft is the method of propulsion. Traditional motorized watercraft use propellers. But PWCs use water jet propulsion and are typically smaller, more agile and faster than propeller-driven watercraft.

PWCs gained widespread popularity in the 1980s as several manufacturers started mass-producing and -marketing the watercraft. They were marketed as an affordable recreational watercraft that the entire family could enjoy. Many inexperienced boaters were attracted to the idea of a less expensive, more maneuverable alternative to traditional boats. Moreover, the speed and agility of PWCs created a new, exhilarating boating experience. This combination of speed, maneuverability and interest from inexperienced boaters has caused countless injuries.

PWCs are becoming more dangerous with each year model instead of becoming safer. In effect, PWC manufacturers have added little in the way of safety features. But they have pushed the limits of speed and performance. The first mass-produced PWCs averaged around 500cc engines. With almost every remodel, the engines have slowly

increased in size. Today's average PWC engine is around 1500cc with some as large as 1800cc. Superchargers and other engine upgrades are also common on many of the sportier models. Many of these PWCs reach speeds of 60-70 miles per hour. Not only are these top-end speeds alarming, but the acceleration is also shocking. Many of these watercrafts will accelerate to more than 30 miles per hour in just over a second's time.

PWCs, by the very nature of their design, create certain hazards. Unlike traditional motorized watercraft, PWCs do not have rudders. As a result, there is virtually no steering unless the rider is accelerating. Moreover, the manufacturers acknowledge that from top-end speed, it takes 300-400 feet to completely stop the watercraft. The operator is forced to accelerate away from danger instead of being able to stop or steer away without engine power. This goes against most riders' natural reaction. When posed with a hazard or danger, and operator's natural reaction is to let off of the throttle and come to a controlled stop. However, this can take the length of a football field. Operators are forced to counter-intuitively accelerate if danger presents itself. This flaw in the jet propulsion system has resulted in countless injuries and still presents a problem in new models. In fact, the problem is likely getting worse as newer models become faster and the length of time needed to stop also increases.

PWCs are also responsible for orifice injuries to operators and passengers. These horrific injuries occur when a rider falls off the watercraft backward and lands in the path of the high pressure water jet. These forces are so strong that it can push an extreme volume of water into the riders' orifices, causing catastrophic injuries. This hazard is also becoming more of a problem as the engine size and jet outputs of the machines increase.

Although PWCs create certain hazards due to their design, many accidents are a result of inexperienced operators behind the wheel. PWCs are small, fast, maneuverable and simple to operate. These characteristics naturally appeal to inexperienced boaters. Unfortunately, quite often novice boaters don't fully appreciate the power and dangers associated with the watercraft. Predictably, PWCs are very popular with younger operators. Several states have recently increased the age at which one can apply for a boating license. Many believe such legislation is a direct response to the increase of teen boating accidents involving PWCs.

In Alabama, an operator can apply for a boating license at the age of 12 and must pass a written test. Fortunately, from the age of 12 to 14, boaters must be accompanied by a licensed adult older than 21 to operate a

vessel. Although this may seem like a young age, I believe it's a good idea for young operators to learn with a supervising adult as opposed to simply turning them loose at the age of 14 or 16. No amount of reading or testing can fully prepare a young operator to use such a powerful machine. More importantly, parents and friends must remind young and inexperienced riders that although fun, a PWC should not be mistaken for a toy. They are capable of blazing speeds and must be treated as cautiously as any other high-powered machine.

Although experience on PWCs and a heightened awareness of the machine's power is a great start to limiting accidents on the water, a watercraft that forces an operator to accelerate in an emergency situation is a dangerous product that no amount of education or training can correct. For more than 20 years manufacturers have placed all their efforts in making the fastest and most stylish watercraft. It is time that they put as much emphasis on consumer safety. If you need more information 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.

WOMAN AWARDED \$21.7 MILLION IN CALIFORNIA WATERCRAFT ACCIDENT

In a related matter, a woman who was injured in a personal watercraft accident on the Colorado River has been awarded \$21.7 million by a Los Angeles jury. The verdict came in her lawsuit against the watercraft's drivers and a manufacturer. Fabiola Esparza was 15 when she suffered a permanent brain injury in the 2008 accident near Blythe, Calif. The watercraft the teenager and two others were riding became impossible to control through a defect that Polaris, the maker, knew about.

Source: *Claims Journal*

MESOTHELIOMA CASES PRESENT UNIQUE CHALLENGES

Mesothelioma is a complex and deadly cancer that has been directly linked to exposure to asbestos-containing materials. The National Institute of Health has estimated that 11 million people were exposed to asbestos between 1940 and 1978, as asbestos was once used in many products, including insulation, floor tiles, door gaskets, soundproofing, roofing, patching compounds, fireproof gloves, ironing board covers and even brake pads.

More than 2,000 cases of mesothelioma are diagnosed each year, most commonly in adults between the ages of 50 and 70. The incidences of mesothelioma increase with age, due to a 25-to-50-year latency period experienced by most patients. This latency period refers to the time between initial asbestos exposure and when a doctor definitively diagnoses the cancer. In fact, the shortest possible latency period is 10 to 15 years. The length of the latency period depends on a number of factors, including the duration and intensity of asbestos exposure, the patient's gender and the actual type of mesothelioma.

Because of the long latency period involved, mesothelioma cases present unique challenges. Developments in case law have placed greater emphasis on identifying co-workers who can both identify the products the client was exposed to and provide testimony regarding the duration and frequency of exposure. Further, many of the primary Defendants in asbestos litigation are now in bankruptcy and claimants are being left with no further recourse than to seek payment through a bankruptcy trust. Finally, a client's time from actual diagnosis to death is typically very short—about 12 to 18 months. During this short period, it is crucial to identify the product the client was exposed to, file the lawsuit and make the client available for deposition to memorialize her testimony.

Despite these challenges, asbestos litigation will most likely continue in the United States. This is due in large part to the long history of asbestos use in the United States. Mesothelioma litigation will continue to evolve as older Defendants seek bankruptcy protection and new Defendants are identified. As a result, it is important that patients diagnosed with mesothelioma immediately associate with a law firm with the resources and experience to tackle such challenging cases. Lawyers in our firm are currently handling several mesothelioma cases. For more information about this topic, contact Mike Andrews, a lawyer in our Personal Injury/Products Liability Section, at 1-800-898-2034 or by email at Mike.Andrews@beasleyallen.com.

Source: The Mesothelioma Center at www.asbestos.com

VIII. MASS TORTS UPDATE

ROGER SMITH APPOINTED TO PSC FOR MIRENA IUD LITIGATION

Roger Smith, a lawyer in our firm's Mass Torts Section, has been appointed by the United States District Court for the Southern District of New York to serve on the Plaintiffs Steering Committee for the Mirena IUD litigation pending before that Court. The case is MDL No. 2434.

The Mirena IUD is an intrauterine device used to prevent pregnancy. It is also used to treat heavy menstrual bleeding. It is a small, T-shaped device made of flexible plastic that is inserted into the uterine cavity by a trained health care provider. It releases the hormone levonorgestrel. Since it was approved in 2000, the U.S. Food and Drug Administration (FDA) has received numerous reports of adverse events associated with the device, including the IUD becoming imbedded, migrating and/or perforating the uterine wall. It can move through the abdominal cavity and end up in the bowels, intestine, spine, hip or pelvic area. Often surgery, including hysterectomy, is needed to remove the device. Roger had this to say:

I am honored to be selected to work as part of the team prosecuting these cases on behalf of the women that have been injured by these IUD devices. It is my hope that we can bring these cases to a successful and timely resolution for our clients.

Consolidating the cases into a multidistrict litigation (MDL) allows the committee overseeing the process to put more pressure and focus on moving the case forward, moving cases more quickly to resolution. Lawyers will coordinate the litigation and work together on issues of science and discovery. If you need more information on this important litigation contact Roger Smith at 1-800-898-2034 or by email at Roger.Smith@beasleyallen.com.

FRANK WOODSON APPOINTED TO PSC IN THE GRANUFLO MDL

Frank Woodson, a lawyer in our Mass Torts section, has been appointed by the United States District Court for the District of Massachusetts to serve on the Plaintiffs Steering Committee for the Fresenius Granu-

flo/Naturalyte litigation pending before that Court. The case is MDL No. 2428.

GranuFlo, and a similar product called NaturaLyte, were administered in dialysis clinics operated by Fresenius Medical Care. GranuFlo is a product used to help balance chemicals in the blood during dialysis treatment. It contains an ingredient that metabolizes in the body as bicarbonate. GranuFlo has more of this ingredient in it than competitor products. Studies have shown that elevated bicarbonate levels increases the risk of cardiac problems, including heart attack, stroke and sudden cardiac death.

In the case of GranuFlo, an internal memo indicates Fresenius knew about a number of cardiac problems and deaths possibly associated with GranuFlo but they did not release this information to doctors, patients or the FDA. Frank, when learning of his approval, said:

I am honored to be selected to work as part of the team prosecuting these cases on behalf of the patients suffering harm from this product. I will work very hard to help bring these cases to a successful and timely resolution for our clients.

If you have any questions about this litigation, contact Frank Woodson at 800-898-2034 or by email at Frank.Woodson@beasleyallen.com.

FIRST TRIALS SCHEDULED IN DEPUY PINNACLE MDL

Parties involved in the DePuy Pinnacle multidistrict litigation (MDL) in the U.S. District Court for the Northern District of Texas have agreed on the process for selecting a small group of cases that will be prepared for early trial dates. Known as “bellwether” lawsuits, the trials are designed to help the parties gauge the relative strengths and weaknesses of their cases.

Currently, more than 4,000 product liability lawsuits are in Pinnacle MDL before U.S. District Judge Ed Kinkeade in the Northern District of Texas. Each complaint makes similar allegations against DePuy for injuries sustained from the metal-on-metal Pinnacle device. Specifically, the claims are that the Pinnacle device was defectively designed or manufactured, and that inadequate warnings were provided about the risk of early complications or problems, which often develop within a few years post-original implant. Patients have reported issues similar to those reported in DePuy ASR patients, including pain, swelling, component loosening and need for premature revision surgery. A

danger for metallosis also exists, a condition involving the build-up of metallic debris in the soft tissues of the body.

In August 2012, the Honorable James E. Kinkeade ordered that the first Pinnacle hip replacement trials would begin in September 2014. Another order issued this year by Judge Kinkeade requires Plaintiffs’ and Defendants’ counsel to choose eight cases for consideration as “bellwether” trials. Both sides are expected to each select four cases by September 2, 2013, for a total of eight cases. Of the eight cases selected, four will go to trial in September 2014.

Bellwether trials are a vital part of the litigation process and will impact all Pinnacle cases. The bellwether process is designed to test the waters and allow both the Defendants and Plaintiffs to gauge the strengths and weaknesses of their cases. It also provides information about how jurors will respond and react to each side’s arguments. The outcome of bellwether trials can provide direction to both Defendants and Plaintiffs, particularly in personal injury cases, where it might be more prudent to reach a settlement rather than go to trial.

Anyone implanted with a metal-on-metal hip implant should have his or her case investigated to determine its merits. If you need more information, contact Navan Ward, a lawyer in our firm’s Mass Torts section, who is heavily involved in this litigation, at 1-800-898-2034 or by email at Navan.Ward@beasleyallen.com.

STUDY SUGGESTS LIPITOR INCREASES RISK OF DIABETES

We wrote about the risk of diabetes for women in the July issue. Researchers at the University of Massachusetts Medical School in Worcester have studied data on more than 150,000 women in their 50s, 60s and 70s. They found that the women who reported using any kind of statin, including Lipitor, at the start of the study were 48 percent more likely to be diagnosed with diabetes than those not taking the drugs. Another large statin study, known as JUPITER, found a 27 percent increase in the risk of diabetes even though it was stopped early. The U.S. Food and Drug Administration (FDA) has also cited studies linking the use of statins, like Lipitor, to an increase in blood sugar levels, which is often a precursor to diabetes.

In February, 2012, the FDA required that all statins, including Lipitor, warn specifically about some of those health concerns, which include:

- Increases in blood sugar levels (a precursor to diabetes)
- Serious liver problems
- Memory loss and confusion
- A form of muscle injury called myopathy

Many doctors and patients are not aware of the risk of developing diabetes while on Lipitor because the risks were not widely publicized, even though millions of people are at risk. After their introduction in 1987, statins like Lipitor quickly became some of the best-selling medications in history, with sales in excess of \$130 billion. According to Reuters, about 25 percent of American adults older than 45 now take them.

If you need additional information on this subject or you have suffered such an injury, contact Frank Woodson, a lawyer in our Mass Torts Section. He can be reached at 1-800-898-2034 or Frank.Woodson@beasleyallen.com.

Source: Reuters

MISTRIAL IN FIRST BELLWETHER TRANSVAGINAL MESH TRIAL AGAINST BARD

On July 8th the United States District Court in West Virginia began the first bellwether trial in the C.R. Bard, Inc. Multidistrict Litigation (MDL). Bard is a manufacturer of transvaginal mesh (TVM) products. After opening statements by the parties and the testimony of at least one witness, the Court declared a mistrial after a physician inadvertently testified that manufacturers were no longer selling the type of mesh product at issue in the case. The Court declared the mistrial because the Court determined the testimony violated a rule that prohibits evidence of a subsequent remedial measure. The trial started again on July 29, 2013. “Bellwether” trials are used to define issues in the litigation and give the parties some guidance for the rest of the litigation.

Transvaginal mesh products are used to repair conditions in women such as pelvic organ prolapse (POP) and stress urinary incontinence (SUI). Pelvic organ prolapse is the bulge of organs/structures surrounding the vagina into the vaginal or extending beyond the vaginal opening, caused by a laxity of supporting tissue of the vagina. Stress Urinary Incontinence is the involuntary leaking of urine associated with an increase in intra-abdominal pressure that may be caused by straining, physical activity, coughing or sneezing.

On July 13, 2011, the FDA 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,” it was not clear that transvaginal mesh repair was safer than traditional non-mesh repairs and transvaginal mesh repair could present greater risks to the patient. The FDA report noted that the most common reported complication was erosion of the mesh material but contraction of the mesh material was also a reported complication. Both could lead to severe pelvic pain, 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 retrial of the West Kenya case started on July 29th. Lawyers in our Mass Torts section are heavily involved in the TVM litigation. They are 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 you or a loved one has suffered such an injury, please contact Leigh O’Dell or Chad Cook, lawyers in our Mass Torts Section, at 1-800-898-2034 or by email at Leigh.Odell@beasleyallen.com or Chad.Cook@beasleyallen.com.

AN UPDATE ON THE JANUVIA LITIGATION

While there may not be quite as many Januvia cancer lawsuits as there are for a competing diabetes drug Actos, the stakes are still considerable for Merck, the manufacturer of sitagliptin (Januvia). It was reported that Januvia and its related drug Janumet had global sales of \$5.7 billion between the two in 2012. But there is concern over the potential for Januvia-related pancreatic cancer, a very serious illness for which there is no cure. The sad truth is that most pancreatic cancer patients are dead within a year.

A recent study found a doubling of the risk for acute pancreatitis. Dr. Peter C. Butler, chief of endocrinology, diabetes and hypertension at the University of California has done his own studies, the outcomes of which have been a cause for concern. Dr. Butler was originally invited by Januvia manufacturer Merck to test its drug on rats to determine if incretin mimetics such as Januvia could rid diabetic rats of Type 2 diabetes.

Dr. Butler says that Merck agreed to fund the study, but he declined the offer initially. When he later agreed to do the Januvia side effects study, Dr. Butler was concerned by what he found. There were worrisome changes in the pancreases of the rats under study—changes that could lead to Januvia pancreatic cancer—according to Dr. Butler. Both the U.S. Food and Drug Administration and the European Medicines Agency took notice and they are continuing their own investigations. It should be noted that Dr. Butler’s critics view the data as inconclusive. For example, Dr. Robert E. Ratner, chief scientific and medical officer with the American Diabetes Association, has said that even if excess risk was a factor at all, that risk would remain “exceptionally low.”

However, Dr. Butler, who is also the former editor of *Diabetes*, the journal of the American Diabetes Association, also has his defenders. Dr. Butler himself notes that studies undertaken prior to the approval of incretins by the FDA tended to involve younger, healthier animals that might not be expected to emerge with pancreatic cancer. What’s more, any patient or potential Plaintiff concerned about the potential for Januvia cancer would be interested in Dr. Butler’s latter study of human pancreases obtained, according to the report, from 34 organ donors who died due to circumstances unrelated to disease of the pancreas.

Eight of the donors were taking incretins, and Dr. Butler found pancreases of those eight people tended to have more precancerous lesions than the organs of the diabetics who had not taken those drugs, or those of the non-diabetics. There was also one case of a neuroendocrine tumor, a type of pancreatic cancer, amongst the pancreases inherent with the incretin users. Also, the pancreases of the users presented as heavier with faster growth of certain cells. Seven of the eight incretin donors had been taking Januvia.

Dr. Butler’s study on human pancreases also has its detractors, including Dr. Fred Gorelock, a professor of medicine and cell biology at Yale, who noted the precancerous lesions found had been early-stage ones. Many middle-age people have these, and they often do not lead to cancer. But Dr. Gorelock did say, however, that the study “raised several red flags.”

Patients concerned about the potential for Januvia pancreatitis might be well advised to pay close attention to information due for release later this summer, according to a Herald Tribune report. Results from randomized clinical trials studying any potential association between incretins and heart issues will also likely reveal any increased risk of pancreatitis. The National Institutes of Health met recently to study the associa-

tion between diabetes, diabetes drugs and pancreatic cancers. Hopefully, there will be more information coming from the studies. Since pancreatic cancer carries a virtual death sentence, it’s important information for patients taking Januvia.

Lawyers in our Mass Torts section are currently investigating claims involving pancreatic cancer. If you have any questions on the subject, contact Melissa Prickett, a lawyer in the section, at 1-800-898-2034 or by email Melissa.Prickett@beasleyallen.com.

Source: Lawyersandsettlements.com

IX. AN UPDATE ON SECURITIES LITIGATION

COMMODITY FUTURES TRADING COMMISSION WHISTLEBLOWER PROGRAM

The Commodity Futures Trading Commission (CFTC) has a little-known whistleblower program that can result in a huge payoff for those reporting fraud to the CFTC. The Dodd-Frank Wall Street Reform and Protection Act (Dodd-Frank) created the CFTC whistleblower program. The benefits of the CFTC whistleblower program are threefold: confidentiality, employee protection and financial reward.

The CFTC whistleblower program has stronger confidentiality protections than other whistleblower statutes, such as the False Claims Act (FCA). Whistleblowers remain anonymous if they are represented by an attorney and have often remained anonymous to the CFTC up until they receive their financial award for blowing the whistle. Confidentiality assures potential whistleblowers that they will not be “under the gun” for standing up and doing the right thing.

A second protection is that employees who blow the whistle cannot be fired, demoted, threatened, harassed, discriminated against or suspended for being a whistleblower. If any of these actions are taken by an employer, then the employee may sue for back pay, damages and reinstatement. Generally, because of the greater confidentiality protection of the CFTC whistleblower program, fear of retaliation is mitigated.

Finally, the CFTC rewards those who step forward and do what is right—reporting fraud. The CFTC awards between 10 to 30 percent of the monies recovered by the CFTC if more than \$1 million is collected. A whistleblower’s

reward will be measured by the significance of the information provided, assistance provided by the whistleblower and his lawyer and the interest of the CFTC in deterring violations of the law.

A CFTC whistleblower must have independent and direct knowledge of violations of the Commodity Exchange Act that leads to a government enforcement action recovering more than \$1 million in monetary sanctions. The Commodity Exchange Act can be found at 7 U.S.C. § 1 of the United States Code. This Act forbids fraud, manipulation, excessive speculation and abusive actions on the commodity, financial futures and options markets. A whistleblower who has knowledge of any of these listed violations of the Commodity Exchange Act may qualify as a CFTC whistleblower and should contact a lawyer immediately to protect his or her rights.

Besides the CFTC whistleblower program, whistleblowers can also help prosecute government fraud through 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. 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, many 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 his or her 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.

Many states have adopted state versions of the False Claims Act. 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.

Lawyers in the Consumer Fraud Section at Beasley Allen continue to vigorously investigate fraud against both the federal and state

governments and encourages anyone 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. Lawyers at Beasley Allen are very familiar with the federal False Claims Act and its state counterparts and can guide whistleblowers along the process. If you have any information and would like to speak with a lawyer, please contact Andrew Brashier at Andrew.Brashier@beasleyallen.com, or at 1-800-898-2034 or 334-269-2343.

Sources: <http://www.cftc.gov/ConsumerProtection/WhistleblowerProgram/index.htm>
<http://www.phillipsandcohen.com/SEC-Whistleblowers/CFTC-whistleblower-provisions.shtml>
<http://www.phillipsandcohen.com/SEC-Whistleblowers/SEC-and-CFTC-whistleblower-info.shtml>

X. PREMISES LIABILITY UPDATE

WRONGFUL DEATH LAWSUIT FILED OVER WOMAN'S ELECTROCUTION

The administrator of the estate of a woman who was electrocuted last year while swimming beside a dock at Lake Sinclair has filed a wrongful death suit against the dock's owners. Devin Olivia Powers, 25, was visiting a friend on Bluegill Run in Eatonton, Ga., on May 5, 2012. The two women went to a nearby home and swam near a neighbor's dock. The dock's flooring recently had been replaced, and an outlet box was lying on the decking, along with a bare wire, according to the Putnam County Sheriff's Office. At some point, Ms. Powers was treading water near the dock when she touched the dock and came in contact with either the outlet box or the wire. An autopsy later confirmed that Ms. Powers died of electrocution, according to the Putnam County coroner's office.

The lawsuit, filed last month in Bibb County Superior Court, names CBM Investments Inc., Carey B. Merrell and three "John Does" as defendants. Putnam County property records list CBM Investments Inc. as the owner of the property at 106 Bluegill Run. Georgia Secretary of State records list Merrell as holding multiple offices in CBM Investments.

The lawsuit contends that Ms. Powers was electrocuted due to improper and dangerous

wiring on the dock, and that CBM and Merrell either knew or should have known that the wiring was improper and dangerous. CBM and Merrell were at fault, according to the suit, and didn't take precautionary measures to prevent an electrocution or to make the area safe. Macon lawyer Robert Herndon is acting as administrator of Powers' estate and conservator for her 2-year-old daughter. Trent Speckhals, a lawyer with the Atlanta-based firm Speckhals & Corn represents the estate in the lawsuit.

Source: [Macon.com](http://www.macon.com)

CITY FILES LAWSUIT AGAINST WEST FERTILIZER Co.

The City of West, Texas, has filed a lawsuit against the owner of the fertilizer plant that was the site of an explosion in April that resulted in 15 deaths and tens of millions in property damage. Also named in the lawsuit is CF Industries, the manufacturer of the ammonium nitrate that fueled the blast. The Federal Emergency Management Agency (FEMA) has turned down the request by the State of Texas for a major disaster declaration, which would have allowed federal funds to rebuild a destroyed school and damaged utility infrastructure. The city estimates that it has more than \$17 million in uninsured losses from the explosion and seeks an unspecified amount of damages from the Defendants.

Senator Barbara Boxer, D-California, is working in the Senate to strengthen oversight of facilities that handle and store large amounts of ammonium nitrate. A U.S. Senate Committee headed by Sen. Boxer is probing regulatory agencies regarding oversight lapses. As our readers may already know, ammonium nitrate has explosive potential under the right conditions. Sen. Boxer has called on the Environmental Protection Agency (EPA) to immediately amend its risk management program to include such reactive chemicals on the list of hazardous substances that require procedures and safeguards to minimize the risk of explosion.

According to Dr. M. Sam Mannan, a Texas A&M chemical engineering professor, the disaster could have been prevented if the Occupational Safety and Health Administration (OSHA) had inspected the fertilizer plant and found it was not in compliance with its regulations on storing explosive chemicals. Among the requirements were sprinkler systems and fire walls separating the chemicals from combustible materials. West Fertilizer had neither.

In the city's lawsuit, it's claimed the ammonium nitrate, manufactured by CF

Industries, “was unreasonably dangerous and defective” and that West Fertilizer was negligent in safely storing the chemical. A statement issued by the manufacturer said the company will seek dismissal of the lawsuit.

Source: statesman.com

DISPLAY UNITS CAN BE DANGEROUS

While most folks don’t consider display units in stores to be dangerous and to create hazards, they can be both dangerous and hazardous to customers. For example, a 25-pound candy dispenser fell on a woman in New York City at the Toys R Us flagship store in Times Square. The 42-year-old woman, Beth Flickinger, who was injured, has filed suit. It’s alleged in the complaint that she suffered a herniated disk, has excruciating headaches, a loss of income and has suffered other damages. It was alleged that the massive bin of light blue M&Ms fell over, hitting Mrs. Flickinger on the head.

Mrs. Flickinger and her husband, James, are optometrists from Clarks Summit, Pa. They were visiting New York City with their two children. In the complaint they are seeking unspecified damages against Trade Fixtures, the maker of the candy dispenser. In a prior suit against Toys R Us, tried in their home state, a jury found that the store employees were not negligent. The couple reached a settlement for an undisclosed sum with the maker of M&Ms. While in New York, prior to the incident, the Flickinger family had seen “The Lion King” on Broadway, had shopped at FAO Schwarz and Build-A-Bear on Fifth Ave., and attended Mass at St. Patrick’s Cathedral.

Mrs. Finckinger and her two boys had stopped at the Toys R Us on Oct. 26, 2008, for a ride on the Ferris wheel, and to buy some toys and some candy for the trip home. Each boy wanted different treats from the store’s self-service dispensers. While they were looking at the M&M bin, it fell on Mrs. Flickinger. A Toys R Us employee claimed that one of the children, James Jr., and not his mother, was pulling on the swing-down arm when the bin fell over. Mrs. Flickinger testified under oath that, “The boys were adamant they didn’t pull it.” Trade Fixtures’ lawyer argued that Mrs. Flickinger did not report any physical problems for more than six months after the accident, and that 50,000 of the dispensers have delivered “sweets to millions of children for seven years” without any problems.

According to Mrs. Flickinger, she had discussed the incident with the cashier, but didn’t file a report until later when her husband, who was waiting in the car, saw a

“goose egg” on her head. Experts who appeared at trial on the Plaintiffs’ behalf testified that the dispenser tipped over because it was not properly secured due to a design defect. Trade Fixtures controller Wade Baumgarten says there has never been a similar accident. Jay W. Dankner, a lawyer with Dankner, Milstein & Ruffo, located in New York City, represents the Plaintiffs in this litigation. It will be interesting to see how it comes out.

Source: *New York Daily News*

NURSING HOME WHISTLE-BLOWER SUIT CAN PROCEED

A former nursing home employee, who reported to state health officials that he found an elderly patient lying in a pool of urine and who photographed another patient’s severe bedsore to show his superiors, will be allowed to proceed with his whistle-blower and wrongful termination lawsuit. Judge Hamilton Gayden denied a motion to dismiss the lawsuit filed by Michael Cantrell, a licensed practical nurse, whose complaint triggered a state inspection resulting in a temporary shutdown of the Imperial Gardens Health and Rehabilitation Center located in Madison, Tenn. It was contended by Cantrell that he was fired in retaliation for his “doing the right thing.” A lawyer for the nursing home claims that Cantrell violated work rules and patient privacy laws when he used his cellphone to take a picture of the bedsore.

Cantrell was on temporary assignment to Imperial Gardens in November of last year when a technician called him to the patient’s room. It was alleged that the patient was soaked in her own urine. On the same day, it was alleged that Cantrell observed severe bedsores on another female patient, who had not had a bowel movement in 10 days and was in severe pain as a result. The lawsuit also alleges that Cantrell observed a male patient who had fallen and was calling for help. When he went to get help, he said, the nurse told him: “The resident falls all the time. He is not all there and he does not know what he is doing.”

After Cantrell reported the poor patient conditions to his superiors, he was first suspended and soon thereafter fired. Cantrell then reported the conditions he observed to the state health department. The subsequent inspection by state health inspectors resulted in a highly critical 143-page report citing multiple violations of state and federal regulations. In late February Imperial Gardens was ordered to shut down and transfer its patients to other facilities. The facility was allowed to reopen in April.

A lawyer for Imperial Gardens said the whistle-blower law did not apply because Cantrell failed to meet its reporting requirements. The lawyer also disputed the claim that Cantrell’s actions met the requirements of the state laws against abuse of the elderly. He claimed that Cantrell was fired, not in retaliation, but because he violated work rules barring the photographing of patients. Cantrell is represented by R. Stephen Waldron, a lawyer with Walden, Fann, & Parsley, based in Murfreesboro, Tenn.

Source: *Tennessean.com*

“HIDE-THE-BALL” GAME COMMON IN NURSING HOMES LITIGATION

In order to operate a vehicle in the State of Alabama, motorists are required to have, keep and maintain a liability policy of insurance, providing coverage in the event they are at fault in a motor vehicle collision. Our readers may be surprised to learn that nursing homes, which provide care to our ever-aging population, and others who require nursing home care, are not required to carry liability insurance. It is almost unimaginable that a nursing home could hold itself out as a responsible, reputable health care provider and yet provide little or no liability coverage. Equally disconcerting, many of the nursing homes operating in Alabama (and other states), are operated through a myriad of corporate entities in order to attempt to shield those from liability who may otherwise have some responsibility for medical negligence.

This very issue was recently brought to light in an opinion released by the Alabama Supreme Court—*Hill v. Fairfield Nursing and Rehabilitation Center*. In *Hill*, the Plaintiff sued several corporate entities, alleging that they were the “alter ego” of the company whose name was on the nursing home, Fairfield. The trial court dismissed the claims against all of the corporate entities, except Fairfield. On appeal, the Alabama Supreme Court reversed and addressed this area of significant concern to Alabama citizens.

At the trial level and on appeal, *Hill* contended that Fairfield was merely a shell company. Despite purportedly operating and owning a nursing home, it did not own any significant real or personal property. Fairfield only carried \$25,000 in liability coverage. It showed an operation loss for the most recent year. Two limited liability companies, DTD, LLC and D&N, LLC, were the owners of Fairfield. Both DTD and D&N had single members who were shown as the owners of those entities. The two individuals who were listed as the sole members of

these LLCs were also current or former officers of Fairfield.

A fourth company, Tara Cares, was also owned by DTD and D&N. Tara Cares operated under an “administrative services agreement” with Fairfield (as well as 30 other nursing homes). DTD and D&N owned several other nursing homes in seven different states. Like Fairfield, none of these other nursing homes own any real or personal property. In fact, a separate company, Healthcare REIT, owns most of the real and personal property of these 30-plus nursing homes that are owned by DTD and D&N. Healthcare REIT utilized a “middle-man” company, Aurora Healthcare, LLC, to which it leased the Fairfield nursing home property. Aurora, in turn, subleased that property to Fairfield.

While the facts of this case and the interrelationship of these corporate entities is more detailed and complex than stated here, the point here is that, in many instances, the company that purportedly owns and operates the nursing home is set up to be judgment proof, while others benefit financially from the operation with little risk or exposure. Most health care providers are covered by adequate liability insurance, or they have assets that can be attached in the event a judgment is obtained. Moving assets out of a nursing home’s name, however, makes it extremely difficult to collect such a judgment.

Since a nursing home may be judgment proof, the low amounts of liability insurance coverage, such as Fairfield had in this case, promote poor health care. The incentive to provide the level of health care required and expected for our senior citizens is compromised. If a company is found to be liable, for example, for causing harm or death to one of its patients, it purportedly could simply tender its \$25,000 in insurance coverage. It can also simply shut its doors, form new corporate entities and come back as a “new” facility. The company has little motive to provide the care needed for its patients, since there is very little risk that it will be harmed or affected as a result of its negligent conduct.

In the *Hill* case, the Alabama Supreme got it right! The Court determined that a question of fact existed “as to whether the defendants operated as a single business enterprise as to which Fairfield was an alter ego.” Quoting from prior case law, the Court stated that “the courts should not ‘allow a corporate entity to successfully masquerade through [its corporate affiliates] so as to defeat the payment of its just obligations.’” If you need additional information on any of the above, contact Ben Locklar, a lawyer in our firm’s Personal Injury/Products Liability

section, at 1-800-898-2034 or by email at Ben.Locklar@beasleyallen.com.

ROLLER-COASTER DEATH INVESTIGATION IS A PRIME EXAMPLE OF THE FOX GUARDING THE HENHOUSE

Rosa Ayala-Goana was killed on July 19 when she fell from the Texas Giant roller coaster at Six Flags Over Texas theme park in Arlington, Texas. Shortly after the tragedy, Six Flags officials said they would be working with area law enforcement and other agencies to determine the cause of the accident. But now it has come to light that the theme park is actually investigating itself in the matter. As we have previously reported, there are no federal agencies, which have been given the authority to enforce safety standards at the park.

Amusement park standards are set by the American Society for Testing and Materials (ASTM) International, which is made up of consumer advocates, government officials, amusement park operators, ride manufacturers and industry suppliers. This organization establishes and reviews safety standards for amusement park rides. However, all these standards are voluntary.

Amusement parks are also subject to state and local governmental codes, requirements and safety inspections, and they must pass inspection by insurance companies. But an NBC News investigation revealed Texas is one of at least 17 states that have no agency responsible for inspecting amusement park rides, as designated by state code.

The Texas Giant roller coaster was built by Gerstlauer Amusement Rides, a 30-year-old ride manufacturer based in Munsterhausen, Germany. The ride was rebuilt two years ago by Rocky Mountain Construction of Hayden, Idaho. An independent inspection of the ride would have been conducted by the Texas Insurance Department, which requires an annual inspection to certify rides meet ASTM standards. However, the inspection is done by an employee or contractor of the insurance company, not any government authority.

According to a survey of state codes in all 50 states by NBC news, eight states required no permits or inspections for amusement park rides: Alabama; Mississippi; Montana; South Dakota; Utah; Vermont; West Virginia; and Wyoming. Additionally, seven states including Texas accept recommendations and safety approval from park-employed or -contracted inspectors or from insurance company inspectors: Texas; Arizona; Colorado; Delaware; Idaho (requires only electrical inspections); Missouri; and North Dakota.

NBC News additionally found that Florida does not require inspections for permanent facilities that employ 1,000 or more full-time employees and maintain their own safety inspectors; and Minnesota allows inspectors contracted by the park or by the State Agricultural Society. The U.S. Consumer Product Safety Commission (CPSC) only has jurisdiction over mobile amusement rides—those rides transported from location to location.

The International Association of Amusement Parks and Attractions (IAAPA) is the largest international trade association for permanently situated amusement parks worldwide. In its core beliefs statement, the IAAPA says “Safety is the foundation of our profession and top priority.” In March, the IAAPA published a report citing statistics that in 2011, 4.3 in 1 million people who visited an amusement park or attraction sustained an injury on a ride. This report was based on a survey of parks that self-reported injuries on their property. The data did not include any reports of deaths. Only 144 of 383 amusement parks in the U.S. with rides responded to the survey.

The Amusement Safety Organization recorded four “significant injuries” on the Texas Giant roller coaster ride in 2013, and seven in 2012, all for whiplash-like neck injuries. Witnesses told the *Dallas Morning News* that Ms. Ayala-Goana was worried about her safety restraint before the ride left the station, but Six Flags employees assured her it would be fine. The ride was closed until Six Flags’ investigation is complete, and the ride is inspected and approved by the Department of Insurance.

Sources: NBC News, IAAPA, CPSC, *Dallas Morning News*, and WFAA

XI. TRANSPORTATION

SURVIVORS OF QUEBEC TRAIN CRASH TO FILE CLASS ACTION LAWSUIT

Two residents of the Quebec town of Lac-Mégantic, where a runaway train derailed and exploded into a wall of fire that killed 50 people, have filed a class action lawsuit attempting to secure compensation for the small community. The Plaintiffs, Guy Ouellet and Yannick Gagné, are seeking damages after the Montreal Maine & Atlantic Railway train of 72 oil tanker cars crashed on July 6 into the center of the lakeside town near the Maine border, destroying buildings and businesses, and leaving a community in mourning. Ouellet lost his partner, Diane Bizier, in

the explosion, while Gagné's popular bar, the Musi-Cafe, was destroyed by the blast and subsequent fire. The bar was filled with people at the time of the accident, and most are presumed dead. At press time, 37 bodies had been recovered from the blackened remains of the town's historic downtown, with another 13 people still missing and presumed dead. This is one of the worst railway disasters in Canada's history.

The railway's chairman, Edward Burkhardt, apologized to the town of about 6,000 and acknowledged corporate liability. The company has said the engineer, who parked the train in a nearby town uphill from Lac-Mégantic, most likely failed to set sufficient hand brakes. The investigation, which could take months to complete, is also likely to also spur tougher regulations for companies operating in the railway industry. The debate over the safety of moving crude oil by rail will definitely intensify as a result of this disaster.

The class-action suit, filed in the district of Saint-Francois, in southeastern Quebec, seeks compensation for those who have lost loved ones or were injured in the explosions. It also includes claims for property or business losses. Burkhardt and railway President Robert Grindrod are named as Defendants, along with numerous other company executives and the train's engineer.

Daniel Larochelle, a Lac-Mégantic based lawyer, heads the legal team handling the class action lawsuit. That team includes the Consumer Law Group of Montreal, Rochon Genova LLP of Toronto and Lief Cabraser Heimann and Bernstein LLP of New York and San Francisco.

Source: *Insurance Journal*

DRIVER WAS SPEEDING AND TALKING ON PHONE WHEN TRAIN CRASHED IN SPAIN

The driver of the train that derailed and killed 79 people in Spain was on the phone and traveling at 95 mph (153 kph)—almost twice the speed limit—when the crash happened last week, according to a preliminary investigation released last month. The train had been going as fast as 119 mph (192 kph) shortly before the derailment, and the driver activated the brakes “seconds before the crash,” according to a written statement from the court in Santiago de Compostela. Investigators obtained the information from two “black box” data recorders recovered from the train. The speed limit on the section of track was 50 mph (80 kph).

The crash occurred near Santiago de Compostela in northwestern Spain, and was the country's worst rail accident in decades. At press time some 66 people were still hospi-

talized for injuries, 15 of whom were in critical condition. The driver, Francisco Jose Garzon Amo, was talking on the phone to an official of national rail company Renfe when the crash happened, and apparently was consulting a paper document at the time, according to the statement. Garzon has been provisionally charged with multiple counts of negligent homicide.

It appears that the driver received a call on his work phone in the cabin, not his personal cellphone, to tell him what approach to take toward his final destination. The Renfe employee on the telephone “appears to be a controller,” the statement said. “From the contents of the conversation and from the background noise it seems that the driver (was) consulting a plan or similar paper document,” according to the statement. The train was carrying 218 passengers when it hurtled off the tracks last month during the evening. It slammed into a concrete wall, and some of the cars caught fire. The Spanish rail agency has said the brakes should have been applied four kilometers (2.5 miles) before the train hit the curve.

Investigators from the Santiago de Compostela court, forensic police experts, the Ministry of Transport and Renfe examined the contents of the two black boxes recovered from the lead and rear cars of the train. At press time, the investigation was ongoing. The next steps include measuring the wheels on the cars and examining the locomotive. Sniffer dogs have been used to search for human remains in the wreckage.

Source: NJ.com

FRENCH TRAIN CRASH CAUSED BY TECHNICAL FAULT ON TRACK

The French train crash that killed at least six people on July 12 is believed to have been caused by a technical fault involving the track, according to the railway operator SNCF. Guillaume Pepy, who is Chairman of SNCF, said the piece of metal linking two train lines “broke away” when the accident took place. Technical and judicial investigations will focus on this fault at the railway points. Transport Minister Frederic Cuvillier has ruled out the possibility that human error caused the Intercity train to derail. SNCF will review all the other metal links [approximately 5,000] of the same type on its network, according to Pierre Izard, head of the infrastructures division at the company.

The crash marked the country's worst rail accident since 2002. Twenty-two of those injured were hospitalized. The authorities brought a crane to the accident site to lift the derailed train cars and check for more

victims. The department of Essonne, a local government authority, oversees Bretigny-sur-Orge, where the accident took place. Two of the hospitalized victims had severe injuries. An investigation was underway at press time. The train, which had 385 passengers, was en route to Limoges from Paris. It derailed at 5:14 p.m. at Bretigny-sur-Orge, about 28 kilometers (17 miles) outside Paris. The train was traveling at 137 kilometers per hour (85.6 mph) when it derailed.

In October 2006, a passenger train from Luxembourg and a French freight train collided in the Lorraine region of northeastern France, killing five people and injuring 20. In November 2002, a fire on a passenger train traveling from Paris to Munich killed 12 passengers and injured 12. The worst railway accident in France in living memory took place at Paris Gare de Lyon in 1988, when two trains collided, killing 56 people.

The recent crash came six days after a train operated by Montreal, Maine & Atlantic Railway Ltd. jumped the tracks at Lac-Mégantic, Quebec. The runaway train, which was hauling 72 cars of crude oil, exploded, killing as many as 50 people. In June, a commuter train crash in Buenos Aires killed three people and injured 155. In May, a Metro-North rush-hour train derailed in Connecticut, injuring at least 75 people.

Source: *Insurance Journal*

FAA TO INCREASE U.S. PILOT TRAINING IN WAKE OF ASIANA CRASH

Because of the political pressure to act in the wake of the San Francisco jet crash, federal authorities have announced they will enact new aviation safety rules, including a requirement for increased training of U.S. pilots. While the new rules would apply only to pilots on U.S. passenger and cargo airlines, a group of lawmakers sought to use the recent crash-landing of the South Korean jetliner to call attention to aviation safety and put pressure on the Federal Aviation Administration (FAA) to complete work on rules that grew out of a 2009 plane crash near Buffalo, N.Y.

The new rule requires first officers who fly U.S. passenger and cargo planes to have 1,500 hours of flight time—the same as captains—rather than 250 hours. First officers are required to undergo additional training specific to the airplanes they fly. A pilot also needs a minimum of 1,000 flight hours as a co-pilot in air carrier operations prior to serving as a captain for a U.S. airline. New training requirements also are expected to be issued this fall to “ensure pilots know how to react properly in difficult operating environments,” according to the FAA

announcement. FAA Administrator Michael Huerta said: “The rule gives first officers a stronger foundation of aeronautical knowledge and experience before they fly for an air carrier.”

The announcement came just hours before a group of New York lawmakers planned a news conference to press the FAA to complete work on the new rules. The FAA earlier this year drew criticism from its inspector general for being 18 months behind schedule for completing work on an “important safety initiative that will require pilot training programs to incorporate flight simulators and enhance pilots’ abilities to work together during emergencies, as well as how to recognize and recover from stalls.” Congress in 2010 passed legislation requiring increased training and experience for pilots after lobbying by the families of the victims of the 2009 Colgan Air crash, which killed 50 people near Buffalo. Pilot training and fatigue were cited as factors in the crash. In December 2011, the FAA announced new rules designed to reduce fatigue, including requiring pilots to have at least a 10-hour rest period before flights.

While the cause of the crash at San Francisco International Airport is under investigation, attention has focused on the pilots, who were flying too low and slow during their final approach. It also was the pilot’s first landing in San Francisco in a Boeing 777. Three people were killed and 181 were injured in the crash-landing.

Source: *Los Angeles Times*

PILOT WAS WARNED THAT PLANE WAS NOT FLIGHT WORTHY

A pilot of a plane that crashed and killed him and a passenger in New York on August 19, 2012, had been warned before takeoff that the craft should not be flown, according to a report by the National Transportation Safety Board (NTSB). The report says a mechanic told the pilot, David McElroy, the plane had a faulty tachometer (which measures engine revolutions) and shouldn’t be flown. The report also says that a friend of the pilot told investigators the single-engine Socata TB10 had problems climbing three days before the crash.

The lone survivor, Erik Unhjem, said he was unaware of the conversation between the mechanic and the pilot. His wife, Jane Unhjem, was killed in the crash. The Unhjems, of Goshen, N.Y., were interested in buying the aircraft and had taken it for a test flight when it crashed last August.

Source: *Newsday*

CELL PHONE TALKING AND TEXTING POSES HAZARD TO DRIVERS AND PEDESTRIANS

There has been a great deal of focus lately on the issue of distracted driving and rightly so. Lots of it has centered on sending text messages while driving. But talking on a cell phone while driving, however, can also cause enough distraction to slow down a driver’s reaction time. In 2010, approximately 21 percent of all auto crashes involved persons using cell phone devices. Surprisingly, cell phone use while walking is a growing source of personal injuries. In fact the number of injuries related to using a cell phone while walking has more than doubled since 2005. More than 1,500 pedestrians were estimated to be treated in an emergency room in 2010 as the result of these incidents.

Some of the increase in injuries can be attributed to the fact that cell phone use has grown dramatically during the past 15 years. In 1996, cell phone subscriptions covered only 14 percent of the U.S. population. By 2011, it had grown to 102 percent. Research has shown that at any point during the day, 10 percent of drivers are using electronic devices, whether speaking on a phone or texting. That certainly creates a safety hazard on our highways.

But the sidewalks are no safer. Dr. Jack Nasar, co-author of a new study on pedestrian injuries as a result of cell phone use while walking, says:

If current trends continue, I wouldn't be surprised if the number of injuries to pedestrians caused by cell phones doubles again between 2010 and 2015. The role of cell phones in distracted driving injuries and deaths gets a lot of attention and rightly so, but we need to also consider the danger cell phone use poses to pedestrians.

Dr. Nasar conducted the study with Derek Troyer, a former graduate student at The Ohio State University. They used data from the National Electronic Injury Surveillance System, a database maintained by the U.S. Consumer Products Safety Commission (CPSC), which samples injury reports from 100 hospitals around the country. The study results appear in the August 2013 issue of the journal *Accident Analysis and Prevention*.

Pedestrian injuries ranged from a case where a 14-year-old boy walking down a road while talking on a cell phone fell 6 to 8 feet off a bridge, suffering chest and shoulder injuries; to a 23-year-old man who was struck by a car while walking on the middle line of a road and talking on a cell phone, injuring his hip.

There are two obvious risks to using a cell phone while driving or walking: visual—looking away from the road or pathway; and manual—removing your hands from the steering wheel when driving a car. But there is another type of hazard that applies to both driving and walking: cognitive—taking your mind off the primary task of operating a vehicle or navigating a path.

It shouldn’t come as a surprise that lots of folks really believe they can “multi-task.” In fact, multi-tasking is valued in today’s culture and our drive for increased productivity makes it tempting to use cell phones when driving or walking. Folks often believe they are effectively accomplishing two tasks at the same time if texting, checking Facebook, talking to a friend or even following GPS directions. However, this is the truth behind multi-tasking:

- Folks do not actually multi-task; and
- Folks do not accomplish both tasks with optimal focus and effectiveness.

Human brains do not perform two tasks at the same time. Instead the brain handles tasks sequentially, switching between one task and another. The brain can juggle tasks very rapidly, which leads us to erroneously believe we are doing two tasks at the same time. In reality, the brain is switching attention between tasks and only performing one task at a time.

In addition to “attention switching,” the brain engages in a constant process to deal with information that it receives. When the brain receives information it must go through the following steps:

- Select the information the brain will attend to;
- Process the information;
- Encode, a stage that creates memory; and
- Store the information.

Further, the brain must go through two more cognitive functions before it can act on saved information. It must retrieve stored information and also execute and act on the information.

For every information input, the brain must make decisions: whether to act on information processed, how to act, execute the action and stop the action. While this process mainly takes fractions of a second, all these steps do take time. When driving, fractions of seconds can be the time between a crash or no crash, injury or no injury, life or death. Research clearly indicates that the risk of crashing when using an electronic device is four times greater than

when not using an electronic device while driving a vehicle.

The same holds true for walking. Dr. Nasar believes the number of injuries to distracted pedestrians is actually much higher than statistics suggest. He said a more accurate count of injuries to walkers might come from comparing distracted walking to distracted driving, which has been more heavily studied. Recent research examining increases in traffic accidents related to cell phone use suggests that the number of crash-related injuries in emergency rooms is actually about 1,300 times higher than CPSC national estimates, according to Dr. Nasar.

Findings showed that in 2004, an estimated 559 pedestrians were treated in emergency rooms for injuries received while using a cell phone. The number dropped to 256 in 2005, but has risen every year since then. Young people ages 16 to 25 were most likely to be injured as distracted pedestrians and, surprisingly, most were hurt while talking rather than texting. Talking on the phone accounted for about 69 percent of injuries compared to texting, which accounted for about 9 percent.

Data is not available to compare CPSC estimates with actual injuries to distracted pedestrians. But if the pedestrian numbers are similar to those for drivers, there may have been about 2 million pedestrian injuries related to mobile phone use in 2010. Dr. Nasar also believes emergency room numbers underestimate actual injuries because not every person who is injured goes to an emergency room. Dr. Nasar believes the problem with distracted pedestrians is likely to get worse. He made this assessment of what to expect:

As more people get cell phones and spend more time using them, the number of injuries is likely to increase as well. Now people are playing games and using social media on their phones too.

Dr. Nasar believes the best way to reverse these numbers is to start changing norms for cell phone use in our society. We all have a vested interests in making this happen. Safety on our nation's highways—and side-walks—is important for all Americans.

Sources: distracteddriving.nsc.org and *The Claims Journal*

XII. HEALTHCARE ISSUES

CHILDREN MAY TAKE LONGER TO RECOVER AFTER REPEATED CONCUSSIONS

As all parents and grandparents know all too well, children are resilient. Scraped knees, bumps and bruises are all part of growing up, and children usually bounce back quickly from life's ups and downs. But a new study indicates that recovery time is slower in the case of concussions—even those that are considered relatively minor—and that it takes longer to recover after each successive concussion. The findings of the new study were published in the June issue of the journal *Pediatrics*.

A concussion is a type of traumatic brain injury, which is caused by a blow to the head or a blow to the body that jars the head, causing the brain to move around inside the skull. All concussions are considered serious. The long-term effects are still being studied, but researchers now believe repeated concussions may eventually lead to depression and loss of cognitive abilities.

The study observed 280 young people ages 11 to 22 who came to the emergency room within a few days of suffering a concussion. The youths took home questionnaires and reported their symptoms during the next 12 weeks. They also noted the last day on which they had any type of concussion-related problems.

The results revealed children who had never suffered a concussion before recovered more quickly than those who had previous concussions. Youngsters who had never had a concussion before reported recovery time around 12 days after the head injury. Those who had at least one past concussion took an average of 24 days to fully recover, and as much as 35 days if the previous concussion had been sustained within a year of the new injury.

As a result of the study, doctors are urging parents and coaches to use even more caution to decide when a child is healthy enough to return to normal activities, and especially to return to sports and other physical activities. Dr. Matthew Eisenberg from Boston Children's hospital told Reuters Health:

Even after symptoms have improved and even after these neuropsychological tests have returned to normal, there's still a vulnerability that can lead to a much more severe second concussion.

The Centers for Disease Control and Prevention (CDC) has created a number of fact sheets about concussion for parents and coaches, as part of its "Heads Up" concussion awareness program. The materials are available online at www.cdc.gov/concussion/HeadsUp.

Sources: CDC, Reuters

XIII. THE CONSUMER CORNER

THE TOP 10 BIGGEST RECALLS OF 2013

Each year, the National Highway Traffic Safety Administration issues recalls on millions of vehicles. In 2012, NHTSA recalled almost 18 million vehicles, and 15.5 million in 2011. While some recalls affect just a handful of vehicles, others impact millions. Many people don't realize just how many vehicles are recalled each year.

So far this year, the biggest recall is technically not a recall at all. In June, it was reported that NHTSA had requested Chrysler "fix" 2.7 million Jeep SUVs—1993-2004 Grand Cherokee and 2002-07 Liberty models—due to a potential fuel-system problem that could cause fires in a rear-end crash. Jeep initially refused, insisting the vehicles "met and exceeded all applicable requirements" of federal standards pertaining to fuel-system integrity. NHTSA then gave Chrysler a June 18 deadline to either issue a recall themselves, or be ordered to do so.

On the day of its deadline, Chrysler announced it would launch a campaign to inspect and, if necessary, fix the 2.7 million Jeeps—never officially referring to the action as a "recall." Still, that's what it was, and therefore it earns the distinction of being the biggest one this year.

According to recent research, the top 10 recalls affecting the U.S. market in 2013, in reverse order, as to number of recalls, were:

- Chrysler, 442,000 vehicles: 2011-13 Chrysler Sebring, Chrysler 200 and Dodge Avenger sedans, as well as 2011-13 Jeep Liberty and 2011-12 Dodge Nitro SUVs, due to a potential problem with the active head restraint function.
- BMW, 500,545 vehicles: 2008-12 1 Series coupes and convertibles, 2007-11 3 Series sedans, coupes, convertibles and wagons, and 2009-11 Z4 roadsters due to a poten-

tial electrical-system problem that could cause stalling.

- Toyota, 510,000 vehicles: Toyota Corolla, Matrix, Sequoia, Tundra and Lexus SC 430 models manufactured between 2001 and 2003 (model year not specified in report) due to potentially faulty airbags.
- Honda, 561,000 Honda vehicles: 2001-03 Civic sedans, 2002-03 CR-V compact crossovers and 2002 Odyssey minivans, also due to potentially faulty airbags.
- Kia, 623,658 vehicles: 2007-10 Rondo and Sportage, 2007-11 Sorento, 2007 Sedona, 2010-11 Soul and 2011 Optima models due to malfunctioning brake lights.
- Subaru, 633,842 vehicles: 2009-12 Forester, 2010-11 Legacy, 2010-11 Outback and 2006-12 Tribeca models to fix potential faulty lamp wiring that could cause a short circuit.
- Honda, 748,000 vehicles: 2009-13 Pilot SUVs and 2011-13 Odyssey minivans due to a potential problem with the driver-side airbag that could cause improper deployment.
- Toyota, 752,000 vehicles: 2003-04 versions of the Corolla sedan and Matrix hatchback due to a faulty airbag control module.
- Hyundai, more than 1 million vehicles: 2007-09 Accent and Tucson, 2007-10 Elantra, 2007-11 Santa Fe, 2008-09 Veracruz, 2010-11 Genesis Coupe and 2011 Sonata models as part of the same brake-light problem also affecting sister company Kia (No. 6).
- Chrysler, 2.7 million vehicles: 1993-2004 Jeep Grand Cherokees and 2002-07 Liberty models due to a potential fuel-system problem that could cause fires in a rear-end crash.

Source: *Chicago Tribune*

JEEP OWNERS WORRY ABOUT SAFETY AFTER RECALL DEAL

The agreement reached between NHTSA and Chrysler over Jeeps linked to deadly fires has not been accepted by many Jeep owners and several auto safety advocates. In early June, after a nearly three-year investigation, the National Highway Traffic Safety Administration (NHTSA) recommended that Chrysler recall 2.7 million older Jeep SUVs because the fuel tanks could rupture, leak and cause fires in rear-end crashes. But after talks between outgoing Transportation Sec-

retary Ray LaHood and Chrysler CEO Sergio Marchionne, NHTSA compromised, allowing Chrysler to limit the recall to about 1.5 million vehicles.

The agreement removed about 1.2 million Jeep Grand Cherokees, model years 1999 to 2004, from the recall, leaving some owners confused about the safety of their vehicles. Chrysler says those Jeeps have a different design than the ones it agreed to recall and are as safe as comparable models from other automakers. The about-face has confused lots of owners. Chrysler won't comment on the recall, beyond the documents it filed with NHTSA outlining its case.

Sean Kane, who is with Safety Research & Strategies, Inc., based in Massachusetts, said the number of vehicles cut from the Jeep recall is unusual. But he points out that the agency frequently negotiates the size of recalls with car companies. For example, in the early 2000s, Ford negotiated a series of smaller recalls that held off a big one for vehicles with cruise control switches that caused fires. But the company eventually recalled more than 10 million vehicles.

Yet critics say all the Jeeps should be recalled. And they question whether Chrysler's solution of adding a trailer hitch as an extra buffer in the back is enough to prevent deadly fires. Under the recall Chrysler will, free of charge, install hitches on any Grand Cherokees from 1993-1998 and Libertys from 2002-2007 that don't already have them from the factory. About 65 percent of Jeeps from that era were sold without factory hitches, according to Ward's Automotive. Chrysler will inspect those with hitches purchased elsewhere and replace them if they have sharp edges that could puncture the gas tank.

The 1999-2004 Grand Cherokees are part of a "customer service campaign." Here, a Chrysler dealer will inspect a trailer hitch installed after the car was purchased and replace it if necessary. But Chrysler won't install a hitch on any vehicle that doesn't already have one. Chrysler Group LLC, which is majority owned by Fiat SpA of Italy, hasn't disclosed how much the recall could cost, although hitches sell for about \$200 each on websites.

As we reported last month, NHTSA sent Chrysler a 13-page letter on June 3 requesting a recall of all 2.7 million Grand Cherokees and Libertys in question. The letter included detailed statistics on crashes involving fuel tank fires in SUVs from model years 1993 to 2007. The agency said the data showed the Jeeps were more prone to fuel tank fires than similar models. The Jeeps have gas tanks behind the rear axle, a design that was fairly common when they were built but isn't used much anymore. NHTSA

had evidence of 37 Jeep accidents that killed 51 people.

Chrysler argued that the vehicles were safe. The company said its data show the Jeeps are no more prone to fatal crashes than comparable vehicles such as the Ford Explorer, Chevrolet Blazer and Toyota 4Runner. But it agreed to the smaller recall, it says, to improve the Jeeps' safety. A spokeswoman for Chrysler said in an emailed statement that NHTSA let Chrysler remove the 1999-2004 Grand Cherokees from the recall because the design change made them safer than the older models. She said the agency's full analysis will be published when the investigation is completed.

But NHTSA knew about the change to the Grand Cherokee's design long before it asked for the recall. Documents on NHTSA's website examined by The Associated Press show that Chrysler detailed the change in a November 2010 letter to the agency. The recall deal came after outgoing Transportation Secretary Ray LaHood and NHTSA Administrator David Strickland met with Chrysler CEO Sergio Marchionne on June 9, and it was sealed in a June 18 telephone call, a Transportation Department spokesman confirmed.

Clarence Ditlow, director of the Center for Auto Safety, a safety advocacy group, said those events show the deal was made by political appointees and not by engineers. Ditlow's 2009 inquiry prompted NHTSA to investigate the Jeeps. Ditlow is urging NHTSA to test the trailer hitches to see if they offer added safety. Ditlow said a hitch failed to protect 4-year-old Cassidy Jarmon of Cleburne, Texas, who died in a fire after her family's 1993 Grand Cherokee was rear-ended by a car in 2006. The hitch punctured the gas tank, he said. According to news reports, police estimated the Jeep was hit by a car traveling 52 mph.

It should be noted that newer Grand Cherokees and Libertys aren't as risky as the old ones. Chrysler moved the fuel tank in front of the axle in a 2005 redesign, which helped meet stricter government rear-crash safety requirements imposed that year. The change also brought easier back-seat access and more storage space. The Liberty's tank was moved forward in the 2008 model year.

Source: *Claims Journal*

NHTSA PROBES GENERAL MOTORS AFTER VEHICLE FIRE

NHTSA has opened an investigation of some recalled General Motors Co sedans after a vehicle fire in March led them to question a screening test's effectiveness. A recall query was opened by NHTSA to look

at whether a stress test GM is using on a portion of the recalled cars is good enough. The fire occurred after the procedure that was meant to catch the problem. In May, GM recalled 42,904 2012 and 2013 model Buick LaCrosse and Regal cars, and 2013 model Chevrolet Malibu Eco cars equipped with its "eAssist" mild hybrid system to repair circuit boards that may overheat and lead to a loss of battery charge or, in extreme cases, a fire in the trunk.

Overheating of the circuit boards in the generator control module in some of the vehicles may cause problems, including loss of battery charge and the illumination of a malfunction indicator light. The issue does not involve the eAssist battery. If the warnings are ignored, the engine may stall. There may also be a burning or melting odor. Of the recalled cars, about 22,000 are getting their battery packs replaced, while the rest undergo the screening test to see if the control module needs to be replaced, GM said. GM says through a spokesman that the recall is continuing. It appears the automaker is cooperating with NHTSA in its probe. GM says it is unaware of any injuries or crashes related to the issue. The changes in the production process at the plant have been made and no other vehicles are affected, according to GM.

NHTSA questioned the effectiveness of the screening test because the fire in March occurred in a car that had already gone through the testing as part of a service procedure before the recall. That same test is being used on almost half the cars in the recall. Regulators said in documents filed online that the fire drew "into question whether or not the procedure can effectively identify a defective (control module)." The recall query could lead NHTSA to ask GM to replace the control module in the recalled cars that underwent the stress test.

Source: albanyherald.com

NHTSA IS INVESTIGATING THE HONDA ODYSSEY MINIVAN

NHTSA has opened an investigation into complaints about unexpected braking on the Honda Odyssey minivan. The preliminary evaluation, which could lead to a recall, covers nearly 344,000 Odysseys, model years 2007 and 2008. The minivan is produced at the Japanese automaker's factory in Talladega County, Ala. According to NHTSA, it has received 22 complaints alleging incidents of unexpected braking in these models. Some say the minivan suddenly applies the brakes by itself while the driver is applying the accelerator, causing the vehicle's speed

to drop by as much as 30 miles per hour in a short period of time. NHTSA says no injuries or crashes have been reported.

Source: AL.com

HONDA TELLS SOME FIT AND JAZZ OWNERS TO PARK CARS OUTSIDE

Honda has urged the owners of more than 686,000 Fit and Jazz subcompacts worldwide to park them outside because the power window switches can catch fire. The company said that it is recalling Fit and Jazz cars from the 2007 and 2008 model years. Honda is telling the owners not to park them in garages until driver's side door switches can be inspected. According to Honda, water can get inside the door through an open window and damage the switches, causing them to overheat and potentially sparking a fire. The automaker said the problem hasn't caused any injuries. Seven switches have melted and two caused fires in the doors. No structure fires have been reported.

The recall covers more than 143,000 Fits in the U.S. and about 35,000 in Canada. The Fit and Jazz are the same car, but sold under different names in different markets. It's the second recall of the cars for the same problem. In January 2010, Honda recalled the cars, but the repairs weren't "sufficiently robust to ensure that all switches would be completely sealed against all possible moisture intrusion," Honda said in a statement. All of the melted switches and fires apparently happened before the first recall.

Under the new recall, owners will be asked to take their cars to dealers, who will inspect the switches. If there is damage, the switches will be replaced. If there's no damage, the cars will go back to the customers until enough parts are available to replace all of the switches, according to Honda. The automaker says that after the inspections, owners can safely park the cars in garages again. The repairs will be made for free. Honda started notifying owners about the recall last month. People with questions can call Honda at 1-800-999-1009.

NHTSA OPENS PROBE OF MERCEDES CARS OVER REAR LIGHTS

NHTSA has opened an investigation of an estimated 218,000 Mercedes C-Class sedans after receiving consumer complaints claiming a failure of rear turn signals and brake lights. A preliminary evaluation of the luxury cars from model years 2008 and 2009 was opened after NHTSA received 21 complaints from U.S. consumers.

The reports typically said the failure is with the lamp connector, with many indicating burnt or melted electrical components, according to NHTSA documents. In multiple instances, consumers have reported smelling smoke and seeing burn marks in the trunks of the cars, with one reporting small flames emanating from the rear lamp connector, according to NHTSA. As we have written previously, a preliminary evaluation is the first step in a process that could lead to a recall should regulators determine that a safety issue needs to be addressed by a manufacturer.

Source: Claims Journal

FORD PAYS \$17 MILLION FOR DRAGGING FEET ON STICKY THROTTLE RECALL

Ford Motor Co. has paid \$17.3 million to NHTSA to settle claims that it was slow to recall one of its SUVs with suspected sticky throttles. The settlement resolves allegations that Ford delayed recalling its 2001-04 Escape models after learning of a speed-control defect, where the throttle wouldn't return to idle when the accelerator pedal was released. Ford paid NHTSA late last month after the agency notified the carmaker that it was prepared to investigate the timeliness of its recall.

NHTSA had opened a preliminary evaluation of the models on July 17, 2012, following a fatal car accident in Arizona potentially linked to the alleged speed-control issues. Ford notified the agency eight days later that it would be recalling some 423,634 vehicles in response to the probe. But the investigation by NHTSA indicated that Ford's recall was untimely. It appears the carmaker may have already known of the faulty throttle and didn't notify regulators or customers.

Under federal law, car manufacturers are required to notify NHTSA within five days of learning of a safety hazard. Derrell Lyles, a spokesman for NHTSA, said in a statement:

As government regulators, it is our job to ensure that manufacturers are held accountable to address safety issues promptly and responsively.

The settlement follows other investigations surrounding stuck-throttle issues in certain Ford models. NHTSA has received complaints detailing incidents of electronic throttle failure that resulted in the sudden reduction of engine power in Mercury Mariner and Milan model vehicles, according to filings. In October, the agency said that some of Ford's Taurus sedans allegedly had defective speed-control cable collars, which caused throttles to stick.

In May, the agency began probing a possible defect in an estimated 400,000 Ford trucks that causes the engine to lose power during accelerations at high speeds. NHTSA's Office of Defects Investigation has received 95 reports of reduced engine power during hard accelerations in F-150 trucks from model year 2011 to 2013, according to filings. The trucks have 3.5-liter gasoline turbocharged direct injection engines.

Source: Law360

NHTSA CLOSES FORD AND HYUNDAI DEFECT PROBES

NHTSA has closed an investigation into defective engine cables in more than 467,000 Ford Taurus and Mercury Sable cars. This came after Ford Motor Co. said it would fix the problem without issuing a recall. Damaged speed control cables on Taurus and Sable cars from the 2000 through 2003 model years with Duratec engines failed to enable the driver to brake properly. NHTSA posted documents relating to the probe last month. The cables can become damaged during underhood maintenance, such as replacing the battery or changing the air filter.

NHTSA called off the investigation, which started last October, after Ford said it would inspect and repair all affected models. The repair program will run through August 31. There is no mileage limit on the progress. Ford will also reimburse drivers if they've paid for similar repairs in the past. The refunds will be offered through the end of the year. There were no fatalities or injuries reported as a result of the defect, but NHTSA said there were 100 complaints and five accidents reported due to the issue with the speed control.

Source: Claims Journal

NOVA PULLS DIABETES TEST STRIPS BECAUSE OF FALSE READINGS

The U.S. Food and Drug Administration has cautioned diabetes patients that up to 62 million Nova Biomedical Corp. glucose test strips were contaminated during manufacturing and can give false readings leading to insulin dosing errors. The FDA announced that 21 lots of Nova Max Blood Glucose Test Strips manufactured as early as 2011 had been recalled after it was discovered they could register false, abnormally high blood glucose readings. Nova Max Plus Glucose Meter Kits, sold separately, also included test strips from the recalled lots, according to the company.

The products were distributed in the U.S., Canada, Chile, Peru, Argentina, the Dominican Republic, Jamaica, Puerto Rico, the U.K., Germany, Belgium, Finland, Congo and Saudi Arabia. According to the FDA, the company's other diabetes product lines were not found to have been affected. Patients using the strips could see artificially high blood glucose levels, the FDA said. The false readings could purportedly result in patients administering insulin doses to treat nonexistent glucose elevations, which could necessitate immediate medical attention. Alberto Gutierrez, a director in the FDA's Center for Devices and Radiological Health, said:

It's important that patients using these test strips discontinue their use immediately. A false reading could result in patient harm and delay critical care.

The defective strips were manufactured between December 2011 and April, according to the company, and became contaminated with an unnamed chemical used during the manufacturing process. The strips are sold in retail stores and online directly to consumers, and are also used in health care facilities. The FDA is working with Nova to investigate the problem and ensure that it doesn't recur. At press time, the source of the contamination had not been fully determined.

Nova has laid out procedures for wholesale pharmaceutical buyers and diabetes patients to obtain replacements if their strips are found to have come from a contaminated lot. The FDA says that if consumers must use compromised strips before the new ones arrive, they should perform a quality-control test using solution that is included with the products first.

The FDA says further that patients should verify all elevated blood glucose test results that are not consistent with their diabetes history by repeating the same test using a new test strip from a different vial. In 2010, Johnson & Johnson unit LifeScan Inc. recalled eight lots of its OneTouch SureStep test strips—about 14,000 units—because the strips could produce falsely low readings. Later that year, Abbott Diabetes Care recalled approximately 359 million test strips that also gave falsely low glucose results.

Source: Law 360

PARASAILERS INJURED AFTER CRASHING INTO CONDO BUILDING AND POWER LINES

Two teenage girls were injured while parasailing off of Panama City Beach, Fla., on July 1 during stormy conditions. According

to an incident report from the Bay County Sheriff's Office, witnesses saw the parasail carrying two girls become detached from a boat amid strong winds and collide with the Commodore condo building on Thomas Drive. Winds then carried the riders over the top of the condo building and into power lines before they crashed down onto several cars in the Commodore parking lot.

Witnesses said that sparks flew when the parasail hit the power lines and that both riders were breathing but only one was conscious after landing in the parking lot. An SUV in the parking lot had its roof caved in and windshield smashed from the impact of the landing. A witness who was on the boat waiting his turn to go up says that strong winds caught the parasail and began pulling the boat. The boat's captain dropped anchor and was unable to reel the parasail back in. The line snapped, sending the parasail into the condo building. Video cameras caught this tragic episode as it was unfolding. It was very hard to watch the two girls hitting the condo and then hitting a power line and finally a parked car.

The two teenage victims, who are from Roanoke, Ind., were transported to Bay Medical Center. Each girl was in critical condition when taken to a local hospital. Their injuries, which included head, neck and back injuries, were considered to be very serious. Photos from the scene show the railing on the 13th-story balcony of the Commodore was damaged from the impact of the crash. The Florida Fish and Wildlife Commission is the primary agency investigating the incident. As a matter of interest, the Florida Senate considered a bill increasing government oversight of parasailing activity earlier this year, but the bill died in committee.

Source: Panama City News Herald

TYPE OF HELMET MAY NOT LOWER CONCUSSION RISK

Forty thousand high school football players get a concussion every year, but contrary to equipment manufacturers' claims, the specific brand of helmet and helmet age were not associated with lower risk of concussion. This is the conclusion of researchers presenting their work at the American Orthopaedic Society for Sports Medicine's Annual Meeting (AOSSM) in Chicago. Lead author Timothy McGuine, PhD, an Athletic Trainer at the University of Wisconsin, had this to say:

According to our research, lower risks of sustaining a sports-related concussion (SRC) and its severity were not improved based on a specific manu-

facturer. In addition, the SRC rates were similar for players wearing new helmets, as compared to those wearing older ones. It is also interesting to note, that players who wore a generic mouth guard provided by the school had a lower rate of SRC compared to players with more expensive mouth guards.

Researchers collected data by Licensed Athletic Trainers (LATs) at 36 public and private high schools in Wisconsin during the 2012 football season. A sample of 1,332 players were enrolled in the study with 251 individuals having reported at least one SRC within the last six years, and 171 reported one SRC within the previous 12 months. LATs at each school recorded the helmet brand, model and purchase year, as well as the type of mouth guard utilized (generic, specialized or custom fit.) LATs also recorded the number and type of exposure (practice vs. game) and the number of SRCs sustained. Dr. McGuine made this observation:

Increased risk of concussions in our study was not associated with age, BMI, grade in school, level of competition or years of football experience. However, players with a history of SRC were twice as likely to sustain another one compared to players without a history. Additional screening to identify those players with increased concussion risk is a key to prevention and hopefully will help reduce rates in the future.

With concussions in the athletic world getting a great amount of attention during the past year, this study comes at a very good time. Schools at both the high school and college level, as well as professional teams, can no longer ignore the concussion problems.

Source: *Claims Journal*

FTC ENFORCEMENT ACTION AGAINST DEBT COLLECTOR ENDS IN RECORD SETTLEMENT

It appears that the Federal Trade Commission intends to continue its vigorous enforcement of the Fair Debt Collection Practices Act (FDCPA). A record settlement with “the world’s largest debt collection operation” is a pretty good indication that this will happen. Under the settlement, filed in a Texas federal district court, the Defendants must pay a \$3.2 million civil penalty for violations of Section 5 of the FTC Act, which prohibits

unfair or deceptive acts or practices, and the FDCPA.

According to the FTC, this represents “the largest [civil penalty] ever obtained by the [FTC] against a third-party debt collector.” The FTC’s complaint alleged that the defendants engaged in unlawful conduct that included:

- Making unsubstantiated representations in telephone calls that consumers owed debts, despite such consumers having previously indicated that they did not.
- Calling debtors three or more times per day and at times known to be inconvenient to the debtor.
- Continuing to call debtors after being asked in writing to stop communications.
- Calling debtors’ workplaces despite knowing that the employers prohibited such calls.
- Leaving recorded messages that disclosed the debtor’s name and the existence of the debt on answering machines on which the greeting included no name, or a name different from that of the debtor.
- Continuing to call non-debtors for a debtor’s location information without a reasonable belief that the non-debtors’ previous denial of knowing that information was erroneous or incomplete.
- Making deceptive representations about stopping future calls.

In addition to payment of the record civil penalty, the FTC’s proposed stipulated order requires the Defendants to follow specific procedures and time frames for conducting investigations after a person disputes owing a debt or its amount. It also includes standards the Defendants must follow for leaving recorded messages and recordkeeping requirements for calls to obtain location information.

For six years, the Defendants are required by the order to tape-record at least 75 percent of calls with anyone contacted in collecting a debt and maintain the recordings for 90 days. For five years, the Defendants must include a specified disclosure in all written debt collection communications that advises debtors how to contact the Defendants or the FTC with complaints and obtain information about their legal rights when dealing with collectors. For 10 years, Defendants must follow certain recordkeeping requirements, such as maintaining records containing specified information on all employees involved in debt collection and

all consumer complaints, and retain such records for five years.

The debt collection industry is also facing increased scrutiny from the Consumer Financial Protection Bureau (CFPB), which shares FDCPA enforcement jurisdiction as to nonbanks with the FTC. In addition, the CFPB recently issued two bulletins warning creditors and servicers that are not covered by the FDCPA that their collection practices are subject to the CFPB’s authority under Section 1031 of the Dodd-Frank Act, which prohibits “unfair, deceptive or abusive” acts or practices.

The FTC does not have supervisory and examination authority and only has authority to investigate and bring enforcement actions against nonbank third-party debt collectors and debt buyers. In contrast, the CFPB has authority to supervise and examine certain nonbank debt collectors and debt buyers (e.g., larger ones, those that pose significant risks to consumers and those that act as service providers to other entities supervised by the CFPB) for compliance with the FDCPA and Section 1031 of the Dodd-Frank Act. The CFPB also can investigate and bring enforcement actions against nonbank debt collectors and debt buyers, regardless of their size, for violations of those same laws.

Source: Ballard Spahr Publications

CLASS ARBITRATION STILL POSSIBLE

Following the U.S. Supreme Court’s 2010 decision in *Stolt-Nielsen S.A. v. AnimalFeeds International Corp.*, most experts believed that class arbitration was virtually impossible. *Stolt-Nielsen* held that class arbitration was possible only if the parties specifically agreed to allow it. Since essentially no arbitration agreements expressly include an authorization for class arbitration—they are, after all, written by companies, not consumers—class arbitration was considered extinct.

But recently in *Oxford Health Plans, LLC v. Sutter*, the US. Supreme Court found that an arbitrator did not exceed his powers when he allowed a class. An arbitrator had ruled that the arbitration clause sent to arbitration the same class of disputes that it barred the parties from bringing in court, which includes a class action. Therefore, the arbitrator reasoned, class arbitration was allowed.

Distinguishing *Stolt-Nielsen*, the Court said it overturned the arbitral decision in that case not because the arbitrator misinterpreted the contract, but because he failed to interpret the contract. By contrast, in *Oxford Health*, the arbitrator had interpreted the

contract. And so long as he was arguably construing the contract, a court cannot correct his mistakes under the Federal Arbitration Act, however good, bad or ugly.

But *Oxford Health* did not completely resolve the class-arbitration debate. The parties in that action agreed that the arbitrator should decide whether the contract authorized class procedures. The Court has never decided whether the availability of class arbitration is a question of arbitrability, which would presumptively be for a court to decide. If it is, absent evidence that the parties wanted an arbitrator to resolve the dispute, court review of an arbitrator's decision on class arbitration would be de novo.

Source: www.scotusblog.com

XIV. RECALLS UPDATE

Once again there are a very large number of safety-related recalls being reported in this issue. We have included some of the more significant recalls that were issued in July. If more information is needed on any of the recalls mentioned below, readers are encouraged to contact Shanna Malone, the Executive Editor of the *Report*. We would also like to know if we have missed any safety recalls that should have been included in this issue.

FORD RECALLS 13,100 EXPLORER, TAURUS AND MKS MODELS

Ford Motor Co. has also recalled more than 13,100 Ford Explorer, Taurus and Lincoln MKS models because the child safety locks on the rear doors may not work properly. The recall affects 2013 models, and the malfunction could mean the child safety locks would turn off automatically, allowing the doors to be opened from the inside. No accidents or injuries have been reported due to the malfunction, Ford said.

The affected vehicles were built at Ford's Chicago Assembly Plant between November 29, 2012 and December 12, 2012. Most of the recalled vehicles are located in North America. Ford said dealers will test and replace the rear child safety locks for no cost if necessary.

FORD RECALLS SOME 2013 C-MAX HYBRIDS OVER ROOFS

Ford Motor Co. has recalled 33,021 C-Max hybrid cars because they may

not adequately protect occupants' heads in a crash. Vehicles involved were made between Jan. 19, 2012, and June 25, 2013 and don't have panoramic roofs. C-Max hybrids with panoramic glass roofs aren't involved in the recall. NHTSA discovered during vehicle testing that the car failed to conform to safety standards pertaining to head injury risk. Ford says there have been no reported injuries related to the issue.

Ford will notify owners of the recall beginning this month. Dealers will install additional energy absorbing material between the car's headliner and the roof. 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.

TOYOTA RECALLING 185,000 VEHICLES WORLDWIDE FOR STEERING GLITCH

Toyota Motor Corp. has recalled 185,000 vehicles, the vast majority of them in Japan, for a flaw in the electric power steering system. The recalled vehicles include the Yaris subcompact. About 130,000 are being recalled in Japan. The balance is coming from other countries, including the United States, where 74 cars are a part of the recall. No accidents have been reported from the glitch, which could make the steering heavier.

GM RECALLS NEARLY 200,000 SUVs FOR FIRE RISK

General Motors has recalled several models of SUVs, citing a fire risk caused by an issue with corrosion in the driver's door module. A total of 193,652 vehicles are involved in the recall. This includes certain models of the 2006 Chevrolet Trailblazer EXT and GMC Envoy XL, as well as 2006-2007 Chevrolet Trailblazer, GMC Envoy, Buick Rainier, SAAB 9-7x, and Isuzu Ascender vehicles. The problem stems from fluid entering the driver's door module, potentially causing a short in the module's circuit board. The short can cause issues with the power lock and power window switches, and lead to potential overheating, causing components to melt, smoke or set on fire. GM will contact all vehicle owners and ask that they have their vehicles tested by local, authorized dealers. The recall began on July 24th.

NHTSA MAY EXPAND GENERAL MOTORS CAR RECALL

NHTSA may add nearly 5,000 cars to a recall of the Chevrolet Malibu Eco, Buick LaCrosse and Buick Regal sedans. In May, General Motors announced that it would recall more than 38,000 of the 2012 and 2013 cars because a defective generator control module could stall the engine or cause a fire. The cars have GM's eAssist gas-electric hybrid system. Unsold vehicles were not part of the recall. GM said it would test them to make sure there were no problems. But NHTSA says there was a fire in a car that had been tested. The agency says the fire raises questions about whether the recall should be expanded to nearly 43,000 cars. GM says the recall is continuing and it's cooperating in the investigation.

CHRYSLER RECALLS MORE THAN 4,400 GRAND CHEROKEE SUVs TO FIX HEADLIGHTS

Chrysler Group LLC, the U.S. automaker majority controlled by Fiat SpA, has recalled 4,458 Jeep Grand Cherokee sport-utility vehicles to fix an electrical problem that is turning off the headlights. The action covers 2014 Grand Cherokee SUVs equipped with premium headlamps and built between January 14th and March 20th. "An investigation discovered the software that controls lamp function was turning them off," Chrysler said in a statement. Chrysler said it was unaware of any consumer complaints, injuries or accidents associated with the problem. The recall involves 4,242 vehicles in the United States and 216 in Canada.

HYUNDAI RECALLS 5,200 AZERAS FOR POSSIBLE AIRBAG FLAW

Hyundai has recalled about 5,200 of its Azera sedans because the front passenger airbag could inflate when a child is sitting there, causing injury or death. Hyundai told NHTSA that the potential flaw is present in 2012-2013 Azeras built from May 22, 2012, through November 23, 2012. Hyundai said it since has corrected the problem and newer vehicles shouldn't be at risk. The possible flaw can affect "the ability of the sensor to properly distinguish when the front passenger airbag should be deactivated," Hyundai said in a filing with federal safety officials.

All vehicles' front seats use sensors to meet the requirement that they be able to distinguish between small, light passengers—mainly children—and normal-size adults. The air bag is supposed to inflate more gently, or not supposed to inflate at all, in a crash when a smaller person is in the seat because the full force of the bag against a small body could be harmful. The safety belt is supposed to be adequate in such cases. In most states, children under certain ages aren't legally allowed to sit up front. Still, the rule is meant to protect kids who are allowed up front, as well as small-stature adults.

According to Hyundai its supplier, Autoliv Korea, notified the automaker last November that a change in fabric covering the sensor mat within the seat could cause the system to misread the sensor and inflate the airbag when it shouldn't. The car company said it received five warranty claims from last May through November as a result of airbag warning lights coming on for no apparent reason. Hyundai said it expects to begin notifying owners the third quarter this year. Dealers will recalibrate the airbag system to account for the fabric change.

HONDA EXPANDS RECALL OF COMPACT FIT HATCHBACK

Honda has expanded an earlier recall of its compact Fit hatchback, saying another 48,000 vehicles need to have their stability control software updated. This brings to 91,920 the number of Honda Fits from the 2012 and 2013 model years that are affected by the recall. The vehicles need a software update to the vehicle's electronic stability control system, Honda said in a statement.

The first recall was issued in April and affected only the more premium Sport versions. Honda initially tested all Fit models as a result of the April recall, but found no reason to recall anything other than the Sport models. But NHTSA then put the Fit through a more extreme battery of tests Honda didn't account for. After reviewing and duplicating the results from the more rigorous testing, Honda voluntarily agreed to the expanded recall.

At issue was the vehicles' software that may allow the car's body to roll too much before intervening, possibly causing the driver to lose control. No

crashes or injuries have been reported as a result of the issue, according to Honda. Owners will be notified by mail early this month, according to the automaker. They can take their cars to a Honda dealer to have the software update done free of charge.

NISSAN RECALLS VERSA NOTE HATCHBACKS TO FIX BOLTS

Nissan has recalled nearly 13,000 Versa Note subcompact hatchbacks because of problems with bolts in the back of the vehicle. The company says the recall affects cars from the 2014 model year that were built in Mexico before July 5 and distributed mainly in North America. Nissan says bolts holding the rear seat back latches may not be strong enough. This could increase the injury risk for back-seat passengers in a crash. Other bolts that secure the body to the undercarriage may not have been tightened enough or could be missing in rare cases. That could weaken the car's rear-crash performance. Nissan says it knows of no crashes or injuries from the problems. Dealers will check the bolts and fix or replace them.

BEL AIR LIGHTING RECALLS CHANDELIERS DUE TO IMPACT INJURY HAZARD

Bel Air Lighting Inc., of Valencia, Calif., has recalled about 20,500 Portfolio and Transglobe nine-light chandeliers. The mounting loop that holds the chandeliers to the ceiling can break, causing the chandelier to fall, posing an impact injury hazard to consumers. The recalled nine-light chandeliers have a two-tone antique bronze-colored metal frame with antique-gold accents and champagne-frosted color glass shades. The six antique-gold colored lamp holders at the bottom and three at top have a floral pattern that is repeated on components at the top and bottom of the center lamp stem. Antique-bronze-colored ornamental scrolling connects all the elements. The chandeliers were sold at Lowe's as Portfolio brand with item number 256047 and at other stores as Transglobe item number 2579 EBG. The item numbers are located inside the ceiling canopy of the chandelier. Bel Air has received 18 reports of the chandeliers falling from ceilings with some incidents resulting in property damage.

The Portfolio brand chandeliers were sold exclusively at Lowe's stores and the Transglobe brand sold at lighting stores

nationwide, both from February 2007 to June 2010 for about \$250. Consumers should prevent people from going into the immediate area under the chandeliers. Contact Bel Air immediately to receive a free replacement mounting ring to repair the chandelier and instructions on being reimbursed for the cost of the installation. Contact Bel Air Lighting toll-free at 1-888-803-0509 from 7 a.m. to 6 p.m. CT Monday through Friday, or online at www.regcen.com/belair for more information. Photos are available at <http://www.cpsc.gov/en/Recalls/2013/Bel-Air-Lighting-Recalls-Chandeliers/>

INDUSTRIAL REVOLUTION RECALLS LED LANTERNS

About 2,300 UCO Arka LED lanterns have been recalled by Industrial Revolution Inc., of Tukwila, Wash. The lantern's wall charger plug can fail during normal use, posing a fire hazard. The recalled UCO Arka LED lantern can be used as a flashlight, a lantern or a USB charger. It has a red cap around the flashlight lens, a collapsible clear plastic lantern top and a black base with red extendable feet. It comes with a rechargeable 3.7V 4Ah Lithium-ion battery, a USB cable and a wall charger. The lantern is 7.7 inches tall and 2.5 inches in diameter. It collapses to 5.25 inches tall when closed. "UCO" and an image of a flame are printed in red on the base. There are two USB ports (USB-A and USB-mini) under recessed caps on the base of the lantern, just above the red ring at the bottom. The wall charger is a one-inch black plastic cube with a white-faced plug. Model number "A1265" is printed above the plug's prongs and a small green dot appears below on the lower corner.

The lanterns were sold exclusively at REI stores nationwide and online from April to May 2013 for about \$70. Consumers should immediately stop using the chargers, unplug them and contact REI to receive a free replacement charger plug. REI is contacting customers directly. Contact Industrial Revolution toll-free at 1-888-297-6062 from 6 a.m. to 3 p.m. PT, or online at www.industrialrev.com then click on "news" at the bottom of the page for more information.

TOYS R US RECALLS REMOTE-CONTROLLED HELICOPTERS DUE TO FIRE AND BURN HAZARDS

Toys R Us Inc., of Wayne, N.J. has recalled its remote-controlled 3-channel helicopters. The rechargeable battery inside the helicopters can overheat, posing fire and burn hazards to consumers or nearby items. This recall involves the Fast Lane FA-005 Radio Control 3-Channel Helicopter with Gyro Stabilizer and Charger, model number 5F5F2F5. The model number is printed on the front of the product packaging and on the underside of the helicopter. The double-rotor helicopters are blue and white, approximately 9 inches high and have the Fast Lane logo on the top of the helicopter. They were sold with a remote control unit, a battery charger and a carrying case. Toys R Us has received 11 reports worldwide of the rechargeable battery overheating. No injuries have been reported.

The controllers were sold exclusively at Toys R Us stores nationwide and online at www.toysrus.com from September 2012 through January 2013 for about \$100. Consumers should immediately stop using the remote-controlled helicopter and return all components to a Toys R Us store for a full refund or store credit. Contact Toys R Us at 1-800-869-7787 from 9 a.m. to 11 p.m. ET Monday through Saturday and 10 a.m. to 7 p.m. ET on Sundays, or online at www.toysrus.com and click on About Us, then select Safety at the top of the page, and then click Product Recalls for more information. Photos available at <http://www.cpsc.gov/en/Recalls/2013/Toys-R-Us-Recalls-Remote-Controlled-Helicopters>

MASTERBUILT MANUFACTURING RECALLS ELECTRIC SMOKERS DUE TO FIRE HAZARD

About 11,000 Electric Smokehouse Smokers have been recalled by Masterbuilt Manufacturing Inc. of Columbus, Ga. The wood chip tray can fail to slide securely into the smoker, causing the wood to combust and the smoker's cabinet door to blow open, posing a fire hazard. The upright electric smoker is a rectangular, black matte cabinet with a stainless steel door with a glass window. The smokers were sold with a remote control and have a control panel on the top front of the unit. The 20070312 model smoker measures about 32 inches high by 17 inches wide

by 15 inches deep. The 20070512 model smoker measures about 40 inches high by 22 inches wide by 16 inches deep. Model number 20070312 or 20070512 is printed on the serial plate located on the rear panel of the smoker. The smokers have a screen printed Masterbuilt logo on the window and on the serial plate. Masterbuilt has received six reports of fires occurring in the smoker causing the door to blow open. No injuries were reported.

The smokers were sold at Bass Pro Shops and Cabelas stores nationwide from May 2012 through August 2012 for between \$270 and \$430. Consumers should immediately stop using and unplug the recalled smokers and contact Masterbuilt Manufacturing for a free repair kit at 1-800-489-1581 from 8 a.m. to 5 p.m. ET Monday through Friday or online at www.masterbuilt.com. Click on Contact on the top right hand corner of the page for more information.

SUBARU PORTABLE GASOLINE GENERATORS RECALLED BY ROBIN AMERICA DUE TO FIRE AND BURN HAZARDS

Portable Generators have been recalled by Robin America Inc., of Lake Zurich, Ill. The fuel tank can leak, posing a fire or burn hazard. The recalled portable gasoline generators are Subaru models SGX3500, SGX5000 and SGX7500. They have yellow fuel tanks and black frames with collapsible handles. The word "Subaru" is on the fuel tank and is on the control panel under the Subaru logo. The Product, or Spec, number and serial number are on the end of the fuel tank above the wheels. Robin America has received four reports of fuel leakage. No injuries or property damage have been reported.

The generators were sold at Authorized Subaru Power Equipment dealers nationwide, including authorized internet dealers, between September 2011 and January 2013 for approximately \$920 to \$1800. Consumers should immediately stop using the generators and contact Robin America to schedule a free repair. Consumer Contact: Robin America Inc., toll-free at (866) 664-1363 from 8 a.m. and 5 p.m. ET Monday through Friday, or online www.subaru-power.com and click on Recall at the bottom of the page for more information. Photos available at <http://www.cpsc.gov/en/Recalls/2013/Subaru-Portable-Gasoline-Generators-Recalled-By-Robin-America>.

[ble-Gasoline-Generators-Recalled-By-Robin-America](http://www.cpsc.gov/en/Recalls/2013/Subaru-Portable-Gasoline-Generators-Recalled-By-Robin-America).

HOME DEPOT RECALLS SOLEIL PORTABLE FAN HEATERS DUE TO FIRE HAZARD

About 107,000 Soleil portable fan heaters have been recalled by Shanghai Limach Mfg. Co. Ltd., of China Manufactured in: China. The portable fans plastic housing can melt, deform and catch fire during use, posing a fire hazard. This recall involves Soleil portable fan heaters with model number LH-707. The model number is printed on the underside of the fan on a sticker. The circular table fans are white plastic and are 1500 watts. Soleil is printed on the center front of the fan. The fans have a thermostat control on the bottom left front and a power and fan speed control on the bottom right front. The fans measure about 8 inches in diameter by 8½ inches tall. Home Depot has received 464 reports of the fans melting. No injuries or property damage have been reported.

The fan heaters were sold exclusively at Home Depot stores nationwide from September 2012 through May 2013 for about \$15. Consumers should immediately stop using the recalled fan heaters and return them to Home Depot for a full refund. Consumer Contact: Home Depot toll-free at (877) 527-0313 between 8 a.m. and 5 p.m. ET any day, or online at www.homedepot.com and click on Product Recalls for more information. Photos available at <http://www.cpsc.gov/en/Recalls/2013/Home-Depot-Recalls-Soleil-Portable-Fan-Heaters/>.

ANGEL'S TOUCH COLLECTIONS RECALLS BUTTERFLY AND SHELL LAMPS DUE TO SHOCK AND FIRE HAZARDS

About 8,000 decorative lamps have been recalled by Angel's Touch Collections Co., Ltd., of Rego Park, N.Y. The lamps have exposed wiring at the base. This poses shock and fire hazards to consumers. This recall involves "Butterfly Clip Light" (SKU# 416593) and "Shell Clip Light" (SKU #416955) lamps that feature a Tiffany-style stained glass shade resembling a seashell or a multi-colored butterfly. The seashell lamps measure 5.5 inches tall and 1.5 inches wide, and weigh around 1.5 pounds. The butterfly lamps measure 10.5 inches tall and 7.5 inches wide, and weigh around 2 pounds. Both lamps use a 7-watt type C bulb and have a plug-in cord with a cord-mounted on/off

thumb-switch. The SKU number can be found on the product's packaging.

The lamps were sold exclusively at Cracker Barrel Old Country Store locations nationwide and online at www.crackerbarrel.com from November 2012 through February 2013 for about \$40. Consumers should immediately stop using the recalled decorative lights, unplug and return them to any Cracker Barrel Old Country Store or by mail to Angel's Touch Collections, 2732 Teaster Lane, Suite 119, Pigeon Forge, TN 37868, for a full refund, including shipping. Contact Angel's Touch Collections toll-free at 1-877-474-2133 from 10 a.m. to 4 p.m. ET Monday through Friday or online at www.angeltouchcollections.com and click on "Recall Notice" for more information. Consumers can also send an email to ATCrecall@gmail.com. Photos available at <http://www.cpsc.gov/en/Recalls/2013/Angels-Touch-Collections-Recalls-Butterfly-and-Shell-Lamps/>

SEARS REANNOUNCES RECALL OF KENMORE DEHUMIDIFIERS

LG Electronics USA Inc. and Sears has recalled their Kenmore dehumidifiers. The dehumidifiers can overheat, smoke, melt and catch on fire, posing fire and burn hazards to consumers. This recall involves Kenmore brand 35-, 50- and 70-pint dehumidifiers made by LG and manufactured between 2003 and 2005. The dehumidifiers are made of white plastic and are between 21 and 24 inches tall, about 15 inches wide and about 13.5 inches deep. They have a fan, humidity controls and a Kenmore logo on their top front panels. They come with front-loading water buckets. Some models include remote controls. The model number can be found on the right side of the interior of the unit once the bucket has been removed. Recalled units have the following model numbers:

35-pint (2004)—580.54351400
50-pint (2003)—580.53509300
70-pint (2003)—580.53701300
70-pint (2004)—580.54701400
70-pint (2005)—580.54701500

Sears has received seven additional incident reports of shorting and fire associated with the dehumidifiers, including one incident with a severe burn to a consumer's foot and three fires resulting in more than \$300,000 of property damage. The dehumidifiers were sold

exclusively at Sears and Kmart stores nationwide and Sears.com and Kmart.com from 2003 to 2009 for between \$140 and \$220.

Consumers should immediately turn off and unplug the dehumidifiers and contact the Recall Fulfillment Center to receive a Sears gift card for either \$75, \$80, \$90 or \$100, which may be used at any Sears or Kmart store or at Sears.com or Kmart.com. The gift card amount will depend on the capacity and year of the dehumidifier. In lieu of a gift card, consumers may request a check for the refund amount. All consumers with recalled units will also receive a \$25 coupon that may be used at Sears Department Stores or Sears.com toward the purchase of a new Kenmore dehumidifier. The consumer contact is LG Recall Fulfillment Center, toll-free at 1-855-400-4641 between 8 a.m. and 7 p.m. CT Monday through Friday and between 8 a.m. and 2 p.m. CT Saturday. Consumers also can determine whether their product has been recalled and register for the remedy at www.Kenmore-dehumidifierrecall.com.

OUTDOOR SOLUTIONS HAMMOCK AND SUNSHADE RECALLED BY H-E-B

HEB Grocery Company LLC, of San Antonio, Texas has recalled about 700 Outdoor Solutions Hammock with Sunshades. The seam in the lounge of the hammock can open and rip, posing a fall hazard. The Outdoor Solutions Hammock and Sunshade is a stand-alone, light-brown canvas hammock that sits inside a steel and plastic frame. It has a detachable sunshade affixed to the hammock. The product was sold in a light brown canvas bag with handles. A tag affixed to the outside of the canvas bag includes the product name, model number 147184 and UPC number 4122088609. The company received two reports of seams tearing. Bruising and discomfort were reported in one incident.

They were sold exclusively at Texas H-E-B stores between February 2013 and June 2013 for about \$76. Consumers should immediately stop using the hammock, disassemble it and contact H-E-B for a full refund. Contact H-E-B at 1-800-432-3113 between 8 a.m. and 5 p.m. CT Monday through Friday or online at <http://www.heb.com> and go to About Us and click on Our Company and then Recalls for more information.

Photos available at <http://www.cpsc.gov/en/Recalls/2013/Outdoor-Solutions-Hammock-and-Sunshade-Recalled-by-H-E-B/>

THERMOBABY BATH SEATS RECALLED BY SCS DIRECT

About 7,500 Thermobaby Aquababy Bath Ring Seats have been recalled by SCS Direct Inc., of Milford, Conn. The bath seats fail to meet federal safety standards, including the requirement for stability. Specifically, the bath seats can tip over, posing a risk of drowning to babies. The recall includes Aquababy Bath Ring seats in pink or blue designed for children 5 months to 10 months old. The seat is made of white plastic with blue, pink or green trimming and has four suction cups on the bottom. An oval-shaped arm rail runs from the seat back and connects two side posts and the seat front post. There are three spinning toys on the front of the seat rail above the front post. "Thermobaby Z.I. De Kerbois," "Aquababy" and "Ref. 1953 Made in France" is engraved underneath the bath seat.

The seats were sold exclusively at Amazon.com from June 2012 through January 2013 for about \$35. Consumers should immediately stop using the recalled bath seats and contact the company for instruction on returning the bath seat and receiving a \$35 refund. Contact: SCS Direct Inc. toll-free at 1-888-749-1387 from 8 a.m. to 5 p.m. ET Monday through Friday, e-mail recall@scsdirectinc.com or online at www.SCSdirectinc.com. Click "Recall Notices" for more information.

MACY'S RECALLS INFANTS' FIRST IMPRESSIONS VARSITY JACKETS

About 8,700 Infants' First Impressions Varsity Jackets have been recalled by Macy's Merchandising Group, Inc., of New York, N.Y. The snaps on the jackets can come off, posing a choking hazard. This recall involves infants' snap-up jackets with hoods. The hooded jackets come in navy blue with green and turquoise trim, or gray with yellow sleeves and navy and yellow trim. Style number 1300 is found on the label sewn into the side seam and the UPC code is found on the product hangtag.

The jackets were sold exclusively at Macy's stores nationwide, on the company's website www.macys.com and at

Military Exchanges between September and November 2012 for between \$25 and \$52. Consumers should immediately stop using the recalled products and return them to the place of purchase for a refund of the purchase price. Consumers who purchased the product from www.macys.com should return the recalled products to their nearest Macy's store or use the return shipping label enclosed with their original mail order. Macy's can be contacted toll-free at 1-888-257-5949 between 10 a.m. and 10 p.m. ET or online at www.macys.com. Click on Product Recalls for more information. Photos are available at: <http://www.cpsc.gov/en/Recalls/2013/Macys-Recalls-Infants-First-Impressions-Varsity-Jackets/>

5 STAR KIDS APPAREL RECALLS HOODED JACKETS

About 48,000 boys long-sleeve hooded jackets have been recalled by 5 Star Kids Apparel, LLC dba Mecca 5 Star, of New York, N.Y. The recalled jackets have drawstrings with toggles inside the bottom hem and neck area, posing a strangulation hazard to children. In February 1996, CPSC issued guidelines about drawstrings in children's upper outerwear. In 1997, those guidelines were incorporated into a voluntary standard. Then in July 2011, based on the guidelines and voluntary standard, CPSC issued a federal regulation. CPSC's actions demonstrate a commitment to help prevent children from strangling or getting entangled on neck and waist drawstrings in upper outerwear, such as jackets and sweatshirts.

This recall involves boys long-sleeve hooded jackets sizes 2T to XL. The word "Mecca" is embroidered on the front chest of the garment and on the interior label sewn into the neck of the jacket. There are elastic drawstrings around the neck and waist. The style number can be found on a label sewn into the jacket one inch above the bottom seam on the left side.

The jackets were sold at A&E stores, All Kids Inc. 27, Bergen Kids LLC, Children's Town, Cititrends Inc., Concord Stores, Fordham Kids, Hudson Operating Corp, Kiddie Outlet, Modecraft/Burlington, Myrtle Kids, Pitkin Kids, Suitmart and Youngland from August 2010 through March 2011 for about \$30. Consumers should remove the drawstrings immediately, cut drawstrings out of the garment including toggle and

continue to use jackets once both are removed. Customers can return the product to the store where purchased for a full refund. Contact Mecca 5 Star, toll-free at 1-880-229-6833 from 9 a.m. to 6 p.m. ET Monday through Friday, or email dsinger@5-starapparel.com.

HOLLIS RECALLS DIGITAL DIVE COMPUTERS DUE TO DROWNING HAZARD

About 1,000 Hollis DG03 Dive Computers have been recalled by Pelagic Pressure Systems, of San Leandro, Calif. The dive computer, when used with an optional integrated transmitter, can malfunction and display an incorrect tank pressure reading to the diver. A diver could unknowingly deplete his air supply based on the reading, resulting in drowning. The recall includes Hollis brand DG03 dive computers with serial numbers 100 through 1142 that may be used with integrated transmitters that monitor tank pressure. The round black 2-1/2 inch diameter computer has a digital screen and is worn on the diver's wrist like a watch. The name of the product, Hollis DG03, is printed on the front of the unit and the serial number is printed on the back of the unit. These computers allow scuba divers to measure the time and depth of a dive. Only dive computers with software labeled Revision 1A, viewed on the computer's display are included in the recall. Hollis has received two reports of dive computers malfunctioning. No injuries have been reported.

The computer drives were sold at authorized Hollis dealers nationwide from July 2011 through May 2013 for about \$500.

Consumers should stop using the recalled dive computers until the unit's operating system is upgraded to revision 1B. Consumers can download the upgrade from the firm's website or contact an authorized Hollis dealer for assistance. Contact Hollis toll-free at 1-888-383-3483 from 8 a.m. to 5 p.m. PT Monday through Friday, email info@hollisgear.com or go online at www.hollisgear.com and click Safety Notices for more information. Photos available at: <http://www.cpsc.gov/en/Recalls/2013/Hollis-Recalls-Digital-Dive-Computers/>

VIKING RANGE EXPANDS RECALL OF BUILT-IN REFRIGERATORS WITH BOTTOM FREEZERS DUE TO INJURY HAZARD

Viking built-in refrigerators with bottom freezers have been recalled by Viking Range LLC, of Greenwood, Miss. The refrigerator's doors can detach, posing an injury hazard to consumers. This recall involves Viking built-in 36-inch wide refrigerators with bottom freezers with models and serial numbers/date codes listed below. The model and serial numbers are located on the ceiling of the interior of the refrigerators. The first six numbers in the serial number range are the manufacture date of the unit in (mm)(dd)(yy). Viking has received 39 reports of falling refrigerator doors, including 12 reports of injuries involving a fracture, bruises, strains and cuts, and 25 reports of minor property damage. The 39 new reports are in addition to 57 reports in the previous recall of doors detaching, including four reports of injuries involving bruises, broken toes/fingers, and strains.

The freezers were sold at appliance and specialty stores nationwide from November 2005 through October 2012 for between \$5,100 and \$7,700. Consumers should contact Viking immediately to schedule a free in-home repair. Consumers should stop using the recalled refrigerators if the door does not appear to be sealed properly, the door is sagging or it fails to open or close normally. If the door is working properly, consumers can continue to use the refrigerator until it has been repaired. Consumer Contact: Viking toll-free at (877) 546-0136 from 8 a.m. to 5 p.m. ET Monday through Friday, or online at www.vikingrange.com and click on Safety Recall Information. Photos available at <http://www.cpsc.gov/en/Recalls/2013/Viking-Range-Expands-Recall-of-Built-in-Refrigerators-with-Bottom-Freezers/>.

GIRLS BOOTS RECALLED BY RENAISSANCE IMPORTS DUE TO LACERATION HAZARD

About 5,000 Autumn Run Girls Gemma II Boots have been recalled by Renaissance Imports, of Matthews, N.C. An exposed staple in the sole of the boot presents a laceration hazard to the consumer. This recall involves Autumn Run brand girls Gemma II style boots with SKU number 0529-02613-1050. The SKU number can be found on a tag which is located inside the shoe, on the inner

side of the collar. The brown roper style boots were sold in girls sizes 5 to 11. A paisley-print fabric sash and a leather beaded strap are tied around the boot. Renaissance Imports has received one report of a consumer who was punctured by an exposed staple in the sole.

The boots were sold exclusively at Academy Sports + Outdoors stores nationwide and online at Academy.com between July 2012 and October 2012 for about \$23. Consumers should immediately take the recalled boots from children and inspect the boots for exposed staples. Instructions for inspecting the boots can be found online at www.renimp.com. Boots that are stamped "INSPECTED" on the reverse side of the inside label have been inspected for staples and are not included in this recall. Consumers can return recalled boots to any Academy Sports + Outdoors store for a full refund. Renaissance Imports toll-free at (877) 632-2021 from 9 a.m. to 6 p.m. CT Monday through Friday, or online at www.renimp.com and click on "Product Recall Info" for more information. Photos available at <http://www.cpsc.gov/en/Recalls/2013/Girls-Boots-Recalled-By-Renaissance-Imports/>

KRANKCYCLE BY MATRIX WITH DETACHABLE SEAT RECALLED BY JOHNSON HEALTH TECH DUE TO FALL HAZARD

About 2,200 Johnny G. Krankcycle by Matrix have been recalled by Johnson Health Tech North America, of Cottage Grove, Wis. The seat can unexpectedly detach from the Krankcycle's frame during use, posing a fall hazard to users. This recall involves all Johnny G. Krankcycles by Matrix with detachable seats that can be removed from the frame by lifting up on the seat. The Krankcycles have handles that the user turns in a circular motion for cardio exercise. Consumers can use the machine in a seated or standing position. The Krankcycles measure about 57 inches tall by 27 inches wide by 42 inches long. They are black and silver-colored. KRANKcycle and Matrix are printed on the machines. Two injuries from falls when the seat detached have been reported, including one report of broken ribs and one report of a back injury requiring surgery.

The krankcycle's were sold by Johnson Health Tech to consumers, health clubs, military facilities, physical therapists, public parks facilities nationwide and

they were also sold on various websites, including www.bike-on.com, from January 2008 through January 2012 for between \$2,200 and \$2,700. Consumers and exercise facilities should immediately stop using the recalled Krankcycles and contact Johnson Health Tech North America to schedule a free repair, which consists of a service technician permanently bolting the seat to the frame or removing the seat for which the consumer will receive a refund. This includes any Krankcycles sold online. Consumer Contact: Johnson Health Tech North America toll-free at (866) 218-3674 from 8 a.m. to 5 p.m. CT Monday through Friday, or online at www.matrixfitness.com and click on Safety Notice at the bottom of the page. Photo available at <http://www.cpsc.gov/en/Recalls/2013/Krankcycle-by-Matrix-with-Detachable-Seat-Recalled-by-Johnson-Health-Tech/>

NAN FAR WOODWORKING RECALLS ROCKLAND FURNITURE ROUND CRIBS

About 3,900 Rockland Furniture round cribs have been recalled J.C. Penney Purchasing Corp., of Plano, Texas. The crib's drop-side rails can malfunction, detach or otherwise fail. When this happens, the drop-side rail can fall out of position and create a space where an infant or toddler can become wedged or entrapped, posing a risk of strangulation or suffocation. A child can also fall out of the crib. In addition, drop-side related incidents can also occur due to incorrect assembly and with age-related wear and tear. This recall involves Rockland Furniture round cribs with model number 343-8314. The model number is printed on a label located on the inner-lower portion of the crib rail. The cribs are 44 ½ inches in diameter and were sold in white, ebony and cherry finishes.

Consumers should immediately stop using the recalled cribs and contact Rockland Furniture for a free repair kit that will immobilize the drop-side rail. Until the crib is repaired, consumers should find an alternate, safe sleep environment for the child such as a bassinet, play yard or toddler bed, depending on the child's age. Rockland Furniture toll-free at (877) 967-5770 anytime, or visit the firm's website at www.rocklandimmobilizationkit.com, then click on "Round Crib Recall" for more information.

KIDS II RECALLS BABY EINSTEIN ACTIVITY JUMPERS DUE TO IMPACT HAZARD

Kids II Inc., of Atlanta, Ga. has recalled their Baby Einstein Musical Motion Activity Jumpers. The "sun" toy attachment on the activity jumper can rebound with force and injure the infant, posing an impact hazard. This recall includes Baby Einstein Musical Motion Activity Jumpers with model number 90564. The model number can be found on a tag attached to the underside of the seat. These stationary activity centers have a support seat covered in blue fabric attached to a large white metal frame and include a variety of brightly colored toys surrounding the seat. The yellow sun toy is attached to the seat frame on a flexible stalk with either three or five brightly colored rings. A date code is located in the lower right corner of the sewn in label on the back of the blue seat pad. The following date codes, indicating a manufacture date prior to November 2011, are included in the recall: OD0, OE0, OF0, OG0, OH0, OI0, OJ0, OK0, OL0, OA1, OB1, OC1, OD1, OE1, OF1, OG1, OH1, OI1, OJ1 and OK1.

The firm has received 100 reports of incidents including 61 injuries. Reported injuries include bruises, lacerations to the face, a 7-month-old boy who sustained a lineal skull fracture and a chipped tooth to an adult. The jumpers were sold at Target, Toys R Us and other retailers stores nationwide and online at Amazon.com between May 2010 and May 2013 for about \$90. Consumers should immediately stop using the product and contact Kids II for a replacement toy attachment. Consumer Contact: Kids II toll-free at (877) 325-7056 from 8 a.m. to 5 p.m. ET Monday through Friday or online at www.kidsii.com, then click on the Recall link at the bottom of the page for more information.

There have been once again an extremely large number of recalls since the July issue. We weren't able to include all of them in this issue. But 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.

XV. FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

CHAD COOK

Chad Cook, a lawyer in our Mass Torts Section, is currently responsible for a number of cases including Fosamax, Heparin, Reglan and Zithromax litigation. He also assists in investigating new drugs and medical devices that present a serious danger to consumers. Chad received his Bachelor of Science degree in Criminal Justice from Auburn University at Montgomery in 1998. After graduating from undergraduate school, Chad pursued his Juris Doctor degree at Thomas Goode Jones School of Law. Chad was placed on the Dean's Honors List and given the Scholastic Achievement Award for Employment Law in 2001.

While attending law school, Chad worked as a staff assistant in the firm's Mass Torts section. After graduating in 2002, he was hired as a staff attorney for the firm. Chad is now a Shareholder in the firm and works in the Mass Torts Section. The focus of his practice is on pharmaceutical litigation, representing victims of defective prescription drugs and medical devices. Presently, Chad is one of 11 lawyers from around the country selected to oversee the consolidated litigation as part of the Plaintiffs Steering Committee (PSC) for *In re: Fosamax Products Liability Litigation* (No. II), MDL 2243. This litigation, which encompasses hundreds of cases against Merck Sharp & Dohme, Corp., involves femur fracture injuries, and is consolidated under U.S. District Judge Garrett E. Brown, Jr., in the District of New Jersey.

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

In addition to his work at Beasley Allen, Chad has served as an instructor in Civil Procedure and Evidence at Faulkner University and as a member of the Legal Studies Advisory Committee. Chad also serves as a

Mentor for the Thomas Goode Jones Professional Development Program, which gives law school students an opportunity to connect with practicing attorneys, discuss the practice of law and promote professionalism. Chad currently is serving as treasurer for the Montgomery County Association for Justice.

Chad and his wife, the former Sharon Broadfoot, are from the Montgomery area. They have a 6-year-old son, Parker. The Cooks are members of First Baptist Church in Montgomery where Chad serves on the Board of the Nehemiah Project, a program designed to bring church leaders, businesses, civic organizations and city officials together to address the spiritual and social needs of Montgomery's inner city. Chad is also a member of the Alabama Chapter's Cystic Fibrosis Foundation Young Professionals Leadership Committee and is a Board member for The Montgomery County Association for Justice as well as a Board member for Montgomery Partners in Education, where community members volunteer as tutors, mentors and partners, helping students to build skills and to find the link between school and the future. Chad is a very hard worker, is totally dedicated to his clients and is a very good lawyer. We are blessed to have him with us.

MANDY PINKARD

Mandy Pinkard has been with the firm for a year now as a law clerk in the Products Liability/ Personal Injury section. Mandy continued working through her third year of law school and after graduation. As a law clerk in this section, her job consists of helping to draft pre-trial, trial and appellate motions and briefs for lawyers. Mandy also does research on a variety of legal issues. She also submits an article each month for this Report, which is really appreciated.

Mandy received a full scholarship to Troy University, where she graduated Cum Laude in December of 2009, earning a Bachelor of Science in Criminal Justice with a minor in Political Science. She then received a scholarship to Faulkner University's Thomas Goode Jones School of Law, where she graduated Magna Cum Laude and earned a Juris Doctorate in May of 2013. While in law school, Mandy was a junior and senior editor of the Faulkner Law Review and was also recognized as a Public Interest Society Fellow for her commitment to service and pro bono work. She also received Best-Paper awards in Torts, Contracts and Constitutional Law II. Mandy is also an active member of the Hugh Maddox Inn of the American Inns of Court.

Mandy loves spending time with her family and friends and having fun with her

10-year-old niece, Laura Pinkard. She enjoys playing with her Chihuahua named Roxy, shopping, playing softball and watching the Auburn Tigers and Atlanta Braves. In Mandy's spare time she enjoys drawing, painting and decorating cakes for special events. Many has been a very good, hard-working law clerk. I predict that she will become a very good lawyer.

CINDY WEBER

Cindy Weber, who has been with the firm for almost 12 years, serves as a HRT Staff Assistant in the Mass Torts Section, providing assistance to Legal Assistants. In this position, Cindy speaks with clients on a daily basis, something she enjoys very much. Cindy's daughter and son-in-law have two children. They reside in Watkinsville, Ga. Cindy attended Lanier High School, and completed one year of secretarial school. Her hobbies include reading, crossword puzzles and having fun with her five best friends. Cindy is a good employee who really seems to enjoy her work. We are fortunate to have her with us.

XVI. SPECIAL RECOGNITIONS

DR. SIDNEY WOLFE IS PASSING THE TORCH

Dr. Sidney Wolfe is a great American who has been a tremendous friend to the American people. Dr. Wolfe started Public Citizen's Health Research Group in 1971. He has led the group successfully since that time and has never backed down from any challenge. Dr. Wolfe has decided to give up his position and turn it over to Dr. Michael Carome, the man he groomed for the job. Dr. Carome became director, replacing his mentor, on June 3, 2013.

Although Dr. Wolfe is stepping aside, he is not stepping out—he will continue to work at Public Citizen on the issues he cares so deeply about. Those include drug and device safety, patient access to care, medical board oversight of doctors, worker health and much more. Dr. Wolfe's new title will be "Founder and Senior Advisor."

In my opinion, Dr. Wolfe may well have done more for U.S. consumers than any one person in recent history. He has been relentless in his efforts to make Big Pharma do right. Robert Weissman, the president of Public Citizen, had this to say:

Sid Wolfe has never backed down in the face of enormous industry and

government pressure, and the result is that our country is safer and healthier. His insistence on doing what's right is now a defining trait of Public Citizen. The good news about the leadership change at the Health Research Group is, first, that Sid has located such an excellent successor, and, second, that Sid himself will continue working with Public Citizen.

Perhaps Dr. Wolfe's landmark project was "Worst Pills, Best Pills," a book that provided people with information about the side effects of medications and warned of drug interactions. The book contained advice that folks badly needed, but couldn't get elsewhere. The book has sold 2 ½ million copies since the first edition in 1988. *Worst Pills* has been supplemented by a website (Worst-Pills.org) that is updated regularly. The latest on drug information also is available through *Worst Pills, Best Pills News*, a monthly newsletter with a circulation of about 150,000.

Dr. Wolfe says he will "keep working on pretty much the same topics as before," but that Dr. Carome will be "directing the group." Dr. Wolfe, a strong voice for U.S. consumers, has been a real champion for safety and corporate accountability in the drug manufacturing industry. His work has been a tremendous benefit to consumers who badly need to be protected from dangerous drugs that are put on the market by Big Pharma.

Source: Public Citizen

HANK WILLIAMS MUSEUM PRESERVES THE LEGACY OF A COUNTRY MUSIC LEGEND

Hank Williams is regarded by many, including this writer, as the father of contemporary country music. Although Hank died at the very young age of 29, he was a prolific song writer who recorded 225 songs in a five-year career, 128 of which he wrote. Thirty-five of those singles (five released after his death) placed in the Top 10 of the Billboard Country & Western Best Sellers chart, including 11 number-one hits. He is credited with making country music a major genre in popular music.

Right here in Montgomery, Ala., where his career began, the Hank Williams Museum preserves a complete collection of Hank Williams memorabilia, including the famous 1952 baby-blue Cadillac convertible in which Hank took his "last ride" the night he died. The museum also houses items such as concert programs, costumes worn onstage, records, photographs and more. It's an invaluable collection that spotlights the life and career of a man who set the standard for modern country music.

Hiram King Williams, who was born on September 17, 1923, in Mount Olive, Ala., later changed his name to "Hank." In 1937, he moved to Montgomery, Ala., with his mother, where she operated a boarding house. At the age of 13, Hank was already playing guitar and singing, and he began to write songs as well. Hank participated in a talent show at the Empire Theater, where he won first prize and drew the attention of WSFA radio station producers. Listeners called the station asking to hear the talented young man, and he soon had a regular show twice a week. Soon after he formed a band, The Drifting Cowboys, and they performed on the air.

When the United States entered World War II in 1941, it was the end of the Drifting Cowboys and Hank's radio show. But it was just a lull before some very big things in Hank's career came about. After moving to Mobile for a time and working in a shipyard, Hank met Audrey Sheppard in 1943 at a performance. They were married in 1944 and moved back to Montgomery in 1945. Hank began singing and playing on the radio again.

In 1946, the couple traveled to Nashville to meet Fred Rose, who was head of Acuff-Rose Publishing, and Rose asked Hank to record two songs for Sterling Records—"Never Again" and "Honky Tonkin." Both were successful and in 1947 Hank got his first record deal with MGM Records.

Hank's first MGM single, "Move It On Over," was an immediate hit and his popularity began to grow by leaps and bounds. He followed it with "I'm a Long Gone Daddy" and "Lovesick Blues," which became his first number one hit. The years that followed were filled with songs that have become iconic:

- My Bucket's Got a Hole in It
- Dear John
- Cold, Cold Heart
- Hey, Good Lookin
- I Can't Help It (If I'm Still in Love with You)
- Honky Tonk Blues
- Jambalaya

It is amazing to think how many more songs the world would know and love had Hank Williams survived. Sadly, his life was cut short when he passed away while traveling to a concert in Ohio on Jan. 1, 1953. He was traveling in the back of the now-famous blue Cadillac when his driver, then-17-year-old Charles Carr, noticed the singer had been quiet for a couple of hours. The driver pulled

over and he found that Hank had died due to heart failure. Hank was only 29 years old. Incidentally, Charles Carr, a resident of Montgomery, died recently.

Hank's funeral, held at Montgomery's City Auditorium on Jan. 4, 1953, was the largest funeral in the South. Crowds of folks who could not get into the auditorium packed South Perry Street in front of the building to mourn the death of a superstar. Hank is buried at Oakwood Cemetery Annex in Montgomery, and his wife Audrey is laid to rest there next to him. There is a statue of Hank Williams in the park across from the City Auditorium, which now houses City Hall.

More than 60 years after his death, Hank Williams is still a major influence on country music. Without any doubt, Hank and his music greatly influenced the development of American Music, Rockabilly and Rock and Roll. Alabama Governor Gordon Persons officially proclaimed September 21 as "Hank Williams Day," in 1954, which is still recognized today. In 1960, Hank was honored with a star on the Hollywood Walk of Fame. In 1961, he was inducted into the Country Music Hall of Fame. He also has been included in the Alabama Music Hall of Fame, Rock and Roll Hall of Fame, Recording Academy Grammy Hall of Fame, and is listed as one of the 40 Greatest Men of Country Music by CMT, among his many honors. You have probably figured it out by now, but if you haven't, I will let you know that Jere Beasley is a very big Hank Williams fan.

The Hank Williams Museum is located at 118 Commerce Street in downtown Montgomery, Ala. It is open Monday-Friday from 9 a.m.-4:30 p.m.; Saturday from 10 a.m.-4 p.m.; and Sunday from 1-4 p.m. Admission is \$10 for ages 15 and older, and \$3 for ages 3-14. Find out more at their website, www.thehankwilliamsmuseum.net, or call 334-262-3600.

XVII. FAVORITE BIBLE VERSES

Jane Allen, (Greg's wife), sent in some of her favorite verses for this issue. Jane is a godly woman who has helped lots of folks find their way to the Lord. All who know Jane have been blessed by her shining example of love for her Lord and Savior, Jesus Christ.

Direct my steps by Your word, And let no iniquity have dominion over me.

Psalm 119:133

He has shown you, O man, what is good; And what does the Lord require of you But to do justly, To love mercy, And to walk humbly with your God?

Micah 6:8

Let your light so shine before men, that they may see your good works and glorify your Father in heaven.

Matt 5:16

Angie Spackman, who is director of Adullam House, a home for children whose parents are incarcerated, says one scripture has become precious to her during the last year or so. She believes it will be significant to others who are struggling with some trial or sickness.

“Blessed is he who considereth the poor: the Lord will deliver him in time of trouble. THE Lord will preserve him and keep him alive; and he shall be blessed upon the earth: and thou wilt not deliver him unto the will of his enemies. The Lord will strengthen him upon the bed of languishing: thou wilt make all his bed in his sickness.”

Psalm 41: 1-3

Dink Jones, the Manager for Royal Cup Coffee in the Montgomery territory, left a verse at the office for this issue. Dink says if we have all of God's gifts, but do not have love and share it, we have missed God's purpose for our lives. He is absolutely correct!

And now abide faith, hope, love, these three; but the greatest of these is love.

1 Corinthians 13: 13

Martha Hawkins, who operates Martha's place, a very good and popular restaurant in Montgomery, sent in a verse for this issue. Martha says she loves this scripture and that it truly illustrates her passion for the blessings God has placed in her life.

O taste and see that the Lord is good: Blessed is the man that trust in Him.

Psalms 34:8:

Mike Martin, who is the Executive Director of the Montgomery County Bar Foundation, sent in a verse for this issue. Mike says

Dr. Lawson Bryan, Pastor at the First United Methodist Church in Montgomery, recently shared a message in the church's weekly bulletin, advising readers to “travel light by unpacking” the burdens they carry every day. He pointed out that grudges, painful memories, and self-deprecation are just some of the ways we weigh ourselves down, preventing us from reaching our full potential as God would have it. In the message, Dr. Bryan urges all of us to accept the invitation offered in I Peter 5:6-7.

Humble yourselves therefore under the mighty band of God, so that He may exalt you in due time. Cast all your anxiety on Him, because He cares for you.

1 Peter 5:6-7

XVIII. CLOSING OBSERVATIONS

I received an email last month from my friend Cecil Spear, an Engineer with Dallas-based Trinity Industries, that contained a very powerful message. Since our firm deals with product recalls on a recurring basis, I assumed from the title this was just another safety-related recall involving a product. It was in fact safety-related, but of a totally different sort. I am including the “recall” in this issue and encourage all of our readers to pass it on to family and friends.

Recall Notice

The Maker of all human beings (GOD) is recalling all units manufactured, regardless of make or year, due to a serious defect in the primary and central component of the heart. This is due to a malfunction in the original prototype units code named Adam and Eve, resulting in the reproduction of the same defect in all subsequent units. This defect has been identified as “Sub-sequential Internal Non-morality,” more commonly known as S.I.N., as it is primarily expressed.

Some of the symptoms include:

1. Loss of direction
2. Foul vocal emissions
3. Amnesia of origin
4. Lack of peace and joy
5. Selfish or violent behavior
6. Depression or confusion

7. Fearfulness

8. Idolatry

9. Rebellion

The Manufacturer, who is neither liable nor at fault for this defect, is providing factory-authorized repair and service free of charge to correct this defect.

The Repair Technician, JESUS, has most generously offered to bear the entire burden of the staggering cost of these repairs. There is no additional fee required.

The number to call for repair in all areas is: P-R-A-Y-E-R.

Once connected, please upload your burden of SIN through the REPENTANCE procedure.

Next, download ATONEMENT from the Repair Technician, Jesus, into the heart component.

No matter how big or small the SIN defect is, Jesus will replace it with: Love—Joy—Peace—Patience—Kindness—Goodness—Faithfulness—Gentleness—Self control.

Please see the operating manual, the B.I.B.L.E. (BEST Instructions Before Leaving Earth) for further details on the use of these fixes.

WARNING: Continuing to operate the human being unit without correction voids any manufacturer warranties, exposing the unit to dangers and problems too numerous to list, and will result in the human unit being permanently impounded. For free emergency service, call on Jesus.

DANGER: The human being units not responding to this recall action will have to be scrapped in the furnace. The SIN defect will not be permitted to enter Heaven so as to prevent contamination of that facility. Thank you for your attention!

This symbolic recall from GOD is more important than the total number recalls that have taken place in the U.S. over the years. In reality, It's a recall that cannot be ignored and you do so at your peril.

A MONTHLY REMINDER

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

from heaven and will forgive their sin and will heal their land.

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

When plunder becomes a way of life for a group of men in a society, over the course of time they create for themselves a legal system that authorizes it and a moral code that glorifies it.

Frederick Bastiat

19th Century economist

XIX. PARTING WORDS

I asked Leigh O'Dell, a shareholder in the firm, to write the Parting Words Section for this month's issue. Leigh's message is both timely and badly needed. I believe it is most appropriate for all of our readers, regardless of where they might be, and especially for lawyers.

In the hectic world of the 21st century, busyness is epidemic. Urgent demands often overtake those things in life that are most important. Modern media make us perpetually distracted. The noise of the world drowns out the still small voice of God. In light of these very present realities, how can we maintain a sense of peace and priority?

In his three years of eternity-changing ministry, Jesus never seemed overwhelmed, distracted or, to use a modern phrase, "crazy busy." Yet, the Son of God, who was also the Son of

Man, maintained the most productive, effective, fruitful schedule in the history of the world. The Gospels are replete with examples of His calm in the midst of chaos, His kingdom perspective in the midst of persecution, His loving patience in the midst of perpetual demands. How did Jesus do it?

Jesus models for us what our priorities should be if we are going to live a life characterized by peace and proper perspective. Doing His Father's will and glorifying His Father was Jesus' first priority. (John 5:30). Jesus was not focused on what was popular among those who surrounded Him or trying to meet the expectations of the world. His sole focus was fulfilling His Father's will.

Second, Jesus didn't rush headlong into each new day. He rose early to pray, to commune with His Father in heaven, and to seek direction for the day. (Mark 1:35). He was able to walk in obedience to the Father because He had sought and knew the Father's will. And, He maintained this perspective throughout the day. Jesus attended to the Lord without distraction.

Third people mattered more to Jesus than his schedule or "to do" list. From the Samaritan woman at the well (John 4) to the countless people He healed or to the multitudes when He was teaching, Jesus poured out His life in love and service to people.

Examining the pattern that Jesus provides can be a bit overwhelming. Because after all He was the Son of God, the Messiah! But God, through the power of the Holy Spirit, can and will equip and empower us to live out His priorities. (2 Cor. 9:8 "And God is able to make all grace abound toward you, that you, always having all sufficiency in all things, may have an abundance for every good work.")

In today's work athletes are role models and that's true regardless of what some may say. The priorities set in their lives are looked at by folks young and old, and have a definite influence. In my opinion, we need more positive role models. Coach Tom Landry, legendary coach of the Dallas Cowboys, was a man who learned the lessons in life and achieved exceptional accomplishments while maintaining his priorities. Coach Landry remains one of the most successful NFL coaches ever. As the coach

of the Dallas Cowboys (America's Team), his teams had 20 consecutive winning seasons, 13 division championships, five trips to the Super Bowl and two world championship titles. If that was the real lesson to learn for Coach Landry's life, we would be missing the "main thing."

Serving as head coach of a NFL team was a demanding job, but Coach Landry made a commitment early in his career to make his Christian faith the highest priority in his life. He is quoted as saying, "This is really the most important factor in my life, my faith in Jesus Christ." Landry continued, "When you accept Christ, He becomes first in your life. It's this priority that gives me peace." This was not always the case, however.

Prior to committing his life to Christ in 1958, winning football games was Coach Landry's highest priority and he said it led him to feel "restless and dissatisfied." During a Bible study in the off-season, he decided to transform his nominal church-going Christianity where God got lost in the shuffle to a faith where Christ was his number one priority in life. An interesting example of one way Coach Landry put God first was that on Sunday mornings (game day in the NFL and arguably the biggest day of the week for a NFL coach), Coach Landry didn't change his priorities. When the Cowboys played at home, the coach attended church and taught Sunday School. Many times he walked into the stadium just a few minutes before the opening kickoff. Putting everything in perspective, that's amazing!

Coach Landry also spent time in God's Word and in prayer on a daily basis. In light of the demands on his time, it's likely he didn't have time, but he made time. That's because spending time in God's Word was included in his top priority. According to an interview with Mike McManus, time in God's Word not only grew Coach Landry's faith in Jesus, but it also gave him fresh insights on his family and other people, as well as on winning and losing football games.

Coach Landry also made people around him his priority. He cared about others—his family and his players. While he created an atmosphere with his players that was tough and disciplined, he also let them know that he cared about them. Coach Landry

encouraged his players in their spiritual lives. As NFL Hall of Fame quarterback Roger Staubach shared at Coach Landry's funeral:

He was our rock, our hope, our inspiration. He was our coach. Probably there were some players that didn't love him, but all respected him. He was committed to us and you don't find that type of commitment in life very often.

Tom Landry, Jr. also spoke at his father's funeral. The packed congregation was filled with Pro Football Hall of Famers and Super Bowl champions. This is what the son had to say about his father that day:

Tom Landry was everything the world believed him to be. He was a man of virtue, of high moral character, a man whose talents and hard work pro-

pelled him to the top of his profession. Tom Landry never strayed from his ideals. He remains a consistent shining example to all of us.

Coach Landry, in the face of a demanding schedule, significant responsibilities, and the pressure to win, maintained his priorities—doing God's will was first, spending time with God to grow in his faith was second, and loving people, making people a priority, was third. Because he followed the example of Jesus and lived out these principles throughout his life, his life was characterized by not only accomplishment and excellence, but also by the peace of Christ, the empowerment of the Holy Spirit, the joy and rest that comes from walking in obedience to the Lord. Isn't that what we all want?

Leigh has made a strong case for the importance of setting priorities in our lives.

If you, like me, find yourself in an epic battle against busyness and other things that cause us to stray from our priorities, the pattern of Jesus Christ is readily available to us. We can also be inspired by the example of a man like Coach Landry and commit ourselves to making God's priorities our own. That means pleasing God first and foremost, making time to read God's Word and pray daily, and loving and serving others. As we do, our schedules and the demands on our life may not change externally, but we can trust that the peace of God will reign in our hearts and minds just as it did in Christ Jesus. I am still working to keep my focus on Jesus and maintain the priorities in my life in the proper order.

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