I. Capitol Observations

Gov. Robert Bentley Announces New Database To Enforce Payday Loan Limits

Gov. Robert Bentley is creating a centralized payday loan database to help enforce a $500 cap on how much folks can borrow in Alabama from the payday lenders. The decision won quick praise from advocacy groups for the poor, and rightfully so. But a payday loan industry spokesman criticized the move, making the same claims that have been made before. Currently, payday lenders are not supposed to issue loans to customers with more than $500 in existing payday loan debt. But since there has been no centralized database to track the loans, the payday lenders have in all probability ignored that restriction. I suspect it’s more than just a probability. Gov. Bentley had this to say about his plan:

A single database would protect borrowers from excessive debt from multiple payday loans. If someone has several loans at the same time, and they all carry high interest rates, it’s easy for that person to get trapped in debt. This database can help people avoid that.

John Harrison, superintendent of the Alabama banking department, said without a centralized system, neither the state nor the lenders have any way of knowing if folks are borrowing in excess of the $500 cap. John stated that his department “can’t enforce the cap without the database.” I trust John on this issue and if he says we need the database, that’s enough for me—we need it! Alabama Arise, an advocacy group for the poor, is totally in support of the governor’s plan. Kimber Forrester, state coordinator for Alabama Arise, says Governor Bentley is “finally putting teeth in the governor’s plan. Kimble Forrester, state trust John on this issue and if he says we need the database, that’s enough for me—we need it! Alabama Arise, an advocacy group for the poor, is totally in support of the governor’s plan. Kimber Forrester, state coordinator for Alabama Arise, says Governor Bentley is “finally putting teeth in the

Victims Of Sixteenth Street Baptist Church Bombing Receive Posthumous Congressional Gold Medal

Family members of the four young black girls who were killed in the 1963 bombing of the Sixteenth Street Baptist Church in Birmingham, Ala., gathered at our Nation’s Capital on Sept. 10, where they were presented with a Congressional Gold Medal in the girls’ honor. The ceremony came at the 50th anniversary of the bombing, a pivotal event in the Civil Rights Movement, and hopefully it touched the “hearts” of all members of Congress.

The medal was presented in a ceremony held in the U.S. Capitol in memory of 11-year-old Denise McNair and 14-year-olds Addie Mae Collins, Carolee Robertson and Cynthia Wesley. An honored guest at the presentation was Sarah Collins Rudolph, who was seriously injured in the bomb blast, and is the sister of Addie Mae Collins. The bombing and deaths of the four young girls sparked national outrage. It put my state of Alabama in the national spotlight for all of the wrong reasons. It was a sad day for Alabama and one that will go down in history as a turning point in the battle for racial equality in the U.S. The bombing was one of the catalysts that contributed to the passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965. It took the senseless deaths of four innocent children killed at their church to wake up America. The Kennedy Administration came to realize that no longer could they remain on the sidelines in the battle.

The resolution to honor the girls was introduced in the U.S. House of Representatives on April 25 in a bipartisan gesture by Reps. Terri Sewell and Spencer Bachus. Sen. Richard Shelby co-sponsored the Senate resolution. The measure passed both houses unanimously.

In 1963, nobody was arrested for the bombing. It was not until 1972 that then-Attorney General Bill Baxley was able to access FBI files on the bombing. Bill went to work, located a suspect, Robert Chambliss, and Chambliss was convicted in 1977. He died in prison. But it was not until 20 years later that the investigation was reopened by then-FBI special agent in charge Rob Langford. While trying to improve the FBI’s race relations in Alabama, Langford got feedback from Birmingham ministers who told him “the FBI never did anything with the church bombing.” Langford located two suspects still living, Bobby Frank Cherry and Thomas Blanton, and got busy in an effort to right wrongs. The new investigation turned up sufficient evidence to convict both men. Cherry died in prison in 2002 while Blanton remains incarcerated. A fourth man, Herman Cash, was identified as the fourth man involved in the bombing, but he had already died.

Speaking at the ceremony, Rep. Sewell said, “Today, 50 years later, we remain silent no more. The American people...
through its representatives will bestow the highest civilian honor that Congress can bestow ... God is good.” Congressional leaders in attendance at the medal presentation were House Majority Leader Eric Cantor, Minority Leader Nancy Pelosi, Senate Majority Leader Harry Reid and Senate Minority Leader Mitch McConnell. House speaker John Boehner presided at the event.

The members of the House and Senate attending the ceremony—Republicans and Democrats alike—surely left the event with a different perspective on their responsibilities as public officials. Hopefully, they reflected on our country’s failure to deal with racial injustice through the years. It was also a time for them to assess where we are today in the U.S. on race relations, and to resolve to work for vast improvements that are badly needed.

Sources: NPR, al.com, and Last Chance for Justice

II. A REPORT ON THE GULF COAST DISASTER

BP’s Actions Prove Once Again Where The Company’s Priorities Lie

For most companies—large and small—September 11th was an opportunity for them to remember the 12th anniversary of one of the most horrific terrorist attacks in our nation’s history. Many companies took out full-page ads and bought television space commemorating the fallen on that day. But BP had other plans. The British oil giant took out full page ads in major newspapers around the country to again bash the US. Predictably, media reports suggest that BP’s recent antics were not well taken by the public.

Regardless of how it ignored the anniversary of 9/11, BP is spending millions of dollars on advertising when it should be spending the money to live up to its promises. BP simply couldn’t let up for one day, proving once again that the oil giant only cares about its bottom line. The manner in which BP has misled the public about the settlement it negotiated and agreed to will ultimately backfire on the oil giant. The American people are too smart to fall for the con game being played out by BP.

Long-Awaited Freeh Report Contradicts BP Assertions and Clears Claims Administrator Pat Juneau

BP has painted claims administrator Pat Juneau as a scapegoat to provide cover for the company’s own failure to accurately predict the Settlement’s price tag. The company exaggerated a very isolated and alleged conflict of interest between two lawyers in the program and the processing of claims filed by their former law firm to tarnish Mr. Juneau’s sterling reputation and shut down the processing of claims. Judge Barbier appointed Mr. Louis J. Freeh as Special Master to investigate BP’s claims, and recently, Mr. Freeh released his report.

Mr. Freeh concluded the two lawyers had an impermissible existing conflict of interest. Whether any wrongful conduct actually occurred is for the appropriate authorities and the courts to decide. Importantly, Mr. Freeh’s ultimate conclusions contradict BP’s assertions of a lawless, out-of-control claims process. Instead Mr. Freeh stated that “…the Special Master has not found evidence that Mr. Patrick Juneau engaged in any conflict of interest, or unethical or improper conduct. And while certain conduct of Claims Administration Office (CAO) employees … is problematic, this should not prevent the DHECC from fairly and efficiently processing and paying honest and legitimate claims in a timely manner.”

What about BP’s contentions about widespread manipulation and corruption of claims in the Facility? “The Special Master did not find any evidence that either Mr. Sutton or Ms. Reitano [the attorneys in question] directly manipulated the valuation of claims by accessing the DHECC database. The Special Master also did not find any evidence of such manipulation by other CAO officials.” Moreover, Mr. Freeh found that Mr. Juneau had properly conveyed his expectations to CAO staff, and outlined his expectations and key policies in signed employment agreements with his personnel.

While some of Mr. Freeh’s findings are potentially troubling, the Court and Mr. Juneau did the right thing by quickly freezing the claims in question, identifying potential conflicts, and retaining a respected third party investigator to assess fact from fiction. Predictably, BP’s accusations were (again) proven to be more fiction than fact.

The Second Phase Of The Limitation Trial Should Have Started September 30

On September 30, the second phase of the of the Deepwater Horizon oil spill Limitation of Liability trial was set to begin against BP and its contractors. Hopefully, it did without interruption. The second phase is separated into two parts, one of which will explore BP’s efforts to control the flow of oil. Secondly, the Court will seek to determine how much oil was actually spilled in the Gulf. Sixteen experts are expected to testify during the second part and, in total, Judge Barbier has set a schedule of 16 days to conclude the entire second phase of the trial.

The second phase promises to be a major showdown between the Justice Department and BP, especially as pertaining to volume of oil spilled in the Gulf. Billions of dollars are potentially at stake depending on the Court’s decision. As we have previously written, Clean Water Act fines are calculated, in part, based on the amount of oil spilled.

Justice Department experts estimate that around 4.2 million barrels of oil (176 million gallons) escaped into the Gulf of Mexico as a result of the spill before BP sealed the well 86 days after April 20, 2012. BP, on the other hand, is contending that the Justice Department’s estimate is flawed, and that the well actually spilled an estimated 2.45 million barrels, or nearly 103 million gallons of oil. In total, BP estimates that the Federal Government overestimated the spill by 26 to 42 percent, while the Justice Department has maintained that BP “abandon[ed] the data from the (spill) response actions and contradicting evidence” from the phase one trial in reaching its conclusion.

As stated, Clean Water Act fines are based on the amount of oil spilled and the culpability of the polluter that spilled it. The Act provides that a defendant can be liable for $1,100 per barrel. But if the defendant is shown to be grossly negligent, a maximum of $4,300 per barrel of spilled oil would have to be paid. Based on what we have learned during the BP litigation, I believe the oil giant will be found to have been grossly negligent.

Claims From Mexican States Against BP Dismissed

Judge Carl Barbier has dismissed claims brought by three Mexican states blaming BP PLC for property and economic
damages suffered in the wake of the April 2010 oil spill. Judge Barbier ruled that only Mexican federal officials have standing to assert these claims. The governments of Quintana Roo, Tamaulipas and Veracruz, all of which border the Gulf of Mexico, can’t pursue damages under general maritime law because they lack proprietary interest in the waters, shores and wildlife damaged by the oil, Judge Barbier said. He ruled that as owner of the aquatic territory, seafloor and shores at issue, the Mexican federal government has the exclusive power to bring the type of claims asserted by the three states.

The states had argued that the term “Mexican nation” as used in their country’s constitution includes the states and the federal government, but Judge Barbier said that interpretation conflicts with other laws stating that waters of the territorial sea, inland marine waters and maritime beaches are under the federal government’s jurisdiction and are “inalienable, imprescriptible and unseizable.” The judge noted that the Mexican Supreme Court reached a similar conclusion when it found that “the nation cannot be mistaken for a state” and that state officials cannot represent the federal government. Judge Barbier said in his order:

> The Mexican states are creatures of Mexican law. If Mexican law determines that only the Mexican federal government may bring the sort of action the Mexican states assert here, then neither the Mexican states nor this court may ignore this.

Quintana Roo and Tamaulipas also argued that the federal government transferred certain coastal land rights to them through administrative agreements, but Judge Barbier said the states misrepresented the language of those documents. The agreements only grant the states the right to use the land and exploit its assets and do not go so far as to transfer ownership, according to the ruling. The three Mexican states filed separate suits in September 2010 in a Texas federal court, saying they were owed damages for harm to their fishing, commercial shipping and tourism industries. Veracruz said many residents rely on a clean Gulf and safe navigable waters for their livelihoods and that the state would be hurt by lost fees, taxes and revenues. It alleged that the risks of offshore drilling were well known to the defendants and that they knew work on Deepwater Horizon was especially hazardous, but failed to take the appropriate measures to prevent an accident.

The complaints filed by Tamaulipas and Quintana Roo were similar, except that Quintana Roo—the home of Cancun and Cozumel—focused especially on potential harm to its tourist destinations. The three complaints were consolidated with the multidistrict litigation in November 2010.

**JUDGE ACCEPTS HALIBURTON’S GUILTY PLEA IN GULF OIL CASE**

A federal judge has accepted a Halliburton Co. unit’s guilty plea to destroying tests conducted on cement work connected to the BP PLC-owned well that exploded in 2010, setting off the Gulf of Mexico oil spill. Officials of Halliburton Energy Services Inc., which worked on BP’s Macondo well, said in July that the company would plead guilty on the unit’s behalf to destroying evidence for failing to preserve computer models examining the final cement job on the well after the April 2010 explosion that killed 11 workers and sent millions of barrels of oil pouring into the Gulf.

Halliburton agreed to plead guilty to one misdemeanor violation for the deletion of records created after the Macondo incident, pay the statutory maximum fine of $200,000 and accept a term of three years’ probation. U.S. District Judge Jane Triche Milazzo accepted the plea at a hearing last month in federal court in New Orleans. Judge Milazzo found the plea agreement to “adequately reflect the seriousness” of the violation. The U.S. Justice Department has agreed not to pursue any further criminal prosecution of the Houston-based company or its subsidiaries for any conduct related to the well blowout and subsequent spill. Halliburton is the third corporate defendant to plead guilty to wrongdoing related to the 2010 spill.

**STUDY SHOWS BP SPILL DID WIDE DAMAGE TO SEA-FLOOR LIFE**

A recent study verifies what many have believed all along concerning the effect of the oil and chemicals spilled in the Gulf on Marine life. The 2010 oil spill damaged the tiny animals that live on the sea floor for so much time because one step was count- ing and classifying animals less than one-hundredth of an inch long and comparing the numbers of nematode worms and the tiny crustaceans called copepods, which are more sensitive to pollution. That is still going on for samples from a follow-up cruise in spring 2011 and hasn’t even
begun for 102 of the sites checked in 2010, Dr. Montagna said.
Source: New Orleans Times-Picayune

HOSPITAL GROUP ASKS APPEALS COURT TO APPROVE $130 MILLION DEEPWATER SETTLEMENT

The Louisiana Hospital Association (LHA) has asked the Fifth Circuit Court of Appeals to approve a $130 million medical treatment settlement BP PLC agreed to with a class of 200,000 cleanup workers from the Deepwater Horizon disaster. LHA told the court that the parties would benefit by avoiding a lengthy trial. The amicus brief filed by LHA, an organization representing 160 hospitals across the state of Louisiana, comes two months after a small number of objectors told the Fifth Circuit that the settlement was unfair. The objections claimed that a lower court disregarded U.S. Supreme Court decisions when it certified the settlement class. Four appellants urged the appeals court to revoke Judge Carl Barbier’s January approval of the settlement. This is one of two primary class action settlements in multidistrict litigation over the offshore rig explosion and massive oil spill.

LHA, which represents the majority of the hospitals in Louisiana that would treat most of the class members seeking medical treatment, says the settlement is fair to the class and should be approved. LHA said in its brief:

BP and the settlement class have come to a fair, reasonable, and adequate solution in settlement whereby BP agrees to pay class members for medical treatment and potential conditions that may arise later. Setting aside a settlement agreed to by class members who are giving up the filing of individual law suits which are costly, and the potential for punitive damage awards against British Petroleum, would not be logical.

LHA added that society and the class are the winners in the settlement and that the trial court was correct in its findings and that its order should be affirmed. Under the settlement, the class was defined as consisting of three categories of claimants:

- those who lived in specified Gulf Coast wetlands areas for a 60-day period after the spill.
- those who lived on specified Gulf Coast beachfront areas; and
- workers who were involved in cleaning up the massive oil spill;

III. DRUG MANUFACTURERS FRAUD LITIGATION

STATE OF MISSISSIPPI AWARDED $12.4 MILLION IN MEDICAID FRAUD LITIGATION AGAINST WATSON PHARMACEUTICALS

In September, Judge Thomas L. Zebert found in favor of the State of Mississippi against Watson Pharmaceuticals in the state’s ongoing Medicaid Fraud litigation against a number of pharmaceutical companies. Judge Zebert awarded $12,582,552.00 in compensatory damages and limited statutory penalties, finding that Watson fraudulently inflated the Average Wholesale Price (AWP) of medications, overcharging the state’s Medicaid program. A hearing to determine punitive damages will be held in the next few weeks. Mississippi Attorney General Jim Hood authorized the filing of these lawsuits against the pharmaceutical companies.

Beasley Allen lawyers Dee Miles, Clay Barnett, Roman Shaul, Chad Stewart and Alison Hawthorne, along with former Mississippi Governor Ronnie Musgrove, who is with the Jackson firm Copeland, Cook, Taylor and Bush, are trying the case. Dee had this to say:

This is another huge victory for the State of Mississippi. This is the second of some 54 cases Mississippi has filed against the pharmaceutical manufacturers to go to trial and the State has prevailed victorious in both trials. Pharmaceutical companies overcharging for drugs to the state’s Medicaid Program—a program designed to assist the state’s neediest citizens—is egregious conduct, and the court agreed.

This is the second trial victory for the State of Mississippi in its ongoing Medicaid Fraud litigation commonly referred to as the AWP litigation. The State has recovered to date more than $120 million in settlements in the AWP litigation and has now obtained two trial verdicts. In September 2011, Judge Zebert held that pharmaceutical company Sandoz, Inc.’s prices were fraudulent, unfair and deceptive. In ruling for the state, Judge Zebert awarded Mississippi $23,661,618.00 in compensatory damages, $3,750,000.00 in punitive damages and $2,699,000.00 in civil penalties for a total award of $30,110,618.00. The court also entered an injunction against Sandoz prohibiting the company from reporting false AWP prices to Mississippi.

The Watson case differed slightly from the previous Sandoz trial in that Watson had already settled its claim with the federal government on its portion of damages resulting from Watson’s misconduct. The Medicaid Program is a joint venture between the federal government and the state governments. Mississippi could only pursue its portion of the damages in the Watson case because of the federal settlement. This resulted in the smaller verdict. The federal government settled its portion of damages in all States for approximately $106 million.

If the Court imposes punitive damages in the Watson case in addition to the roughly $12.4 million verdict it has already awarded, Mississippi’s recovery from Watson will be substantially higher proportionally than that of most other States and of the federal government’s recovery.

The case is Mississippi Medicaid Pharmaceutical Average Wholesale Price Litigation (Master Docket No. 65586-65632, 66312, 66313, 66314). It involves claims that Watson and other pharmaceutical companies caused to be published inflated “Average Wholesale Prices” for the drugs they manufactured, which resulted in the Mississippi Division of Medicaid reimbursing pharmacies at an inflated price, all in violation of the Mississippi Consumer Protection Act, the Mississippi Medicaid Fraud Control Act and common law fraud.

The Massachusetts Supreme Judicial Court has upheld a $20.6 million verdict against Toys R Us Inc. The case involved the death of a 28-year-old woman who died using a Chinese pool slide that didn’t meet federal import requirements. The court held that the jury’s $18 million punitive damages award did not violate due process.

The court stated:

"The jury’s award of punitive damages in this case, while perhaps higher than many such awards, cannot fairly be categorized as grossly excessive in relation to the Commonwealth’s legitimate interests in condemnation and deterrence."

Toys R Us had argued that the $2.64 million compensatory verdict was “substantial” and should have lowered the range of punitive damages that could meet the constitutional requirements. The appeals court rejected this claim, noting that a higher ratio of punitive to compensatory damages may be appropriate when the value of a tort victims’ noneconomic loss is uncertain. And on that issue, the court stated:

"Even if we were to agree with Toys R Us that the ratio of punitive to compensatory damages is high, the monetary value of the injury in a wrongful death action is undoubtedly difficult to determine. While $2,640,000 may be a substantial sum of money by many measures, its significance pales when viewed not as compensation for economic loss or emotional distress but for the loss of a young woman’s life."

Robin Aleo had suffered severe neck injuries, became a quadriplegic and subsequently died from the injuries. The case arose when a ToyQuest Banzai inflatable slide gave way as the woman was sliding headfirst into a below-ground pool. A jury found Toys R Us had negligently certified the product for importation despite federal regulations requiring that a slide be able to support a person weighing 350 pounds. The slide, which Toys R Us said was underinflated, was labeled as being able to support 200 pounds and collapsed while Ms. Aleo, a 140-pound woman, was using it.

The Supreme Judicial Court also agreed with the trial court’s exclusion of evidence that the slide was misused. The court affirmed the jury’s findings that Toys R Us was negligent and breached the implied warranty of merchantability. Those conclusions, according to the court’s opinion, were supported by evidence that the retailer understaffed its import compliance department and was indifferent to product safety because it believed it would not be financially liable for defects. The Plaintiffs are represented by Benjamin R. Zimmerman and W. Thomas Smith, who are with the Boston law firm Sugarman & Sugarman. Ben had this to say about the result in the case:

"We are pleased that today’s decision upheld the finding of the jury, and recognized the tremendous and needless loss suffered by the Aleo family. It also sends a powerful message to toy retailers across the country that they have a responsibility to ensure the products they import and bring to market are safe for consumers."

This is an important decision for a number of reasons, one being the fact that many retailers of toy products are importing a significant percentage of the products they are selling in the U.S. The lawyers who handled this case did a very good job.

Sources: Andrew Scuria and Law360.com

Oklahoma Appeals Court Affirms $15 Million Award in Botox Injury Case

The Oklahoma Court of Appeals has upheld a $15 million jury verdict in favor of a medical doctor in her Botox lawsuit against Allergan Inc. The Plaintiff, Sharla Helton, suffered debilitating side effects from receiving an injection of the company’s Botox treatment. The court said the Plaintiff met her burden of proof at trial to show Botox caused her injuries. The appeals panel said Dr. Helton presented adequate evidence to the jury to show that an injection of Allergan’s Botox product caused her to develop botulism poisoning.

Dr. Helton, an obstetrician and gynecologist, alleged that she developed double vision, breathing difficulties, and joint and muscle pain from the poisoning. She eventually was forced to quit her job as the medical director at an Oklahoma women’s hospital.

The appellate court’s decision upheld the verdict in its entirety, with no reduction. It was alleged in the suit that Dr. Helton received Botox injections four times between 2004 and 2006 without incident. But following a July 2006 injection, Dr. Helton began experiencing joint and muscle pain that eventually became debilitating, and she was later diagnosed with botulism poisoning, according to court documents. Dr. Helton sued Allergan in 2009 saying Botox’s warning labels were inadequate. She alleged Allergan encouraged physicians to use the product “off label” for purposes and in doses not approved by the FDA. The complaint included claims based both on product liability and negligence.

The jury returned a verdict in favor of Dr. Helton on the negligence claim, but found in favor of Allergan on the product liability claim. On appeal, Allergan argued Dr. Helton failed to establish that Botox caused her injuries. The panel rejected that contention, pointing to the testimony of one of Helton’s treating physicians, Dr. Brent Beson, who testified that the Botox injection did in fact cause Dr. Helton’s condition.

Allergan claimed the court erred by allowing Dr. Helton, as well as her anesthesiologist husband and other physicians, to testify regarding their observations and opinions about the cause of her illness. Allergan claimed none of them were qualified as expert witnesses in toxicology, nor had they ever treated a patient with botulism. The appeals court said those witnesses appropriately represented their
Bisphenol A, commonly known as BPA, has been the subject of heated debate recently. Researchers have linked BPA to a host of health problems, including cancer, reproductive dysfunction and heart disease, but federal regulators have for some reason ignored the health safety issues. The FDA, in July, vouched for the chemical to be used in food packaging.

One of the EPA’s draft rules would have listed BPA and eight flame retardants known as polybrominated diphenyl ethers (PBDEs) as posing an “unreasonable risk to human health and/or the environment.” The other would have forced companies to release the names of chemicals used in health and safety studies rather than keep them hidden as confidential business information. The American Chemistry Council (ACC) strongly supports the EPA’s decision. It claims the withdrawal will ultimately strengthen the federal Toxic Substances Control Act that the proposals would have amended. The industry group also noted that the EPA already has a process in place to assess the risk of dangerous chemicals. In that regard, the ACC said that the “Work Plan Chemicals initiative has made the proposal unnecessary.”

The Natural Resources Defense Council (NRDC) believes that huge corporations are exerting too much influence over the Obama Administration and the EPA. The Council said the recent move shows that the Obama administration is catering to the interests of companies such as Dow Chemical Co., BASF Corp., ExxonMobil Corp. and other chemical manufacturers, rather than protecting the health of children. Daniel Rosenberg, who is senior attorney with NRDC, said in a statement:

They are keeping information secret and stifling public debate on toxic chemicals the American people are widely exposed to now, and may endanger children’s health and the environment.

Earthjustice, a public interest law firm, was very upset with EPA’s decision. Marianne Engelman Lado, Managing Attorney with the group, described the agency’s move as a disturbing about-face. She had this to say:

Withdrawing these rules only adds more secrecy and maintains what amounts to a black hole of information around toxics. This latest action leaves the American public more vulnerable to chemical exposure.

Even though the EPA has backed off new regulations, the BPA problem is still receiving attention on Capitol Hill. Senate Democrats introduced legislation in June that would force manufacturers to include a warning label on any packaging that contains the chemical. They have been pushing the FDA to ban the chemical in products made for children. The FDA announced in July that it would no longer allow BPA to be used in infant formula packaging, but said it was basing the decision on the industry’s abandonment of the chemical rather than safety concerns and added that its current review supports the chemical’s safety.

The FDA rejected a bid in March of last year by the NRDC to ban BPA from food packaging. The agency claimed that the group hadn’t presented enough scientific data that the chemical was harmful to justify a change in regulations. But the FDA did prohibit the use of BPA in baby bottles and sippy cups. Legislation targeting BPA at the state level has had mixed results. For example, Maine Gov. Paul LePage vetoed a bill in July that would have required additional labeling on food packaging containing BPA. Hopefully, the Obama Administration will wake up, realize that the federal government has a duty to protect the public from unsafe products of any kind, and then get actively involved in this battle.

Sources: Jeff Sistrunk and Law360.com

V. THE NATIONAL SCENE

SHAME ON THE EPA FOR KILLING CHEMICAL SAFETY RULES

The U.S. Environmental Protection Agency (EPA) has withdrawn a pair of draft chemical regulations that were awaiting Office of Management and Budget (OMB) approval. This included a measure that would have placed the synthetic compound bisphenol A on a “chemicals of concern” list. Proponents of the changes had called for adding nine chemicals to a list of dangerous substances and preventing health and safety study data for new chemicals from being classified as confidential. In a move that is difficult to comprehend or defend, the EPA has killed the needed safety rules.

The EPA pulled the rules proposed without any formal announcement after they had been sitting at OMB for more than two years. Obviously, industry groups were very happy. They claimed the rules weren’t needed. Environmental groups accused the EPA of bowing to industry demands and endangering the public.
$10 billion and there is much more to be done. As we reported last month, after three years the clean-up is not yet complete.

Recent events are evidence that large, modern ships do not eliminate the danger of oil spills. For example, on June 17, 2013, the recently built container ship MOL Comfort, which was 980 feet long, split in two for no apparent reason and sank. That was not the first time huge vessels have snapped in two. Unfortunately, based on reports, neither will it be the last.

Oil spills that occur in very sheltered waters are usually cleaned up effectively and economically using current mitigation techniques. But even San Francisco Bay is not sheltered enough for today’s oil spill technology to function in a satisfactory manner. In 2007 the container ship, Cosco Busan, hit the Bay Bridge and spilled fuel oil. The United States Coast Guard and oil spill industry could not operate in the currents and choppy water so they lost 60 percent of the spilled oil. There were $75 million in damages caused by that spill.

The fact that there have been no significant innovations in oil spill mitigation in the last 40 years is difficult to understand. It’s also totally unacceptable. After the Deepwater Horizon incident, the oil industry issued a report that stated:

Spill prevention remains a primary focus of the industry. Nonetheless, the current surface oil spill response system—as exhibited in the DWH incident (Deepwater Horizon)—continues to be effective.

The system they refer to is the very same system that failed miserably to prevent the blowout in the Gulf in 2010. Even more troubling is that a 3 percent success rate is considered by the industry to be “effective.” One might ask, what other industry could get away with that sort of success rate and still be in business?

If the American people knew how the current system really works they would demand an acceptable oil spill mitigation performance. The oil companies’ oil spill mitigation success rate is far from good and very little has been done by the federal government to make it better. The oil companies, by and large, do not clean up oil spills themselves. Instead, the companies subcontract this work out. As we have learned in the BP litigation, BP was paying the contractors by the hour, not by the barrel of oil brought ashore. That was a costly mistake. As a result, the contractors had revenues of approximately $100 million per day for months even though they only recovered about 3 percent of the oil. It appears all they had to do was show up for work with a rake and then rake in the money. Much of their performance, under BP’s supervision and direction, was for the benefit of the news media. We all saw reports on the nightly news on TV of folks working on the beaches looking for oil to clean up.

Because the contractors who do the clean-up don’t have technology that works effectively on the open water, the oil has to hit the shore in order for the contractors to make money. BP spent more than $10 billion trying to clean up the oil, and they have failed in large part. It was estimated that new and effective technology that could clean up the oil at sea before it hit the beach would have cost only 2 percent of the amount spent. Also, recovering the oil at sea would have avoided most all of the severe damage from the spill.

There is another very good reason for recovering the oil offshore. Untreated oil quickly and efficiently collected offshore can be recovered and refined. That keeps the oil from being just turned into colossal amounts of toxic waste. Since the new technology has a working life of 40-50 years, the costs can be amortized over many oil spills. This better technology is available now, but it was reported that the existing suppliers have locked the door.

One would think that both the oil industry and the federal government would have learned some valuable lessons since April of 2010. But it was reported that things have actually gotten worse since the BP spill. Not only has there been no improvement in actual oil spill cleanup ability, but things have taken a turn for the worse from an ethical perspective. It certainly appears that the damage that most concerns the federal government and the oil industry is public relations damage. A prime example involves the highly toxic dispersant “Corexit,” which was used by BP in the Gulf of Mexico. Corexit did make the oil disappear. A great deal of that chemical was used even though the chemical is toxic. Corexit poisoning is a big problem and it has actively affected folks on the Gulf Coast. For some reason, very little has been reported in the media about the problem. BP, and to a large extent the federal government, has worked hard to keep Corexit out of the news and away from the public.

It was reported that the oil industry intends to greatly expand the use of Corexit. In fact, Environment Canada has recently approved its use. A new oil well-capping system has been developed that injects dispersants deep undersea. The expanded containment system will include a 15k psi subsea containment assembly, dedicated capture vessels and a dispersant injection system. The federal government must get busy and force the oil industry to improve its capacity to clean up oil spills and to mitigate the damages from the spills.

Sources: David Prior, Law360.com and the Claims Journal

CONGRESS SHOULD RESTORE GLASS-STEAGALL WALLS BETWEEN BANKS AND INSURERS

U.S. Senator Elizabeth Warren was definitely on target when she said banks remain too big to fail. Even though progress that has been made on financial regulation since the 2008 credit crisis, it’s clear that much more needs to be done. The Wall Street rules overhaul was a step in the right direction, but there is a gap that must be closed. Sen. Warren, a Massachusetts Democrat, said:

If Dodd-Frank gives the regulators the tools to end too big to fail, great—end too big to fail. If the regulators won’t end too big to fail, then Congress must act to protect our economy and prevent future crises.

Sen. Warren, who set up the Consumer Financial Protection Bureau (CFPB) before being elected to the Senate in 2012, used a speech at an event marking the fifth anniversary of the financial crisis to promote her proposal to re-create the Glass-Steagall Act, the 1930s law that separated commercial and investment banking.

Sen. Warren’s call to end too big to fail aligns her with Federal Reserve Governor Daniel Tarullo and Federal Deposit Insurance Corp. Vice Chairman Thomas Hoenig. While regulators and lawmakers acknowledge the problem still exists, thus far a consensus hasn’t formed around a single approach. The Senator’s bill, also sponsored by Senators John McCain, Maria Cantwell, and Angus King, a most interesting group, would separate traditional banks that offer checking and savings accounts insured by the FDIC from “riskier financial institutions.” The latter category includes companies involved in investment banking, insurance, swaps dealing, hedge funds and private equity.

Previous attempts in the Senate to revive Glass-Steagall, which was repealed in 1999
AlloweD to PRoceeD

...the court ruled for the whistleblower...two drugs. But the court's decision did...False Claims Act (FCA) infractions tied to...against Bayer Corp. The lawsuit alleges...violations regarding heart surgery...L. Linares determined that Laurie Simpson,...anti-kickback law. U.S. District Judge Jose...Sources: Cheyenne Hopkins, Law360.com and InsuranceJournal.com

VI. THE CORPORATE WORLD

WHISTLEBLOWER’S DRUG KICKBACK CLAIMS ALLOWED TO PROCEED

A New Jersey federal judge has allowed a whistleblower’s lawsuit to go forward against Bayer Corp. The lawsuit alleges False Claims Act (FCA) infractions tied to two drugs. But the court’s decision did reject claims for violative off-label marketing. The court ruled for the whistleblower on the claims for breaches of the federal anti-kickback law. U.S. District Judge Jose L. Linares determined that Laurie Simpson, a former Bayer marketing employee, had failed to tie the company’s alleged regulatory violations regarding heart surgery drug Trasylol and antibiotic Avelox to health care providers’ submission of false claims for payment to government programs.

Judge Linares found that government payments were not conditioned on Bayer’s promotion of the drugs for unapproved uses. As a result, the judge said the regulatory violations lacked the connection to false claims that is required to impose liability under the False Claims Act. Judge Linares said in his order:

It remains unclear how defendant’s alleged violations were a condition for payment. This is particularly the case because plaintiff does not dispute that Trasylol was approved by the FDA at all times and that plaintiff does not argue that defendant caused claims to be submitted that were not reimbursable.

The Plaintiff contended that had the government been aware of Trasylol's illegality in interstate commerce, its decision to make payments in reimbursement of the drug would have been altered, and that false claims could therefore be imputed to Bayer. Judge Linares rejected that claim, saying: “Plaintiff points to no controlling law in support of that general position.” The good news for the Plaintiff, however, was that the judge did allow her claim to go forward. The allegations that the providers falsely certified that Bayer’s drugs were in compliance with the federal Anti-Kickback Statute, when in reality the company had illegally offered discounts and other benefits to prescribers and health care institutions to encourage drug sales, was sufficient to state a cause of action. The court refused to dismiss the claims that Ms. Simpson was fired in retaliation for complaining about the purportedly illegal practices, saying her allegations of retaliation plausibly stemmed from activities protected under the FCA.

The government declined intervention in the Simpson suit in 2010. Bayer asked Judge Linares to dismiss the suit, asserting that any misrepresentations it may have made were not material because the government reimbursed providers for Trasylol as part of a so-called Diagnosis Related Group used to categorize hospital patients, rather than reimbursing for it individually. The filing by Bayer drew a rebuke from the federal government, which submitted a letter to the court arguing that the core question for “falsity” under the FCA is whether claims were submitted for items not “covered” or “reimbursable” under a federal health care program. The government said in its brief:

In essence, Bayer contends that if [the Centers for Medicare & Medicaid Services] reimburses for a drug as part of a bundled payment, no false claims could ever result from the use of such drug, regardless of whether the drug was unapproved, defective or dangerous. Contrary to Bayer’s argument ... a manufacturer’s off-label promotion of prescription drugs can give rise to an actionable claim under the FCA because a manufacturer’s conduct can knowingly cause the submission of prescription drug claims that are ‘false’ under the FCA.

Ms. Simpson, in her suit, painted Trasylol as dangerous and promoted for use in untested situations, but those allegations were “conclusory” and insufficient to show that the off-label uses were “unreasonable and unnecessary” for patient care, Judge Linares said. Absent that determination, the drugs were eligible for reimbursement under federal health care programs even when used off-label, according to the court’s order. According to Judge Linares, Ms. Simpson sufficiently alleged that Bayer provided discounts to purchasers, hosted medical meetings and gave grants to health care institutions that encouraged them to prescribe the drugs. If proved at trial, that activity would violate the Anti-Kickback law. Judge Linares said that a reasonable jury could conclude that providers’ reimbursement payments were “tainted” by the “bribes.”

Judge Linares also ruled that Ms. Simpson was not required to identify a particular false claim at the pleading stage. This followed a trend among several district courts on an issue the Third Circuit has yet to directly address. It should be noted that Bayer, at the U.S. Food and Drug Administration’s (FDA) request, suspended its marketing of Trasylol in 2007 and issued a recall in 2008. But Avelox is still on the market.

The Plaintiff in this case is represented by Jeremy B. Stein, who is in the New Jersey office of Hartmann Doherty Rosa Berman & Bulbulia and Edward J. Normand with Boies Schiller & Flexner in their New York office. The case is Simpson v. Bayer Pharmaceutical Corp. et al. in the U.S. District Court for the District of New Jersey.

Source: Andrew Scurria and Law360.com

EMPLOYEE SUES MONTANA HOSPITAL FOR WHISTLEBLOWER FILING ON NUCLEAR WASTE

An employee from Bozeman Deaconess Hospital, located in Bozeman, Mont., has
filed a lawsuit contending he was fired after reporting to federal authorities safety concerns involving radiation treatment and nuclear waste storage. Lawrence Slate, a medical physicist, filed the lawsuit in a state court. The Plaintiff contends he was fired in April in retaliation for reporting safety concerns to the U.S. Nuclear Regulatory Commission.

In the lawsuit, the Plaintiff says the hospital lost a vial of radioactive waste and that he believes it went to a landfill. When he voiced concerns to the hospital’s Chief Operating Officer, the plaintiff says he was rebuffed. He also says the cancer center treated patients with radiation without clear evidence they had cancer.

Sources: David Prior, The Claims Journal and The Bozeman Daily Chronicle

CHEVRON SETTLES BRAZIL OIL SPILL SUITS

Chevron Corp. and Brazilian regulators have reached a $42 million agreement to settle lawsuits demanding more than $20 billion over procedural lapses leading up to a 2011 offshore oil well rupture. This came after several setbacks for prosecutors in the legal battles that have been going on for years. Under the agreement, Chevron will pay 95.2 million Brazilian reais, or just less than $42 million. Co-defendant Transocean Ltd., which operated the offshore reservoir, was absolved of wrongdoing, and will pay nothing.

The release of about 150,000 gallons of oil in the Frade production reservoir off the coast of Rio de Janeiro sparked a major crackdown by the Brazilian government.

Two separate lawsuits were filed by a Brazilian federal prosecutor in December 2011 and April 2012. The suits sought to shut down all of Chevron’s operations in the region. Both Chevron and Transocean were ordered to halt their operations in Brazil in August 2012 while the government investigated the two spills, but the shutdown was short-lived. Transocean’s ban was eased later that year when the country’s second-highest court allowed activities to continue on nine of the company’s 10 rigs. Restrictions on Chevron were subsequently overturned by an appellate judge.

Authorities also brought criminal charges against 12 Chevron and five Transocean employees, including Chevron Brasil President George Buck, accusing them of obstructing an investigation of authorities, failing to comply with environmental obligations, submitting a false emergency plan and illicit misrepresentation of documents submitted to authorities. Prosecutors alleged that the workers had created a “long-term contamination time bomb” by utilizing pressure above permissible levels, causing fractures in the rock walls that leaked oil into the sea. They also said Brazil’s National Petroleum Agency, or ANP, had discovered major flaws in the equipment at the spill site, which the office called “evidence of the carelessness of Chevron in drilling the oil wells.”

Chevron and Transocean denied the charges and defended both the working condition of the well and their response to the spill. Chevron also voluntarily suspended production at the Frade field in March 2012 as a precaution after discovering a seep in an area unaffected by the initial spill. The accident was allegedly caused by Chevron’s failure to grasp the geology and fluid dynamics of the reservoir, as well as its delay in responding to the blowout, according to a report by ANP.

But the company was authorized to resume production in April, and subsequent evidence unearthed by the ANP indicated the oil release was not as severe as expected.

ANP fined Chevron 35.1 million reals for the initial spill. The company did get a 30 percent discount on the fine for paying promptly. It’s possible that environmental authorities from Rio de Janeiro’s municipal government could still go after Chevron.

Sources: Andrew Scurria and Law360.com

VII. CONGRESSIONAL UPDATE

PUBLIC UNHAPPY WITH CONGRESS AND FOR GOOD REASON

It appears that party affiliation has little to do with how the American people feel about how Congress has been performing. While Democrats and Republicans are pointing fingers at each other, casting blame for their performance, the public is blaming both parties. A new poll by Monmouth University shows that public opinion of Congress is universally bad and that the blame was spread equally between both Democrats and Republicans. Three out of four Americans—about 76 percent—disapprove of the job Congress is doing. Only 14 percent approve of their actions.

One would think that this would be a wake-up call for the leaders in both the House and Senate. But will it?

The numbers reflect the overall dissatisfaction with Congress, according to Patrick Murray, director of the New Jersey-based Monmouth University Polling Institute. He had this to say about the poll results:

Americans simply do not believe that Washington has been working on their behalf. Even though most of those polled are initially unaware of the party split in Congressional leadership, they don’t think that unified party control would make much of a difference when presented with this information. Not only is Congress broken, but most people seem to believe it is beyond repair.

Both chambers received low marks. Eighteen percent said the House was doing a better job, and 14 percent picked the Senate. The majority—60 percent—said both houses performed about the same. The approval ratings fell along expected party lines, with more Republicans saying the House is doing a better job (32 percent) than the Senate (7 percent). Among Democrats, 20 percent said the Senate was doing a better job than the House (10 percent). Interestingly, the poll also found most people were unaware of what party controls which chamber. Forty-nine percent knew the House was controlled by Republicans, while 17 percent thought it was led by Democrats. Thirty-four percent didn’t know. Forty-five percent were aware that Democrats controlled the Senate. But 23 percent thought the GOP was in charge in the Senate. Thirty-two percent simply didn’t know what party was in control.

One would think that intelligent men and women serving in Congress would realize that the American people are fed up with their performance in the past few years. In fact, it shouldn’t take poll results to give them a wake-up call. Unfortunately, the overall dissatisfaction with Congress has given the Tea Party a great opportunity to have influence in upcoming Congressional elections. With all of their money, I suspect they will take full advantage of this opportunity. That’s pretty weird with a touch of irony when you consider that the Tea Party’s influence is largely responsible for Congress’ unpopularity.

Source: Al.com

www.BeasleyAllen.com
Agricultural tractor rollovers have been the leading cause of farm operator deaths since 1970 according to the National Safety Council. The data collected by the National Institute of Occupational Safety and Health (NIOSH) suggests that anywhere from 130 to 250 fatalities can be attributed to tractor rollovers annually. What is especially alarming is that these deaths are preventable. Rollover Protection Structures, or ROPS, are roll bars or roll cage structures designed to create a protective zone around the operator in the event of a rollover. The use of ROPS in conjunction with seatbelts is estimated to be 99 percent effective in preventing death or serious injury during a rollover. Preventing tractor rollover fatalities is as simple as having ROPS on a tractor, and always using the ROPS system appropriately.

Rollover protection structures are not a new concept. In fact, ROPS were sold as optional equipment on U.S. farm tractors from 1967-1985. In 1985, ROPS became standard equipment on agricultural tractors with greater than 20 horsepower. Surprisingly, the National Institute of Occupational Safety and Health estimates that of the approximately 4 million tractors currently in use in the U.S., only about half are equipped with ROPS. There are many reasons for this shocking statistic. First, many tractor operators take off the roll bar or seatbelt from a tractor equipped with ROPS. Many operators consider the ROPS and seatbelt to be an inconvenience and elect to remove these crucial safety devices. Whatever the reason, tractor operators should know that using a tractor without ROPS is extremely dangerous. Certain measures can be taken to decrease the chances of a rollover. But due to the power and high center of gravity of the tractors, along with unpredictable terrain tractors are commonly used on, a ROPS is the best method for preventing serious injury or death in case of a rollover.

The importance of seatbelt use in conjunction with ROPS is commonly overlooked. The roll bar is designed to maintain a protective zone around the operator in case of a rollover. The seatbelt is crucial in keeping the operator inside that protective zone. Even with ROPS, the operator can be crushed by the tractor or even the roll bar itself if the occupant is not securely belted to the tractor. Operators must wear seatbelts in order for ROPS to adequately protect in the event of a rollover.

As all avid hunters know, the end of summer and beginning of fall marks the time of year to plant winter food plots for wildlife. This yearly ritual requires the use of a tractor. It never ceases to amaze me how many tractors I see in use this time of year that are not equipped with ROPS. Often times the hobby farmer planting for wildlife opts for older, used tractors and equipment that predate ROPS. Although older tractors may have all of the necessary power and functions that a hobby farmer needs, they lack crucial modern safety devices. However, regardless of age, nearly any tractor can be retrofitted with ROPS.

Tractors are dangerous machines that cause hundreds of fatalities each year. Operators must take caution and good judgment both in selecting a tractor to use, and also during its operation. Although rollovers are just one of many ways a tractor can injure or kill the operator, it is far too common, yet easily preventable. Any tractor without ROPS is unreasonably dangerous and should be retrofitted with ROPS. The average tractor operator does not appreciate just how easily these machines can roll over. Nor do they realize and appreciate the deadly consequences that can result from a rollover. The tractor manufacturers and dealers have a legal and moral responsibility to make tractors reasonably safe. Retrofitting tractors in use without ROPS is their responsibility. If you need additional 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.

Source: www.JereBeasleyReport.com
moving down the road. This potential for the awning to suddenly unfold substantially increases the risk of personal injury or a vehicle crash, which could result in injury or death to others on the highway.

A few years ago, our firm successfully handled a similar case. In that case, an awning struck and killed another motorist whose vehicle was traveling in the opposite lane. If you need more information relating to this topic, contact Mike Andrews, a lawyer in our Personal Injury/Products Liability Section, at 800-898-2034 or by email at Mike.Andrews@beasleyallen.com.

Source: Safercar.gov

IX.
MASS TORTS UPDATE

Reglan Litigation Update

Reglan battles continue to wage on throughout the country on two fronts—generic Defendants continue to allege that federal law preempted them from strengthening their warning labels and brand name Defendants continue to allege that they cannot be held liable for harm caused by their generic counterparts. While Reglan cases are filed in multiple venues, many eyes are on the litigation in Pennsylvania and California state courts, where the majority of Reglan cases are filed. Pennsylvania was the first state to consolidate Reglan cases for discovery management and bellwether trial settings and has so far rejected the Defendants’ attempts to absolve themselves from all liability.

In our last Reglan update, which appeared in February of this year, we reported that generic drug manufacturers sought to appeal Judge Sandra Moss’ decision to overrule their objections to the Plaintiffs’ Master Complaint. This decision effectively dismissed generic Defendants’ arguments that all claims against them were preempted under the U.S. Supreme Court Mensing decision. On September 7, 2012, brand name defendant Wyeth filed a petition to the Court of Pennsylvania, generally arguing that they are also preempted from Plaintiffs’ state law claims against them because they divested from the Reglan product in 2001, thus rendering it impossible for them to have made any changes to the product labeling after that date. While this appeal does not bear upon the future ability to raise claims against generic manufacturers, it can serve as further delay in Reglan proceedings, including the ability to reconvene discovery and reset cases for trial. For more information about the status of Reglan litigation, contact Danielle Mason, a lawyer in our firm’s Mass Torts Section, who has been heavily involved in this litigation, at 800-898-2034 or by email at Danielle.Mason@beasleyallen.com.

Source: Pennsylvania Reglan Litigation Group, including briefing from the parties and various court orders

NEW REGULATIONS MAY BE ON THE WAY FOR COMPOUNDING PHARMACIES

It is hard to believe, but it appears Republicans and Democrats on Capitol Hill have found something on which they agree: Americans should not be killed by unregulated drug compounders. This week committees from both the House and the Senate issued a press release announcing bipartisan support for the Drug Quality and Security Act (Act). Compounding pharmacies historically were local pharmacies that created patient-specific medications. Common examples of the need for such specialized medications are for patients that need: medications created with specific ingredients (allergies); medications at lower or higher dosage than that manufactured (i.e. infants); medication in a form not manufactured (i.e. syrup). For various market reasons traditional compounding pharmacies have become less common. The most common medications that are still compounded are intravenous/parenteral medications.

Traditionally compounding pharmacies were regulated by the states. As true compounding pharmacies dwindled, many hospitals and pharmacies outsourced compounding to large bulk “compounders” that more closely resemble manufacturers than traditional compounding pharmacies. The Federal Food, Drug and Cosmetic Act (FD&C Act) gave the U.S. Food and Drug Administration (FDA) the right to regulate the manufacturing of drugs, whether it be by a pharmaceutical company or a compounding pharmacy. The Food and Drug Administration Modernization Act of 1997, however, contained a provision that largely exempted compounding pharmacies. Because of conflicting decisions by the 5th and 9th Circuits about whether this provision of the FD&C Act is valid, there are now jurisdictions in which the FDA has regulatory authority over compounders and other jurisdictions where it does not. Barring a decision on the issue by the Supreme Court or an act of Congress, there is no way for the FDA to regulate these bulk compounders.

The Act distinguishes traditional compounders from “outsourcing facilities.” Traditional compounders would continue to be regulated by the states. Outsourcing facilities would be required to register with the FDA and would be subject to its oversight and inspection. The Act also provides for “track and trace” of compounded products to address concerns about counterfeit/stolen drugs and to assist in case of recalls. The Professional Compounding Centers of America conducted a poll that suggests the Act could result in a significant decrease in the number of compounding pharmacies.

There have been numerous incidents where compounding “pharmacies” have produced tainted products that have killed or injured dozens of people in many states. The most significant example is that of New England Compounding Center (NECC), which last year shipped epidural steroid injections contaminated with fungal meningitis which killed four dozen and injured hundreds of others in 25 states. This type of operation is a far cry from your local compounding pharmacy. Without FDA oversight, these manufacturers are not required to report adverse events to the FDA. Additionally, while states are charged with oversight of compounding pharmacies, only two states do random testing of compounding pharmacies: Texas and Missouri. Both states have discovered that there are unacceptable variations in the potency of compounded drugs (25 percent too weak or too strong and potency variations of up to 300 percent).

The Act is expected to receive bipartisan support in congress and be enacted quickly. The millions of Americans that rely on compounded medications deserve to know the medications they are sold have been manufactured in sterile environments and contain the proper amount of active ingredients they need. Hopefully, the Act will achieve this goal. If you would like more information on this subject, contact Russ Abney, a lawyer in our firm’s Mass Torts Section, at 800-898-2034 or by email at Russ.Abney@beasleyallen.com.

Sources: Law360.com; ModernMedicine.com; Reuters
GRANUFLO LITIGATION HEATING UP

The FDA issued a GranuFlo recall and Naturalyte recall in March 2012 after Fresenius Medical Care (FMC) sent an internal memo to its own dialysis centers highlighting the increased risk of cardiopulmonary arrest, stroke and heart attack caused by GranuFlo and Naturalyte products. Unfortunately, the manufacturer did not offer the same warning to thousands of other physicians and clinics not owned by FMC.

The federal court litigation is consolidated in Boston and the Court held its first hearing September 27. More than 100 cases are filed in the Multidistrict Litigation (MDL) and more than 200 cases are pending in state courts in Boston. Lawyers for Plaintiffs are concentrating their efforts in that location since the manufacturer is located in Boston. The lawsuits uniformly allege that dialysis patients suffered sudden cardiac death after their treatments as a result of effects from GranuFlo used in their treatment.

Frank Woodson, a lawyer in our firm's Mass Torts Section, was appointed to the Plaintiffs Steering Committee by U.S. District Judge Douglas P. Woodlock. If you have any questions about this litigation or believe you have a potential claim, Frank can be reached at 800-898-2054 or by email at Frank.Woodson@beasleyallen.com.

HIP IMPLANT MDL BELLWETHER TRIAL AGAINST J&J CONTINUED

The first bellwether trial in Multidistrict Litigation (MDL) against a Johnson & Johnson subsidiary over injuries allegedly caused by its metal-on-metal hip implants has been postponed. U.S. District Judge David Katz continued the case, which had been scheduled to start September 24, because of unresolved discovery issues. Judge Katz said that the trial should begin within 90 days. The case involves allegations that DePuy Orthopaedics Inc. failed to warn Anne McCracken, the Plaintiff, and her doctors that its ASR hip implants could cause pain and loss of mobility and require revisionary surgery.

This lawsuit is slated to be the first case in massive multidistrict litigation to go to verdict. There have been two ASR trials against DePuy in state court. A Los Angeles jury returned an $8.3 million judgment against DePuy in March, while a Chicago jury found for the company in April.

The Plaintiff in the MDL bellwether case, an upstate New York resident, was implanted with an ASR implant in August 2009. She alleged in her complaint that she was forced to undergo a “painful and risky” revisionary surgery in January 2011, “years sooner than anticipated had the ASR hip functioned as intended.” In July 2011 and again in September 2011, Ms. McCracken’s hip was dislocated because of the damage caused by the implant. She had to undergo a second revisionary surgery in October 2011, according to her complaint. The claims in the lawsuit are for defective design, failure to warn, breach of warranty, negligence and violation of New York business law.

DePuy sold more than 33,000 ASR implants for patients undergoing total hip replacement before recalling the products in 2010. It has projected that 37 percent of the implants will fail prematurely. Other estimates have put the figure at more than 60 percent. More than 11,000 patients have filed suits. Ms. McCracken is represented by Michelle Kranz with the Toledo, Ohio, firm Zoll Kranz & Borgess; R. Eric Kennedy and David Landever who are with Weisman Kennedy & Berris, a Cleveland, Ohio firm; and Stephen C. Schwarz and Hadley L. Matarazzo of Faraci Lange, located in Rochester, New York. The case is McCracken v. DePuy Orthopaedics Inc., et al. in the U.S. District Court for the Northern District of Ohio.

Source: Law360.com

WOMEN FILING LAWSUITS AGAINST BEST SELLING DRUG OF ALL TIME

Of all medications currently being sold in the United States, Lipitor is one of the most commonly used brand-name medications. This cholesterol lowering statin medication had generated an estimated $125 billion in sales for Pfizer before the drug became available as a generic in 2011. The medication has been heavily promoted in direct-to-consumer advertising campaigns, encouraging patients to speak to their doctors about whether they need to be placed on Lipitor to maintain their health. The advertisements were directed to the public, including women who did not have many risk factors for heart disease and were not at high risk of a cardiac event. Thus, women really received no long-term benefit from taking the drug.

According to several lawsuits filed in 2013, Pfizer knew or reasonably should have known in 1997 that there was a connection between Lipitor and diabetes before the drug was even placed on the market. However, there was no warning added to the label until February 2012. This was after the U.S. Food and Drug Administration’s (FDA) Division of Metabolism and Endocrinology Products requested that a warning be provided for consumers and the medical community. Even then, the warning never actually mentioned Type 2 diabetes, stating instead: “Increases in HbA1c and fasting serum glucose levels have been reported with HMG-CoA reductase inhibitors, including LIPITOR.”

It’s alleged in the lawsuits that until the February 2012 label change, Lipitor’s label never warned patients of any potential relation between changes in blood sugar levels and taking Lipitor. Lawsuits further allege that despite the February 2012 label change, Lipitor’s label continues to fail to warn consumers of the serious risk of developing Type 2 diabetes when using Lipitor. Frank Woodson, a lawyer in our firm’s Mass Torts Section, is investigating Lipitor claims and can be reached at 800-898-2054 or by email at Frank.Woodson@beasleyallen.com.

Source: About Lawsuits website

AN UPDATE ON THE MIRENA LITIGATION

Hundreds of Mirena lawsuits are currently pending in the Mirena Multidistrict Litigation (MDL), which is located in the United States District Court for the Southern District of New York. U.S. District Judge Cathy Seibel is in charge of the MDL. Roger Smith, a lawyer in our firm’s Mass Torts Section, was appointed by Judge Seibel to the Plaintiffs’ Steering Committee (PSC) for the Mirena MDL. The PSC oversees the consolidated litigation.

Roger says there have been a number of positive developments recently in the Mirena litigation. The lawyers on the PSC have met and negotiated with Bayer Healthcare Pharmaceuticals concerning the Plaintiff Fact Sheet (PFS), Defense Fact Sheet (DFS), and the document production protocol. For those of you who haven’t been involved in MDL work, the PFS must be completed by every individual Plaintiff filing a claim, usually within 30 to 45 days following the filing of the Complaint. Typically the PFS is the only written discovery allowed by the court. The next court conference is scheduled for November 21, 2013, and it will address additional litigation issues, including the important pre-trial discovery process.
In addition to the Mirena MDL, more than 210 Mirena cases are pending in a multi-county litigation now underway in New Jersey’s Bergen County Superior Court before Judge Brian R. Martinotti. Recently, Judge Martinotti entered a confidentiality stipulation and protective order to govern document production protocol. Judge Martinotti has approved a PFS for this litigation as well. The next case management conference is set for November 20, 2013, and it will address additional litigation issues, including the pretrial discovery process.

Lawyers in our firm’s Mass Torts Section continue to evaluate and file Mirena claims involving migration with uterine wall perforation. If any of our readers have a claim that they would like for us to review, or if there are any questions relating to the Mirena litigation, contact Roger Smith at 800-898-2034 or by email at Roger.Smith@beasleyallen.com.

An Update on the Actos Litigation

Lawyers at Beasley Allen continue to evaluate and file claims involving bladder cancer during or following usage of Actos, Actoplus Met, Actoplus Met XR, and/or Duetact. Manufactured by Takeda Pharmaceuticals, Actos is in a class of insulin-sensitizing drugs known as thiazolidinediones and was approved to treat Type 2 diabetes. Since gaining FDA approval in July 1999, Actos has been included in the top 10 best-selling medications in the United States for several years. In June 2011, the FDA warned the public that Actos usage for more than one year may be associated with an increased risk of bladder cancer.

To date, more than 2,000 cases have been filed in the Actos Multidistrict Litigation (MDL), which is pending before U.S. District Judge Rebecca Doherty in the Western District of Louisiana. Significant progress is being made in the Actos MDL, and the bellwether trial process is in full swing. The Actos MDL bellwether process involves the taking to trial of two cases, one selected by the Plaintiffs’ side and one selected by Takeda. After those cases are tried or settled, the process is repeated until an overall resolution of all the claims can be reached in some manner. That normally requires at least one trial. The first trial is slated for January 27, 2014, with the second one scheduled to start on April 14, 2014.

In addition to the Actos MDL, litigation is in progress in various state courts as well. Earlier this year, the first Actos trial concluded in a California state court, and the jury determined that Takeda failed to warn of potentially severe side effects and awarded $6.5 million in damages to the Plaintiff. In a post-trial order, the court excluded the Plaintiff’s witness testimony and overturned the damage award.

The second Actos trial, which started August 27 in Baltimore, Md., resulted in an unusual outcome. The jury returned a $1.7 million verdict in the case for the Plaintiff, but also returned a verdict saying the Plaintiff was guilty of contributory negligence. The Baltimore jury found that Takeda negligently failed to warn about the risk of bladder cancer associated with Actos and that Actos was a substantial factor in causing the plaintiff’s bladder cancer. The jury determined that the $1.7 million was the appropriate measure of damages. However, the jury also found that the Mr. An, the plaintiff, did not act with reasonable care toward own health and that this was also a substantial factor in developing bladder cancer. Therefore, applying Maryland law, the Court determined that Mr. An’s family is not entitled to compensation. Since this issue is going to the printer we don’t have much more information on the outcome of this case. Obviously, the verdict poses a problem since it appears to be inconsistent. Additional information may clear this up. Mike Miller represented the An family in this case and he did a good job.

Additionally, about 3,000 cases are pending in the Circuit Court of Cook County, Ill., before Judge Deborah Dooling. The bellwether process is currently underway in that court. Also, in California, Actos cases were consolidated by the Los Angeles Superior Court under the direction of Judge Kenneth R. Freeman.

Andy Birchfield, who heads up our firm’s Mass Torts Section, was appointed by Judge Doherty to the Actos MDL in Louisiana. He and Roger Smith, another lawyer in the section, have been heavily involved in the Actos litigation. If you have any questions regarding any aspect of this litigation, or if you would like for us to review a potential claim, contact either Andy or Roger, at 800-898-2034 or by email at Andy.Birchfield@beasleyallen.com or Roger.Smith@beasleyallen.com.

FDA Issues Final Rule For Device Identification System

The U.S. Food and Drug Administration (FDA) recently released its final rule for a unique device identification system that will require manufacturers to label their products with codes to improve product recalls, neaten electronic health records and help deter device counterfeiting. Each device will receive a unique identification number that will contain information about its batch number, product lot, manufacturing date and expiration date. The FDA will create Global Unique Device Identification Database containing information on every medical device with an identifier. The publicly searchable database will serve as a reference catalog and will not contain identifying patient information.

The FDA plans to phase in the system, starting with high-risk Class III medical devices. Manufacturers of most implantable and Class III devices (like hip replacements) will have one year to comply with the rule. Most class II devices, which are moderate risk devices, will have three years to comply. Some low-risk Class I and one-time-use devices will be exempt from some or all of the new requirements. Manufacturers of non-exempt Class I devices must comply within five years.

The agency said the system is expected to make product recalls more efficient, improve the accuracy of adverse event reports and help address counterfeiting and product diversion as well as pave the way for a globally secure distribution chain. If you need more information on this subject, contact Melissa Pritchett, a lawyer in our firm’s Mass Torts Section, at 800-898-2034 or by email at Melissa.Pritchett@beasleyallen.com.

Source: Law360.com

Bellwether Trials Scheduled in Transvaginal Mesh Litigation

Over 25,000 transvaginal mesh (TVM) cases are pending in the Multidistrict Litigation (MDL) in the Southern District of West Virginia, which is overseen by U.S. District Judge Joseph R. Goodwin. These six MDLs involve vaginal mesh manufacturers C.R. Bard, Inc., American Medical Systems, Inc., Boston Scientific Corp., Ethicon Inc., Coloplast Corp., and Cook Medical Inc. Several thousand more cases are pending in consolidated state court litigations in New Jersey, California, Massachusetts, and Minnesota against these
defendants and other transvaginal mesh manufacturers.

Judge Goodwin of the Southern District of West Virginia recently scheduled the first round of bellwether trials involving transvaginal mesh manufacturers Bard, Boston Scientific, and AMS. These bellwether trials are scheduled for November of this year, February and April of 2014 and will serve as the first bellwether trials involving these three defendants. There is also an Ethicon trial scheduled for December of this year in New Jersey state court.

The scheduled trials are in addition to the bellwether trials involving C.R. Bard that have been ongoing since July 2013. As previously reported, the first two trials produced positive results for the Plaintiffs in each case. In the first case, Cisson, et al. v. C.R. Bard, Inc., the jury returned a verdict in favor of the Plaintiff, Donna Cisson. Shortly thereafter, C.R. Bard reached a settlement with the plaintiff in the second Bellwether trial, Queen, et al. v. C.R. Bard, Inc. The third and fourth trials involving C.R. Bard are slated to begin this month and in November 2013.

In addition to these trials, discovery is ongoing in both the overall TVM litigation and individual cases. Lawyers from our firm’s Mass Torts Section continue to be heavily involved in the TVM litigation, including the massive discovery process. Our lawyers are currently investigating claims where women have experienced organ perforation, bleeding, urinary incontinence, fecal incontinence, pelvic and vaginal 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 family member has suffered such an injury, contact Leigh O’Dell or Chad Cook, lawyers in our Mass Torts Section, at 800-898-2034 or by email at Leigh.Odell@beasleyallen.com or Chad.Cook@beasleyallen.com.

X. AN UPDATE ON SECURITIES LITIGATION

RECENT DEVELOPMENTS IN ARBITRATION OF SECURITIES CLAIMS

Broker Charles Schwab & Company is seeking to eliminate investors’ ability to pursue class action lawsuits. In the case, Sbearton v. McAmbo, the U.S. Supreme Court ruled that brokerage firms could force customers to agree to arbitration. Since this ruling in 1987, investors have not been able to use the public court system as a means for recovery. Brokerage firms routinely add a mandatory arbitration agreement to new accounts.

In 2011, Schwab added language to its mandatory arbitration clauses banning clients from participating in class actions. Class actions provide investors the opportunity to join together to litigate claims involving misconduct that led investors to lose money on the same investment. Class actions are often more efficient than hundreds, or even thousands, of individual lawsuits (or arbitrations as the case may be) involving essentially the same facts.

The Financial Industry Regulatory Authority (FINRA) is a quasi-private corporation that regulates the brokerage industry and oversees the arbitration of investor claims. Last year, FINRA filed a disciplinary action against Schwab to force the firm to eliminate its prohibition on class-action suits. Schwab challenged FINRA’s decision and won at a panel hearing in February. FINRA has appealed.

FINRA’s arbitral system is far from a perfect process in itself, as FINRA’s arbitrators are typically sympathetic to the financial industry, are not required to follow the law, and do not usually award punitive damages even in egregious cases. A ruling in favor of Schwab will skew the process even further, as it will encourage other brokerage firms to include similar anti-class provisions in their mandatory arbitration agreements.

This is not a good development for the average investor who, because of the high cost of arbitral fees and securities experts, typically cannot afford to pursue an individual claim in FINRA arbitration. If Schwab is successful and other brokerage firms follow suit, only well-to-do investors will be able to afford to pursue their claims through FINRA arbitration. Beasley Allen is involved in similar force-placed insurance litigation related to hazard, flood, and wind insurance products. If you need more information on this subject, contact Archie Grubb, a lawyer in our firm’s Consumer Fraud Section, at 800-898-2034 or by email at Archie.Grubb@beasleyallen.com.

Source: New York Times

SANOFI SETTLES OBESITY DRUG CLASS ACTION FOR $40 MILLION

French pharmaceutical giant Sanofi-Aventis SA has settled a class action lawsuit brought by investors who claim the company withheld information about anti-obesity drug Zimulti’s link to severe psychiatric problems. The company agreed to pay $40 million to settle the case. The agreement, which still requires court approval, comes six months after a New York federal judge certified the class of investors. The court found the lead Plaintiffs’ securities fraud claims were typical of the class as a whole. U.S. District Judge George B. Daniels rejected Sanofi’s argument that the claims did not meet the typicality requirement for class actions. Judge Daniels found that the lead Plaintiffs’ asset managers were closely following financial markets and the financial press at the time Sanofi made the alleged misstatements.

Lawyers for the Plaintiffs said the settlement will help provide timely benefits to class members. A proposed order filed with the court reads:

The principal reason for the settlement is the benefit to be provided to the class now. This benefit must be compared to the risk that no recovery might be achieved after a contested trial and likely appeals, possibly years into the future.

Plaintiffs, led by Hawaii Annuity Trust for Operating Engineers, filed suit in the U.S. District Court for the Southern District of New York in 2007. The amended class action complaint alleged that while seeking regulatory approval for Zimulti in 2006, Sanofi covered up the U.S. Food and Drug Administration’s (FDA) concerns about a link between the drug and a heightened risk of suicidal thoughts. The alleged misstatements were made by Sanofi executives in two earnings calls. The amended complaint states that Sanofi ultimately withdrew its application for Zimulti after the FDA’s advisory committee unanimously recommended that the agency

block the drug, causing investors “untold losses.” It was further alleged that this led European regulators to ban sales of the drug.

Zimulti is designed to fight obesity by reducing appetite. During the class period, the Plaintiffs said that analysts forecast that annual sales of the drug could top $4.2 billion by 2011. In opposing class certification, Sanofi argued that the claims failed to meet the requirements for typicality, adequacy, predominance and superiority.

The settlement covers investors who purchased Sanofi American Depository Receipts from Feb. 24, 2006, through June 13, 2007. The Plaintiffs are represented by Tor Gronborg, who is with Robbins Geller Rudman & Dowd in the firm’s San Diego office. The case is In re: Sanofi-Aventis Securities Litigation in the U.S. District Court for the Southern District of New York.

Source: Law360.com

XI. INSURANCE AND FINANCE UPDATE

JP Morgan and Assurant Settle Force-Placed Insurance Claims for $300 Million

JP Morgan Chase & Co and Assurant Inc., a major insurer, have agreed to a $300 million settlement to resolve accusations that they forced homeowners into overpriced property insurance and entered into kickback arrangements that inflated the policies’ prices. It was contended in the lawsuit being settled—one of several targeting large U.S. banks over force-placed insurance—that the improper practices unjustly enriched JPMorgan and the insurer by more than $1 billion since 2008.

JPMorgan says it has discontinued a reinsurance agreement with Assurant. The settlement calls for JPMorgan to stop accepting commissions for force-placed insurance. This settlement is the first nationally to result from several cases against banks that involve force-placed insurance pending in Miami federal court. The settlement is subject to court approval.

Banks have been under increasing scrutiny from regulators about force-placed insurance, which is placed by a bank or other mortgage lender to protect their interests in a property if the homeowner’s insurance lapses. Mortgage agreements give lenders the right to force-place insurance, but regulators have accused banks and insurance companies of pushing up policy prices with improper commission and reinsurance agreements.

Assurant, which is the nation’s largest force-placed insurer, placed about 1.3 million policies for JPMorgan Chase, collecting more than $2.4 billion in force-placed premiums since 2008, according to reports. In March, Assurant agreed to pay $14 million to settle an investigation by the New York state insurance regulator related to its business arrangements with banks and mortgage servicers.

The New York Department of Financial Services had accused Assurant of paying commissions to banks and other mortgage servicers that created an incentive for the banks to force-place higher-priced policies. Typically, Assurant entered into agreements that let reinsurance companies own by banks take as much as 75 percent of the profit for sharing risks. In a statement announcing that settlement, New York Governor Andrew Cuomo said JPMorgan made about $600 million since 2006 by taking 75 percent of the profits from the force-placed business it gave Assurant.

Law suits from around the country over force-placed insurance are still pending in Miami against Citigroup, Wells Fargo, Bank of America and HSBC Bank (USA), which is part of London-based HSBC. A statewide Florida lawsuit against Wells Fargo and QBE Insurance Corp. was settled in May of this year for about $19 million. The JPMorgan case is Salvatore Saccoccio v JPMorgan Chase Bank N.A. et al. It’s pending in the U.S. District Court, Southern District of Florida.

Sources: Dina Aubin, Law360.com and the Insurance Journal

Developments in Ford Insurance Suit

A jury will decide if the relationship of a unit of Berkshire Hathaway Inc. with a troubled German insurer renders it immune from liability in a lawsuit filed by Ford Motor Co. The case involves the alleged obstruction of $20 million in insurance payouts for product liability claims against Ford. The automaker had filed suit seeking to recover damages. U.S. District Judge Robert E. Payne denied Ford’s motion for summary judgment on National Indemnity Co.’s “agency defense.” The insurer claimed it can’t be held liable for directing HDI-Gerling, a financially strapped German insurer, to deny $20 million worth of claims under policies issued to Ford.

The argument by National Indemnity that Ford is stopped from contesting the payouts also survived as a result of the court’s ruling. Ford had previously stated that it wanted disputed and non-disputed claims to be paid all at once, which created a problem in this case for the automaker. Judge Payne ruled that both the Defendants’ affirmative defenses present “genuine disputes of material facts which must be resolved by the jury.”

National Indemnity was accused of trying to avoid its obligations under a $500 million reinsurance contract with HDI-Gerling, which had issued a series of stop-loss policies to Ford between 1995 and 2003. According to allegations in Ford’s suit, National Indemnity recently agreed to reinsurance HDI-Gerling’s obligations in exchange for a $360 million premium—or “float”—on which National Indemnity’s parent Berkshire Hathaway hoped to make money by investing. In the late 1990s, Ford began receiving notices that Firestone tires on some of its Explorer models were malfunctioning at certain speeds. By 2002, the company is said to have incurred more than $680 million in settlements, verdicts and other litigation expenses related to the defects. Ford turned to HDI-Gerling for coverage, only to find out that in 2011 National Indemnity had taken over HDI-Gerling’s claims-handling responsibilities and was denying certain of Ford’s claims for reimbursement en masse.

HDI-Gerling filed for arbitration to resolve the dispute, Ford considered that a general denial of its claims and filed suit. The claims by Ford against National Indemnity included tortious interference with contract and violation of Virginia’s business conspiracy statute. Judge Payne had dismissed the conspiracy claims earlier after holding that the suit was controlled by Michigan law. But the judge refused to dismiss Ford’s claim for tortious interference and ruled that National Indemnity’s actions were not constitutionally protected activity under the Noerr-Pennington doctrine. Under the judge’s last order, National Indemnity will be permitted to argue at trial that it was acting as HDI-Gerling’s agent pursuant to the reinsurance agreement. If the jury finds that to be true, then National Indemnity could not have tortiously interfered with HDI-Gerling’s contracts as a matter of law.

National Indemnity will be allowed to argue that Ford is prohibited from chal-
Huntington Ingalls Industries, a Mississippi shipbuilder, has settled its Katrina disruption impact on net profitability, and things, property damage, business interruption caused by the storm, the company incurred costs to clean up assets, suffered losses under its contracts, replace or repair destroyed or damaged items. This came as the result of a settlement in an arbitration proceeding. Sources: Andrew Scurria and Law360.com

**Mississippi Shipbuilder Settles Katrina Insurance Claim With Insurer**

Huntington Ingalls Industries, a Mississippi shipbuilder, has settled its Katrina insurance claim with FM Global. The insurer will pay $180 million in the settlement, which came in a lawsuit involving the shipbuilder’s losses from Hurricane Katrina in 2005 at facilities in Pascagoula and Avondale, La. The settlement information was contained in a filing last month with the Securities and Exchange Commission (SEC). On September 6 the company reached the settlement with FM Global.

A trial against FM Global was due to start in October in U.S. District Court for the Central District of California. The terms of the settlement agreement are confidential. Ingalls filed a lawsuit against Aon, the company’s broker in connection to the policy with FM Global, alleging breach of contract, negligence and misrepresentation. The complaint also sought declaratory relief.

The company reserved its rights against Aon in the settlement with FM Global and will continue pursuing its claims against Aon. The company’s Ingalls operations were significantly impacted by Hurricane Katrina. The company’s shipyards in Louisiana and Mississippi sustained significant windstorm damage from the hurricane. It was alleged in the suit that as a result of the storm, the company incurred costs to replace or repair destroyed or damaged assets, suffered losses under its contracts, and incurred substantial costs to clean up and recover its operations.

At the time of the storm, the company had a comprehensive insurance program that provided coverage for, among other things, property damage, business interruption impact on net profitability, and costs associated with clean-up and recovery. The SEC filing noted the company has recovered a portion of its Hurricane Katrina claim, including $62 million in recovery of lost profits in 2007. In November 2011, the company recovered an additional $18.8 million from Munich-American Risk Partners, one of its two remaining insurers with whom a resolution had not been reached. This came as the result of a settlement in an arbitration proceeding. Source: ClaimsJournal.com

**Allstate Wins Major Medical Fraud Lawsuit In Nevada**

Allstate Insurance Company won the lawsuit that it had filed in Nevada against a chiropractor and a number of his businesses. This was the insurer’s first medical fraud lawsuit filed in the state. A judgment of more than $7 million was awarded to Allstate. This lawsuit arose following a Racketeering Influenced in Corrupt Organizations (RICO) investigation that started nearly 10 years ago. In a statement, Allstate said its victory sets the stage for the company to “vigorously fight this type of fraud.” Chelci Vaughan, an Allstate spokesperson, said:

> Medical insurance fraud affects all policyholders’ premiums, and it’s not fair for consumers to pay higher rates for criminal behavior. We are committed to protecting our customers from being victimized by this type of fraud.

The RICO complaint was filed by Allstate in 2008 in the Las Vegas Federal District Court against chiropractor Obteen Nassiri, D.C., and his businesses: Advanced Accident Chiropractic Care, ONN Management, Digital Imaging Services and Digital X-Ray. Since the suit was filed, the Chiropractic Physicians’ Board of Nevada revoked Dr. Obteen Nassiri’s license. It was alleged in Allstate’s lawsuit that Dr. Nassiri began defrauding Allstate in 2003 by exaggerating clinical findings, submitting improbable diagnoses, charging for treatment he did not provide, providing unnecessary and excessive treatment, grossly misrepresenting billing, making inappropriate referrals, and exhibiting a general pattern of illegal and fraudulent conduct. The jury also found Nassiri’s wife, Jennifer Nassiri, liable for negligent misrepresentations in the fraudulent scheme.

The case accused Dr. Obteen Nassiri of running a practice that referred patients to his clinics for unnecessary medical consultations and expensive diagnostic studies in an effort to generate more revenue and profit. The liability verdict had been returned in June with the final judgment and damages award being returned by the jury on September 10. The total judgment against the Defendants consisted of $3.59 million in compensatory damages, $2.51 million in punitive damages and $1 million in pre-judgment interest. Allstate is also seeking more than a million dollars in attorneys’ fees and costs.

As a result of the verdict, Allstate will recover money it paid in the settlement of more than 150 automobile accident claims that involved bogus costs. Allstate sought recovery against each defendant for their violation of both Nevada state and federal law based on a pattern of fraudulent behavior. Ms. Vaughn, Allstate’s spokesperson, said:

> It is especially disturbing when medical professionals violate their oaths and abuse the public’s trust. This judgment should send a strong message to unscrupulous providers and would-be criminals that Allstate maintains a zero-tolerance approach in the fight against insurance fraud.

It’s encouraging to see Allstate using the court system to go after individuals and businesses that commit fraud. Some might find it somewhat hypocritical considering the giant insurer’s stance relating to consumer fraud lawsuits that are brought by individuals against companies in Corporate America. Perhaps Allstate has seen the light and now realizes how important the judicial system really is. Source: Claims Journal

**Wrongful Death Lawsuits Filed In Building Collapse**

There have now been two wrongful death lawsuits filed arising out of the June building collapse in downtown Philadelphia. The family of Mary Lea Simpson, a 24-year-old woman who was killed, filed the first wrongful death action. Ms. Simpson was shopping in the Salvation Army store when an adjacent building...
undergoing demolition collapsed and buried the store. Her family has filed suit naming as defendants the Salvation Army, the owner of the collapsed building, the contractor handling the demolition, the architect who expedited the demolition permits, the excavator operator and other parties. Ms. Simpson is the first of the six individuals killed in the collapse whose family has filed a suit. Thirteen other people were reported injured in the collapse. Thus far, 12 personal injury lawsuits have been filed. The complaint in the Simpson case alleges:

*The June 5, 2013, Market Street building collapse was the most devastating construction tragedy in the history of Philadelphia. This claim involves the conduct of parties who knew the danger the demolition posed to members of the general public, like Mary Lea Simpson.*

The complaint sets out a series of emails and letters between lawyers for the Salvation Army and lawyers for Richard Basciano and STB Investments Corp., owners of the collapsed building, in which Basciano’s representatives warned of the dangers posed by the demolition and in which the Salvation Army was slow to respond. It appears the Salvation Army’s cooperation was being sought on a plan for the details of the demolition. It’s alleged in the complaint that these communications implicated both the owners of the collapsed building as well as the Salvation Army in the tragedy. It’s said that both parties were aware of the risks associated with the demolition.

The complaint also contends that Basciano and STB hired the lowest bidder for the demolition—contractor Griffin Campbell, also named as a defendant—electing to take Campbell’s $112,000 bid although it was significantly lower than any others. The complaint also alleges that Basciano, STB, Campbell and architect Plato Marinos ‘lied about the cost of the demolition’ on a city of Philadelphia building permit to save money, listing the estimated cost at $10,000. In addition, the complaint sets out the flawed mechanics of the actual demolition process, which did not take place from the top down and allowed walls to stand without lateral bracing, violating U.S. Occupational Safety and Health Administration (OSHA) standards.

The excavator operator, Sean Benschop, used the machine to rip out the floors, which eliminated the lateral stability for the walls. Benschop is currently being held on $1.6 million bail on charges of involuntary manslaughter, recklessly endangering another person, causing a catastrophe, and risk of a catastrophe. Campbell, the contractor, who faces potential criminal charges, was able to get the first 11 suits filed over the collapse stayed. He said that he would need to invoke the Fifth Amendment in the civil suits to preserve his rights in the criminal investigation being pursued by a Philadelphia grand jury.

The second wrongful death suit was filed last month by the son of Roseline Conteh, a deceased mother of eight, who was also shopping in the Salvation Army stores when she was killed. As stated, this is the second of the six individuals killed in the collapse whose family has filed a suit. The Conteh family complaint is a mirror image of the complaint in the Simpson case. Steven Wigrizer and Jason Weiss, lawyers with the firm of Wapner Newman Wigrizer Brecher & Miller PC, represents both the Simpson and Conteh families. Most likely, there will be more wrongful death lawsuits filed.

Sources: Dan Packel and Law360.com

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**Worker Sues Builders In Miami Garage Collapse**

A construction worker and his wife have filed suit in a Florida state court against several Defendants. The suit arises out of the erection of the $22-million Miami Dade College parking garage that collapsed in October 2012, killing four workers and injuring several others including the Plaintiff, Juan Carlos Fernandez. The Plaintiff is seeking damages for his injuries, which include post-traumatic stress disorder. He was working on the second floor of the garage approximately five feet from the section that collapsed.

The suit names as Defendants the general contractor Ajax Building Corp.; M.A.R. Contracting Inc., MEP Structural Engineering and Inspections Inc.; engineering firm Bliss & Nyitray Inc., architectural firm Harvard Jolly Inc., and Sims Crane & Equipment Co. Also sued were subcontractors Coreslab Structures Miami Inc. and Solar Erectors U.S. Inc., which were both hired to erect the precast concrete slabs and concrete building components of the structure. According to the U.S. Occupational Safety and Health Administration (OSHA), there were several violations, including columns not being properly braced or inspected.

The incident occurred October 10, 2012, at Miami Dade College’s West Campus in Doral, Fla. The families of the four workers killed and five of the workers who were injured reached a confidential settlement in early May in their lawsuits against Ajax and several other defendants, including Coreslab, Solar Erectors and MEP. In those cases, the Plaintiffs claimed that Ajax’s decision to use a cheaper precast concrete construction method caused the collapse. They also contended that Ajax’s inspectors should not have let workers back into the garage after a crane accident two days before the collapse compromised the structure.

It is alleged in the Fernandez suit that it is customary in the type of construction that was being done to use temporary attachments to hold precast concrete components in place before they are permanently secured through bolting, welding, tying or cast-in-place concrete. At the time of the collapse, it was alleged that the pieces had not yet been fully secured. It was alleged:

*The condition of not securing the multiton components as described above, especially in light of the inspections defendants conducted before and after the crane impacted the garage, was virtually certain to result in injury or death to those on the construction site, including the plaintiff.*

The Plaintiff and his wife are represented by Miami lawyers Herman J. Russomanno and Robert J. Borrello. The case is Fernandez et al. v. Ajax Building Corp. Inc. et al. in the Circuit Court for the Eleventh Judicial Circuit of Florida.

Source: Law360.com

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**PG&E Settlements Total $565 Million In San Bruno Pipeline Blast**

PG&E Corp. has agreed to pay $110 million to settle almost all pending personal injury and property damage claims arising from the deadly 2010 pipeline explosion and fire in San Bruno, Calif. This brings the company’s total settlement payments to $565 million, according to a filing with the U.S. Securities and Exchange Commission (SEC). The report says the utility has now settled the claims of “substantially all” the remaining Plaintiffs who sued over the blast, which killed eight people and injured 66 more.
It appears from the SEC filing that about 160 lawsuits related to the San Bruno pipeline explosion on behalf of nearly 500 Plaintiffs have been filed against PG&E. The individual terms of each settlement have not been made public because of confidentiality clauses in the agreements. The settlements cover a range of damages, including burns, post-traumatic stress disorder and emotional distress in addition to physical injury and property damage. The victims should start receiving funds from the settlements within the next 45 days.

The explosion took place in September 2010 in a part of a 30-inch diameter underground pipe, releasing 47.6 million standard cubic feet of natural gas. The incident destroyed 38 homes, according to a June 2011 report by the California Public Utilities Commission (CPUC). The CPUC has launched several investigations into the company since the pipeline rupture, fining PG&E $16.8 million for failing to perform natural gas pipeline surveys as required by a new enforcement program created in the wake of the incident. PG&E is still facing additional penalties from state regulators, with the CPUC in July asking for a minimum payment of $300 million.

The agency’s Consumer Protection and Safety Division (CPSD) had initially called for PG&E to spend $2.25 billion on upgrades to its system instead of paying it as a fine. The CPSD later filed an amended brief suggesting that the utility should still be forced to make the costly improvements toward its Pipeline Safety Enhancement Plan, but at least $300 million of the money should be paid into a general fund. The city of San Bruno had been asking the CPUC to impose $2.25 billion in fines, calling for a contribution of at least $1.25 billion for the state’s general fund and another $1 billion to cover an independent monitor to oversee PG&E’s safety operation, technical pipeline improvements and an emergency response fund.

In March 2012, PG&E agreed to a $70 million settlement with San Bruno to resolve the city’s claims over the pipeline explosion. That payment was in addition to PG&E’s agreement to pay $50 million for infrastructure repairs and other city expenses tied to the accident. A June 2011 report from the CPUC found that although the utility had not intended to undermine safety issues, it had not adequately monitored or focused on pipeline safety matters. The National Transportation Safety Board also found problems with PG&E’s approach to safety in its own report issued later that year, noting that the utility’s emergency guidelines made no mention of whether the field personnel, dispatch center or the gas control are to reach out to emergency services in the event of an explosion.

Sources: Sean McElenon and Law360.com

**Six Flags Sued For Wrongful Death In Texas Coaster Fall**

The family of a woman who was killed in a July roller coaster accident has filed a wrongful death lawsuit against Six Flags Entertainment Corp. The suit, filed in Texas court, alleging the company ignored safety issues with the Texas Giant coaster. The family of Rosa Esparza—who fell to her death from the Texas Giant roller coaster on July 19 at Six Flags Over Texas in Arlington—claims the amusement park giant knew the roller coaster had inadequate and unreliable safety restraints but refused to add safety belts or shoulder harnesses that would further protect riders. The complaint said:

*Six Flags has known for decades the real risks and extreme dangers posed by roller coasters and other amusement rides. Yet, instead of making their rides safer, Six Flags continually pushes the envelope, building extreme roller coasters that are bigger, faster and more dangerous.*

The victim’s safety bar restraint failed when she, her daughter and her son-in-law rode the Texas Giant, leading to her fall and subsequent death. Six Flags shut down the coaster and a similar ride in its San Antonio park following the accident, but reopened the Texas Giant after it was retrofitted with new seat belts and redesigned restraint bar pads. The amusement park company said that it would make sample seats available at ride entrances and that “guests with unique body shapes or sizes may not fit into the restraint system.”

It is alleged in the lawsuit that Six Flags knew the previous safety system was unreliable before Ms. Esparza’s death. It was alleged in the complaint:

*After Rosa’s death, post-incident inspections showed that various parts of the security systems on the ride were experiencing inconsistencies and intermittent failures. In addition, Six Flags has now admitted that, after these inspections, they replaced a ‘limit switch’ for a restraint in a seat in the very car in which Rosa was riding because Six Flags found the switch to be defective.*

The Esparzas family cited a number of other fatal Six Flags roller coaster accidents that have happened across the country and said such events shouldn’t come as a shock to the company because of its inadequate safety measures. It was alleged in the complaint that “Six Flags continues to be reactive, rather than proactive with regard to common sense safety systems and operations.” The family requested unspecified damages for the victim’s husband and children under the Texas Wrongful Death Act and Texas Survival Statute.

The Esparza family is represented by Dallas lawyers Frank L. Branson, Quentin Brogdon and Eugene A. Brooker Jr. The case is *Amado Esparza et al. v. Six Flags Entertainment Corp. et al.* in the 342nd Judicial District Court of Tarrant County, Texas.

Sources: Erica Tiechert and Law360

**Chesapeake Settles With Pennsylvania Landowners In Royalty Lawsuit**

Chesapeake Energy Corp. has agreed to pay $7.5 million to settle a class-action lawsuit filed in August by Pennsylvania landowners. It was alleged that the natural gas producer was deducting large fees from the Plaintiff’s royalty checks. Chesapeake, the largest natural gas operator in the state, settled the lawsuit shortly after it was filed in the U.S. District Court for the Middle District of Pennsylvania. The settlement will require court approval. It’s expected to be approved by the end of the year.

It was reported that Chesapeake this year started to take much heavier deductions from royalty checks it sends Pennsylvania landowners to help pay to gather, compress, market and transport natural gas. In most cases, the royalty compensation was cut by more than half. Chesapeake and its peers send royalty checks to landowners, typically monthly, for the natural gas they extract. The settlement involves a complex formula to reimburse Plaintiffs who had so-called “market enhancement clauses” in their leases. It will bar Chesapeake from deducting certain percentages of fees from Plaintiffs’ royalty checks in the future. The case is *Demcbak Partners Limited Partnership vs. Chesapeake Appalachia LLC* in the U.S.
District Court for the Middle District of Pennsylvania.
Source: Reuters News Service

CENTRAL TEXAS UTILITY SUES TREE TRIMMER OVER FIRES

A $35-million lawsuit has been filed by a utility claiming that a tree-trimming company failed to properly maintain vegetation before the 2011 Central Texas wildfires destroyed nearly 1,700 homes. The lawsuit filed by Bluebonnet Electric Cooperation names Asplundh Tree Expert Co. of Willow Grove, Pa. The Labor Day 2011 blaze was started when strong winds knocked down trees that crashed into overhead power lines, causing sparks, according to a Texas A&M Forest Service investigation.

Bluebonnet has been sued by more than 50 homeowners whose residences burned in Bastrop County, 30 miles east of Austin. In 2005, Bluebonnet contracted with Asplundh to manage vegetation, including trimming trees, along the utility’s 11,000 miles of power lines in 14 counties, including Bastrop. A signed agreement between the utility and Asplundh, in which the contractor assumes responsibility and liability for any destruction of property that isn’t caused by negligence on behalf of Bluebonnet, was referred to in the lawsuit.

According to a Bluebonnet spokesman, the utility filed suit in order to protect its ratepayers. It was said that the utility owed a duty to its members to do so. It was alleged that Asplundh was hired because of its expertise in vegetation management and that Asplundh failed to perform the work it was hired to do according to the contract. It will be interesting to see how this lawsuit winds up. We will continue to monitor it.
Sources: The Austin American-Statesman and The Insurance Journal

XIII.
WORKPLACE HAZARDS

MANUFACTURER TO PAY $1.3 MILLION IN PENALTIES AND FINES FOR WORKER DEATH

Adams Thermal Systems Inc. has agreed to pay more than $1.35 million to resolve criminal penalties and fines in a prosecution agreement with the U.S. Attorney’s Office and the U.S. Department of Labor’s Occupational Safety and Health Administration (OSHA). This was a result of the death of a worker on Nov. 7, 2011, in the company’s Canton, S.D., plant. The U.S. Attorney’s Office has filed the deferred prosecution agreement and asked that it be approved by the U.S. District Court for the District of South Dakota. Under the terms of the agreement, the company will pay the worker’s surviving spouse $450,000, a criminal fine of $450,000 and the full OSHA fine of $435,000 stemming from the regulatory violations that caused the fatality and additional violations discovered in subsequent inspections.

OSHA’s investigation found the worker was fatally crushed in a machine used to make radiator cores. Management had instructed and authorized workers to bypass the manufacturer’s barrier guard in order to adjust the machine to keep it running. OSHA also conducted two concurrent safety and health investigations at the company in February 2012, which resulted in 66 violations. Because the willful violations cited by OSHA caused the worker’s death, the case was referred to the U.S. Attorney for the District of South Dakota in November 2012 for criminal prosecution. Dennis Holmes, the Criminal Chief, handled the case for the U.S. Attorney’s Office. The agreement resolves both of the OSHA civil cases, and includes significant enhanced abatement of violations by the company. Adams Thermal Systems agreed to:

- increase the size of its safety and health department;
- implement a company-wide safety and health program;
- provide incentives for managers and workers to report safety issues and make safety recommendations;
- hire a qualified third-party to review guarding and lockout/tagout for all plant machinery;
- audit the abatement of all identified hazards;
- redesign the safety systems and procedures on the radiator core machine involved in the fatality; and
- report quarterly to OSHA for three years on safety progress and reportable illnesses and injuries.

The agreement will resolve three willful citations issued for $210,000 on April 26, 2012, as a result of the fatality investigation. The settlement also resolves the additional citations issued on August 2012, following two concurrent comprehensive safety and health inspections, with proposed penalties of $225,000. The comprehensive safety and health cases involved 58 serious violations and eight other-than-serious violations addressing unlabeled piping systems; obstructions in aisles and passageways; unguarded machinery; crane and hoist hazards; improper exits; electrical hazards and exposures to chemicals, dust, and noise.

OSHA placed Adams Thermal Systems, which manufactures engine cooling systems for off-highway and on-highway vehicles, in its Severe Violator Enforcement Program in August 2012 as a result of these inspections. The program mandates targeted follow-up inspections to ensure compliance with the law. The program focuses on recalcitrant employers that endanger workers by committing willful, repeat or failure-to-abate violations.
Source: The Insurance Journal

SAFETY VIOLATIONS FOUND IN ST. LOUIS ELECTROCUTION

The U.S. Department of Labor’s Occupational Safety and Health Administration (OSHA) will fine Cold Drawn, Inc., a steel manufacturer, nearly $52,000 after finding more than two dozen safety violations. This comes after an investigation brought on by a worker’s electrocution. The violations found by OSHA were at a plant operated by Cold Drawn in St. Louis. The company manufactures cold-finished steel bars at plants in St. Louis; Point Pleasant, W.V.; and Apodaca, Mexico.

It was reported by OSHA that a Cold Drawn worker was electrocuted May 15 when he reached into an energized electrical panel box to retrieve work gloves stored in the box at the company’s St. Louis manufacturing facility. Nineteen of the safety violations were considered serious.
Source: Claims Journal

$61 MILLION FALSE CLAIMS ACT ROOFING SETTLEMENT

The Department of Justice recently unsealed a $61 million dollar settlement with Ohio-based companies RPM International Inc. and Tremco, Inc. The settlement
XIV.
TRANSPORTATION

Transportation Department Sued By Public Citizen For Failing To Issue Safety Rule

Safety advocates and two parents who unintentionally hit their children with their vehicles when backing up have sued the U.S. Department of Transportation (DOT). The suit requests a court to order the DOT to promptly issue a safety rule mandated by Congress in 2008 to set federal standards on vehicles’ rear visibility. DOT estimated that the rule it proposed in 2010, but has failed to finalize, would prevent 95 to 112 deaths and 7,072 to 8,374 injuries each year when implemented. Congress ordered the rule issued by 2011, but the administration has repeatedly delayed and has now postponed the rule until 2015.

Each year, more than 200 individuals are killed and 18,000 injured in “backover” crashes. Drivers using all three mirrors cannot see a blind zone several feet high directly behind their vehicles. Sadly, 44 percent of those killed in backover incidents are children younger than 5 years old. Each week, on average, 50 children are injured, two fatally, by backover crashes. In 2008, Congress enacted the Cameron Gulbransen Kids Transportation Safety Act, which directed the DOT to issue a rule requiring significantly improved rear visibility in new consumer vehicles through backup cameras or other means. The bill passed the House and Senate and then-President George W. Bush signed it into law. The law required that DOT issue the rule within three years, and permitted the agency to extend the deadline only if it “cannot be met.”

The DOT initially made progress in the rulemaking, issuing a proposed rule in December 2010. In November 2011, the agency sent its final draft of the rule to the White House’s Office of Management and Budget (OMB) for review, where it remained for 19 months. Then in June 2013, after the DOT had already granted itself three extensions of the February 2011 statutory deadline, the agency withdrew the rule from OMB and pushed the deadline back yet again, to January 2015.

The DOT claimed that it needs time for more study—even though it has already conducted research it has characterized as “extensive.” The DOT’s projected completion date in 2015 is nearly four years after the deadline set by Congress and seven years after the law was passed. That’s inexcusable and shouldn’t be tolerated. While automobile manufacturers have included rear-view camera systems in a growing number of cars, many cars still don’t have them.

By the DOT’s own estimates, its delay past the statutory deadline has so far allowed between 237 and 280 preventable deaths—almost half of those killed have been young children—along with thousands of preventable injuries. By the same estimates, another 118 to 140 people will die in preventable backover crashes before the DOT regulates, even assuming the agency doesn’t extend the date again. The suit was filed by Dr. Greg Gulbransen, Susan Auriemma, Consumers Union of the United States, Advocates for Highway and Auto Safety, and Kids And Cars, Inc.

All the Plaintiffs are represented in the suit by Public Citizen. Each of the individual Plaintiffs has had an experience with the issue. Ms. Auriemma, of Manhasset, N.Y., backed over her 3-year-old daughter Kate in her driveway in 2005, injuring her. Dr. Gulbransen, of Syosset, N.Y., backed over his 2-year-old son Cameron in his driveway in 2002, killing him. In fact, the 2008 law is named after Cameron.

The lawsuit came in the form of a petition filed in the U.S. Court of Appeals for the Second Circuit, in the state of New York. The petition asks the court to declare that the DOT has unreasonably delayed the rule, and to direct the DOT and its secretary, Anthony Foxx, to issue the rule within 90 days. The petition contends that the length of time the DOT is taking is unreasonable under the Administrative Procedure Act. The DOT has violated the timetable set forth by Congress. The following are comments from some of the individuals who are involved in this lawsuit:

Dr. Greg Gulbransen

It’s mindboggling that two more children like Cameron are killed every week, yet the administration is content to postpone doing anything about it. This isn’t some technical abstraction, it’s about actual people being injured and killed.

Susan Auriemma

After I backed over my own daughter and injured her, I worked to make sure this or something even worse would never happen to any other...
family. Democrats and Republicans in Congress came together to say they weren’t going to let these needless deaths continue, but now their will is being thwarted.

Joan Claybrook, former administrator of the National Highway Traffic Safety Administration and president emeritus of Public Citizen

Further delays in issuing the safety standard are unacceptable and unnecessary. As a former administrator of the National Highway Traffic Safety Administration, I know that there is enough data to take action today. With each passing week, children throughout America will die or be horribly injured because a proven and effective safety solution is being withheld by DOT under pressure from the auto manufacturers.

Janette Fennell, President of Kids and Cars, Inc.

It’s easy for the administration to do nothing, but it’s the families across the country who pay the ultimate price when children are at risk of injury or death every day in their own driveways. We know there’s a problem; we know there’s a simple solution. The Transportation Department has a mission, duty and obligation to protect the public, but every day it stalls this rule, Americans unnecessarily remain in danger.

Ami Gadhia, senior policy counsel for Consumers Union

This rule has been delayed for years. More manufacturers are offering this critical safety feature, but we believe it should be standard in all new cars and trucks. Rear visibility technology can save lives, and the time for action is long overdue.

Jackie Gillan, president of Advocates for Highway and Auto Safety

Passing the Cameron Gulbransen Kids Transportation Act was not controversial in 2008 and implementing the law should not be controversial today. Democratic and Republican members of Congress supported enactment, along with consumer and safety groups, pediatricians, families whose children were killed in backover crashes and the auto industry. It is time to stop delaying and start solving a dangerous safety problem with a technology that is available and absolutely essential to saving lives.

Scott Michelman, a lawyer for Public Citizen

When Congress ordered this rule issued in three years, they meant three years, not seven. It’s time for a court to step in and make the Transportation Department issue the rule. No administration is above the law.

If you want more information on the lawsuit or its subject matter, contact Amber Rollins at 816-216-7085 or amber@kidsandcars.org.

Source: Public Citizen News Release

18-Wheeler Accidents Can Be Prevented With Attention To Safety Rules

Lawyers in our firm’s Personal Injury/Products Liability Section have handled a large number of personal injury and wrongful death lawsuits throughout the years against trucking companies. Many of the cases involved such things as driver fatigue, excessive speed and inattention to road conditions. Others have been based on companies’ improper hiring and inadequate training of drivers. Tractor trailer drivers operate extremely large vehicles that have the capability to cause a great deal of harm to others on the highways. Drivers, as well as the companies that employ them, have to follow regulations that other drivers don’t have to follow. As a result, commercial drivers receive training that the rest of the motoring public are not required to get. Consequently, commercial drivers have a greater obligation to safety than other drivers on the highways throughout the country. That’s not to say, however, that individuals who drive their personal cars don’t have to observe and obey traffic laws—they do. But commercial drivers have additional rules and regulations to follow.

Establishing fault in an accident when a truck driver runs a red light or rear-ends a vehicle that is legally stopped isn’t all that difficult in most cases. But difficult issues can be involved even in those cases. It may be necessary to find out exactly why the driver wasn’t operating the vehicle responsibly and safely. The trucking company’s conduct when it comes to the hiring and training of drivers can also be involved.

Without any question, a tractor trailer that is operated dangerously on the road creates a serious safety hazard. It takes skill and expertise to adequately investigate accidents involving large tractor-trailer rigs.

In a recent case that we handled, the wife of a truck driver came to our firm after a lawsuit was filed against her husband’s estate. Her husband, a truck driver, was killed in a highway accident after his vehicle broke down in the roadway. Federal law requires a truck driver to put out three warning triangles. Our client’s husband (the decedent) only put out two of the required three triangles. Another tractor trailer approaching the scene hit him from behind while our decedent’s rig was blocking the roadway. Initially, when we first investigated the incident, things looked bad for our client’s case. But we filed a counterclaim in the pending case and ultimately reached a favorable settlement for our client. We had performed testing that proved the driver who hit the decedent’s vehicle should have seen the stopped vehicle in the roadway at a sufficient distance that would have allowed him to have taken steps to avoid the collision. In other words, this was a crash that never should have happened.

Another trucking case handled by lawyers in our firm involved the driver of a tractor trailer rig who was faced with an emergency situation. In that case, a vehicle had stopped in the driver’s lane of travel. Our truck driver wasn’t following too closely, nor was he speeding. He locked down his brakes and steered his vehicle into the oncoming lane of traffic. While this avoided hitting the vehicle stopped in his own lane, our driver collided with a vehicle coming toward him in the opposite lane of traffic. We successfully argued at trial that the emergency situation required the driver of the approaching tractor and trailer to steer his vehicle to the right onto the shoulder of the road in order to avoid a collision. This case required our litigation team to focus on the driver’s failure to follow the training he had previously received, which if followed would have allowed him to avoid the crash. The case was resolved satisfactory for our client.

The Federal Motor Carrier Safety Administration (FMCSA), a division of the U.S. Department of Transportation, oversees the trucking industry. The primary mission of the FMCSA is to reduce crashes, injuries, and fatalities involving large trucks and buses on our nation’s highways. FMCSA has produced a publication titled “A Motor Carrier’s Guide to Improving Highway Safety.”
This guide discusses various countermeasures as examples of defensive driving strategies that can prevent highway accidents. Commercial drivers, who are properly trained, can prevent accidents by following their training in many situations. Those who aren’t properly trained, or who don’t follow their training, create hazards on our highways. Many trucking accidents can be avoided, saving many lives simply by having a trained commercial driver behind the wheel of 18-wheeler on the road.

If you need more information on any aspect of trucking litigation, contact Chris Glover, a lawyer in our firm's Personal Injury and Products Liability section. Chris has successfully handled a number of trucking cases involving injuries and deaths. You can reach Chris at 800-898-2034 or by email at Chris.Glover@beasley-ellin.com.

**A New Study on the Distracted Driving Behaviors of Young Drivers**

Plymouth Rock Assurance, a New Jersey auto insurance group, released the results last month of a new distracted driving study providing insights from Digital Natives, the first generation born into a digital world. The online poll of 1,000 New Jersey-based drivers (ages 17-25) found 73 percent had witnessed a friend texting while driving and 70 percent had witnessed a parent using a phone without hands-free technology. Interestingly, the study also revealed that many young drivers are “mimicking the behavior of their parents.” Twenty-five percent of young drivers have witnessed a parent texting while driving and 57 percent have witnessed a friend using a phone without hands-free technology. Interestingly, the study also revealed that many young drivers are “mimicking the behavior of their parents.” Twenty-five percent of young drivers have witnessed a parent texting while driving and 57 percent have witnessed a friend using a phone without hands-free technology.

Despite these behaviors, young drivers recognized the danger and cited texting while driving as one of the biggest safety problems on New Jersey’s roads. Texting while driving has surpassed both drunk driving and aggressive driving as dangerous behaviors and young drivers have indicated that they do not approve; 36 percent have attempted to alert the driver of another car to stop texting and 82 percent of respondents believe the State of New Jersey should impose a heavy penalty for texting while driving—indicating the need for enforcement. Gerry Wilson, president and CEO of Plymouth Rock Management Company of New Jersey, had this to say:

**Distracted Driving is one of the Most Dangerous Issues Currently Affecting our Roadways. Years ago, motorists demanded an end to drunk driving. Our research demonstrates that even younger drivers are acknowledging that we must put an end to distracted driving.**

The appeals court found a person who knowingly sends a text to a driver can share liability if a driver receiving the text message causes an accident. The ruling last month was in the case of a couple who lost both their legs when their motorcycle was hit by a teenager who was texting and driving in Morris County, N.J., in 2009. The motorists sued the driver and also his girlfriend who sent him text messages. The claim against the girlfriend was dismissed by the trial court. The appeals court upheld that lower court ruling.

The appeals court said that normally a person who texts a motorist can’t be held liable for the driver’s negligent actions. But the court did say, however, that the texeter has a duty to refrain from texting if he or she knows the recipient is driving a car and likely to read the message. The injured couple settled their lawsuit against the driver for $500,000, but was unsuccessful in the claim against the texting girlfriend. The court’s opinion indicates that the claim would have been upheld had there been the required proof. Source: Claims Journal

**Appeals Court Rules That Text Sender Could Be Held Liable**

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**Railroad Industry Wants To Delay PTC Deadline**

The railroad industry, despite a rash of deadly train crashes, is working hard to push back the deadline for installing technology to prevent the most catastrophic types of collisions until at least 2020. If lobbyists for the industry are successful in Congress, half a century will have passed since accident investigators first called for such safety measures. Under a law enacted in 2008, the systems called “positive train control” (PTC) are supposed to be up and running by Dec. 31, 2015. But, according to reports, only a few of the railroads are expected to meet that deadline. The rest of the industry says, despite spending billions of dollars on the systems, they face logistical and technical hurdles and need more time. Four senators who have strong industry ties recently introduced a bill to extend the deadline for another five to seven years.

If the railroad companies are successful in delaying the PTCs, it will show how a powerful industry can stall regulations it doesn’t like. They can do this even after the regulations are enacted into law. The National Transportation Safety Board (NTSB) has investigated 27 train crashes that took 63 lives, injured nearly 1,200 and caused millions of dollars in damage in the past decade that officials say could have been prevented had the safety system been in place. The NTSB first recommended advanced train control systems in 1970. Safety, labor and passenger advocates want the deadline to be met, saying that a blanket, industry-wide pass for five more years is wrong. NTSB member Robert Sumwalt said that “for every day that it is delayed, the threat of another accident remains.”

It was reported that railroads have invested heavily in making their case to Congress. The industry spent nearly $47 million last year lobbying the federal government, according to the political money-tracking website OpenSecrets.org. Interestingly, the industry’s 329 registered lobbyists include former Senators Trent Lott, (R-Miss.), and John Breaux, (D-La.), and a former Governor of Mississippi, the out-spoken Haley Barbour. There are also dozens of former House and Senate aides who are lobbyists for the industry. None of this should come as a big surprise to folks who closely follow congressional actions or inactions.

The safety system uses GPS, wireless radio and computers to monitor track position and speed and stop them from colliding, derailing because of excessive speed, entering track where maintenance is being done or going the wrong way because of a switching mistake. The system is aimed at preventing human error, which is said to be responsible for about 40 percent of train accidents. Such a system would be “a game changer” for safety, Joseph Szabo, head of the Federal Railroad Administration (FRA), stated during a recent Senate
hearing. A dramatic example of the type of accident PTC is designed to prevent occurred in July in Spain when a train traveling twice the speed limit derailed going around a curve, killing 79 people and injuring dozens more.

The NTSB put a newer version of the technology on its “most wanted” list of safety improvements when the list was created in 1990. The government has been funding demonstration projects for decades. After several failed attempts, Congress was prompted to require positive train control by one of the nation’s worst train accidents. On Sept. 12, 2008, a Metrolink commuter train struck a freight train head-on near Los Angeles, killing 25 and injuring more than 100. Investigators said the Metrolink train’s engineer was distracted by text messages, allowing the train to run through a red signal. This was exactly the type of accident the system is designed to prevent. The law gave railroads seven years and three months to install the technology.

Sources: Joan Lowy, Law360.com, Associated Press

YALE CRASH VICTIM’S FAMILY SETTLES LAWSUIT

You may recall that we wrote in a prior issue about the 2003 crash on Interstate 95 in Connecticut. The family of one of four Yale University students killed in the crash has settled a lawsuit against the Delta Kappa Epsilon fraternity. The lawsuit, filed in 2005 by the family of Nicholas Grass, was settled under undisclosed terms last month. The students were among nine packed into the SUV returning from a Delta Kappa Epsilon event in New York City when their vehicle slammed into a tractor-trailer that had crashed in an earlier accident. The lawsuit claimed fraternity leaders failed to provide safe transportation home from the event and the SUV driver, who was a Yale student and a member of the fraternity, was sleep-deprived during the frat’s so-called hell week of alleged hazing of pledges.

The crash killed the SUV driver. Five other Yale students in the SUV were injured. Lawyers for the fraternity claimed Delta Kappa Epsilon shouldn’t be held liable because it couldn’t have foreseen the “series of unfortunate events” that led to the accident. The lawsuit also claimed the state Department of Transportation and two construction companies were liable for alleged safety hazards at the highway construction site where the tractor-trailer crashed. Other victims’ families also sued the state and the two companies. Claims against the state were dismissed because of government immunity from lawsuits, while the construction companies entered into settlements. The National Transportation Safety Board investigated the accident and found plenty of blame, including poor highway conditions, speeding, fatigue and lack of seat belt use.

Source: Claims Journal

BUS COMPANY SETTLES LAWSUIT FOR $15 MILLION

An 85-year-old man who lost part of his leg after a public bus hit him in a Southern California crosswalk has settled his lawsuit for $15 million. The settlement came just before a jury completed their deliberations and reached a verdict for the Plaintiff in his case. Southland Transit Inc., which had a contract to provide city bus service in the city of Baldwin Park, was the Defendant and agreed to the settlement. The Plaintiff was injured when he was struck in a crosswalk in August of last year. He underwent seven surgeries and his right leg was amputated below the knee. The case had been filed in the Los Angeles Superior Court.

Because Southland Transit had admitted fault, acknowledging liability for the accident, the jury only had to determine the amount of damages to be awarded. Lawyers for the parties reached the settlement just before the jury announced that it had reached a verdict. Even though the trial judge allowed the reading of the verdict, which would have awarded more than $17 million, a settlement had been reached and accepted by the court. Thus, the verdict had no effect. Spencer Lucas, a lawyer with Panish Shea and Boyle, located in Los Angeles, represented the Plaintiff in the case. He did a very good job for his client.

Source: The Claims Journal and City News Service

TVA RECOVERS $42 MILLION IN INSURANCE COVERAGE ASSOCIATED WITH THE KINGSTON COAL ASH SPILL

The Tennessee Valley Authority (TVA) recently recovered $42 million in a settlement with one of its insurance carriers, Arch Reinsurance, Ltd. The $42 million payment comes from a $50 million insurance policy. Arch initially rescinded the policy, claiming TVA did not provide complete information when it applied for the policy. In this settlement, TVA agreed to a 16 percent discount on the policy.

This settlement ends one of three arbitration disputes over coverage for the disastrous 2008 dike failure at TVA’s Kingston Plant in Roane County, Tenn., where more than a billion gallons of coal ash spilled into the adjacent community and waterways. It is probably no coincidence that the $42 million is the same amount TVA paid to Roane County for economic development in the area after the spill. Despite being found liable for the disaster, TVA may be able to recover additional insurance funds in the two remaining arbitration disputes with its other insurers. TVA has two remaining cases in arbitration in London—one related to a $150 million ACE Bermuda Insurance Ltd. policy and another concerning a $50 million policy from Zurich Insurance Co.

As TVA actively pursues insurance recovery from its insurance carriers, it has yet to make whole those property owners impacted by the spill. At the time of the spill, EPA Administrator Lisa P. Jackson acknowledged that the disaster was “one of the largest and most serious environmental releases in our history.” The cleanup continues today, nearly five years after the disaster, and this once-tranquil community continues to suffer the impacts associated with the spill.

TVA is a quasi-governmental agency that enjoys immunity under the Federal government’s discretionary immunity doctrine. However, in August 2012, a Federal Judge in Knoxville, Tenn., found TVA liable for its negligence in causing the coal ash spill. The Judge then ordered TVA into mediation with Plaintiffs to resolve damages it owes to those property owners impacted by the spill. Lawyers at Beasley Allen represent hundreds of these property owners.
whose property and way of life continue to be impacted by TVA’s negligence in causing the 2008 disaster.

If you need additional information on this subject, contact Rhon Jones or Brantley Fry, lawyers in our firm’s Toxic Torts Section, who have been heavily involved in the TVA litigation. They can be reached at 800-898-2034 or by email at Rhon.Jones@beasleylan.com or Brantley.Fry@beasleylan.com.

Sources: Law360.com, the Associated Press and The Knoxville News Sentinel

TRIAL DATE PROPOSED FOR EXXON OIL SPILL LAWSUIT

It now appears that the lawsuit against ExxonMobil Corp., which seeks millions in civil fines and cleanup costs, will be tried in June of next year. The suit, filed in an Arkansas federal court, is over a pipeline breach that dumped thousands of gallons of oil into a residential neighborhood. U.S. District Judge James M. Moody has issued a proposed final scheduling order cutting off discovery on March 7 and calling for the trial to occur during the week of June 16 in Mayflower, Ark. The suit includes pollution claims from federal and state authorities.

As you may recall from prior reports, Exxon’s 70-year-old Pegasus pipeline ruptured in March of this year in Mayflower, Ark., contaminating local waterways and forcing several residents to evacuate. The U.S. government and the state of Arkansas filed suit against Exxon two months later, contending that the company violated the Clean Water Act, the Arkansas Water Quality Act and the Arkansas Water and Air Pollution Control Act and other state and federal pollution statutes. The government alleged that during cleanup operations Exxon has stored contaminated soil, water and debris at a nearby facility without a permit, which would violate the Arkansas Hazardous Waste Management Act. It was alleged that Exxon has not removed the waste even though an order by the Arkansas Department of Environmental Quality requires the oil giant to do so.

Exxon filed a motion to dismiss the suit, arguing that the government allegations are not detailed enough to justify the claims. It claims the U.S. failed to demonstrate that Exxon discharged oil into “traditionally navigable waters of the United States” as defined in Section 311 (b)(3) of the Clean Water Act (CWA). “Under this section of the CWA—as opposed to several other sections that explicitly provide for broader jurisdiction over the broader ‘waters of the United States’—federal jurisdiction is limited to discharges into waters that are navigable in fact, not all waters of the United States,” the motion says. “And nowhere has the United States alleged facts plausibly supporting the conclusion that Lake Conway is navigable in fact.”

Exxon also argues the state hazardous waste claim should be dismissed, claiming the complaint contains no facts to support its allegation that the company improperly stored, transported or disposed of the recovered oil from the spill. The oil giant could be hit with several million dollars in penalties, including $25,000 per violation per day under the state hazardous waste law, $10,000 per violation per day under the state pollution law and up to $4,300 per discharged barrel under the Clean Water Act. Federal and state authorities are also seeking a declaratory judgment allowing the state to go after Exxon for removal costs and damages under the federal Oil Pollution Act.

In addition to the government suit, Exxon is facing a putative class action from Arkansas residents living near the spill who are accusing the company of negligence in its operation, maintenance and monitoring of the Pegasus pipeline. Exxon also moved to dismiss that suit. At press time the trial judge had not ruled on the motions. The Pegasus is a 20-inch pipeline that originates in Patoka, Ill., and carries Canadian crude oil to the Texas Gulf Coast. Most observers believe the motions will be rejected by the court and that the case will proceed. The case is U.S. v. ExxonMobil Pipeline Co. in the U.S. District Court for the Eastern District of Arkansas.

Source: Law360.com

COURT RULES IN FRENO’S MTBE CONTAMINATION LAWSUIT

A New York federal judge issued a ruling last month in a lawsuit brought by Fresno, Calif., against several gasoline companies, including Exxon Mobil Corp. and Shell Oil Co., for groundwater contamination from the additive methyl tertiary butyl ether (MTBE). The court ruled that some claims were time-barred and others were dismissed on substantive law issues. Fresno’s suit is one of dozens in an MDL accusing oil companies and refineries of allowing the gasoline additive to leak from underground storage tanks and pollute groundwater. The central California city originally sued 60 gas stations, but reduced that to 19 during the past few months.

Several defendants, including BP Products North America Inc., ConocoPhillips and Atlantic Richfield Co. settled with Fresno. The various remaining stations and the companies running and supplying them faced charges of strict liability, negligence and nuisance. U.S. District Judge Shira Scheindlin dismissed all the remaining claims on 10 of those because she said the claims were time-barred. The strict liability and negligence claims on several more and the nuisance claims on others were dismissed by the court, leaving only three with all claims pending. The companies left are Citgo Petroleum Corp., Exxon and Shell.

Judge Scheindlin granted the motions for summary judgment, ruling that Fresno’s claims were barred by statutes of limitations. The judge said in her order:

The difficulty with Fresno’s position is that it has presented no evidence tying the contaminants detected at the soil detection ... sites to any of its production wells. In sum, Fresno’s position that ‘it is not the mere presence of chemical molecules within the city boundaries that is significant for purposes of determining appreciable harm, it is whether the MTBE caused appreciable harm to Fresno’s water system’ that ultimately dooms its claims as to the ... soil detection sites.

Some Defendants asked the judge to dismiss the strict liability and negligence claims against them on the grounds that Fresno couldn’t prove that their product caused its alleged injuries. She agreed, saying Fresno has no record or evidence tying the defendants’ product to the stations at issue, but rather relied on a theory that the products of several defendants were present in a blended state at one location. Judge Scheindlin said that theory, called the commingled product theory, was not applicable in this case as there was no evidence the products were delivered to stations in an “undifferentiated mass.”

The judge also granted the motion for summary judgment of several Defendants to dismiss the nuisance claims. Fresno opposed the motion on the grounds that the companies knew the risks of MTBE, yet failed to warn the operators of the stations. Judge Scheindlin also said Fresno’s nuisance claim against other defendants at other sites were unsupported by evidence of “affirmative acts” by that contributed

Toyota Motor Corp. has recalled nearly 781,000 SUVs for problems with the vehicles’ suspensions that could cause drivers to lose control of the cars. The recalls involved the 2006-2010 Toyota RAV4 SUVs and the 2010 Lexus HS250h. Problems with the vehicles’ rear tie rods were stated as the reasons for the recalls. If the nuts for adjusting rear wheel alignment were tightened improperly, the rod may start to move around, rust and eventually fail, according to the company.

This is the second time the company has issued a massive recall for the rear tie rods in these vehicles. In a letter sent to dealers on August 27, Toyota said the initial repairs on those recalls may not have been done properly, exacerbating the problem. Toyota wrote in its letter to dealers:

Toyo tReceived reports from dealers indicating that some vehicles experienced symptoms of the recalled condition after being inspected or repaired. Upon investigation, it was discovered that some inspections were not adequate and portions of the repair procedure may not have been performed correctly.

This was the third recall in one week for the Japanese automaker. A total of more than a million vehicles with safety problems were recalled. Toyota recalled 369,000 cars in two recalls. The company recalled nearly 200,000 model year 2006 to 2010 Highlander hybrids and model year 2006 to 2008 Lexus RX 400h SUVs, saying that transistors within the hybrid system’s inverter assembly can become heat damaged due to variations in characteristics of the transistors’ parallel circuits. Toyota said in a statement:

Should this occur, various warning lights on the instrument panel will illuminate, and in most cases, the vehicle will enter “limp home mode.” In limited instances, the hybrid system will shut down … resulting in the vehicle stopping while the vehicle is being driven.

The other recall involved some 169,000 model year 2006 to 2011 Lexus IS 350, IS 350C and GS 350 cars. In these vehicles, bolts used to secure the variable valve timing control device can become loose, causing the vehicle to stop while being driven. The company said an early warning for this condition can be an abnormal noise just after start-up.

You may recall that Toyota announced in January that it would recall more than a million Corolla and Lexus IS vehicles. This came as a result of two separate safety hazards involving defects related to the airbag and windshield wiper systems. According to Toyota, model year 2003 and 2004 Corolla sedans and Corolla Matrix hatchbacks have a problem with the airbag control circuits that has the potential to cause inadvertent deployment.

The National Highway Traffic Safety Administration (NHTSA) announced in February the investigation of more than a million Toyota, Ford and Honda vehicles for safety issues including potential steering defects in Toyota’s Prius hybrid and stalling issues in various Ford models. In a trio of investigations, NHTSA said it would probe approximately 725,000 Ford Escape, Fusion, Mariner and Milan model vehicles for reported incidents of electronic throttle failure resulting in sudden reduction of engine power, as well as an estimated 561,000 Prius vehicles for purported defects in the steering column construction. Toyota agreed in July to pay $1.1 billion to settle with a class of roughly 23 million customers over recalls for defects in its vehicles that caused sudden unintended acceleration.

Sources: Law360.com and The Los Angeles Times

Nissan vehicles investigated for transmission issue

The National Highway Traffic Safety Administration (NHTSA) is investigating whether an estimated 110,000 Nissan North America Inc. vehicles have a defect that causes their transmissions to suddenly lose power. NHTSA's Office of Defect Investigations (ODI) has opened a preliminary evaluation into model year 2013 Nissan Pathfinder and Infiniti JX vehicles. The agency is examining complaints that a connection failure involving the transmission cooler line caused transmission fluid to leak from the vehicles, leading to the loss in power. The ODI has received complaints from five owners of the vehicles. It identified field data in which other drivers reported experiencing a similar issue. According to NHTSA, no deaths or injuries have been reported in connection with the alleged defect.

Nissan issued a bulletin to mechanics in July regarding the leak of transmission fluid, an issue the ODI deemed "a condition similar to that described in" the reports from vehicle owners. A Nissan spokesman says the company is cooperating with the agency, adding that a “repair procedure has already been developed for use where necessary by authorized Nissan/Infiniti dealers for those few vehicles that did experience this issue.” In April Nissan was forced to recall about 480,000 Nissan and Infiniti vehicles worldwide. The vehicles were recalled for a problem with their air bags that could cause them to fail to inflate or explode, sending metal particles into the interior. Approximately 265,367 of those vehicles were in the U.S. market, including the U.S. model year 2001-2003 Maxima, Pathfinder, Sentra and the Infiniti 135 and QX4.

In August 2012, NHTSA opened an investigation into a possible cable assembly defect in Nissan’s 2012 Versa cars that could prevent their air bags from deploying. The ODI received field report data from the automaker showing that the cars’ spiral cable assembly had been discovered pinched in the steering column. If the cable is damaged, the air bag may not deploy, according to the agency. NHTSA estimated at the time there were an estimated 100,000 Versas from that model year in the U.S. The agency closed the investigation in January saying that it did not find a safety-related defect in the vehicles.

Source: Greg Ryan and Law360.com

Johnson & Johnson puts warnings on Tylenol caps

Johnson & Johnson, the manufacturer of Tylenol, will soon put a warning on the popular pain reliever. Tylenol sold in the United States will now bear red warnings alerting users to the potentially fatal risks of taking too much of the drug.
unusual step, disclosed by Johnson & Johnson, comes amid a growing number of lawsuits and pressure from the federal government. It could have widespread ramifications for a medicine taken by millions of people every day. Johnson & Johnson says the warning will appear on the cap of each new bottle of Extra Strength Tylenol sold in the United States beginning this month.

The warning will be put on most other Tylenol bottles in coming months. The warning will make it clear that the over-the-counter drug contains acetaminophen. As we have reported in previous issues, acetaminophen, a pain-relieving ingredient, is the nation’s leading cause of sudden liver failure. The new cap is designed to grab the attention of people who don’t read warnings that already appear in the fine print on the product’s label, according to Johnson & Johnson.

Overdoses from acetaminophen send 55,000 to 80,000 people to the emergency room in the United States each year and kill at least 500, according to the Centers for Disease Control and Prevention (CDC) and the Food and Drug Administration (FDA). Acetaminophen can be found in more than 600 common over-the-counter products used by nearly one in four American adults every week, including household brands like Nyquil cold formula, Excedrin pain tablets, and Sudafed sinus pills. “We’re always looking for ways to better communicate information to patients and consumers,” says Dr. Edwin Kuffner, vice president of McNeil Consumer Healthcare, the Johnson & Johnson unit that makes Tylenol.

Tylenol is the first of these products to include such a warning label on the bottle cap. According to McNeil, the warning is a result of research into the misuse of Tylenol by consumers. The new cap message will read: “CONTAINS ACETAMINOPHEN and “ALWAYS READ THE LABEL.” The move comes at a critical time for the company, which faces more than 85 personal injury lawsuits in federal court that blame Tylenol for liver injuries and deaths.

At the same time, the FDA is drafting long-awaited safety measures that could curtail the use of Tylenol and other acetaminophen products. Much is at stake for McNeil and its parent company. While Johnson & Johnson does not report sales of Tylenol, it should be noted that total sales of all over-the-counter medicines containing acetaminophen were more than $1.75 billion last year. This is according to Information Resources Inc., a retail data service.

Safety experts are most concerned about “extra-strength” versions of Tylenol and other pain relievers with acetaminophen found in drugstores. A typical two-pill dose of Extra Strength Tylenol contains 1,000 milligrams of acetaminophen, compared with 650 milligrams for regular strength. Extra Strength Tylenol is so popular it’s reported that some pharmacies don’t even stock regular strength. Most experts agree that acetaminophen is safe when used as directed, which generally means taking less than 4,000 milligrams, or eight pills of Extra Strength Tylenol, a day.

Each year, some 100 million Americans use acetaminophen, but liver damage occurs in only a fraction of 1 percent of users. While that percentage is small, it still means about one million users will have liver damage. Liver specialists say those cases are preventable. They say that part of the problem is that there are sometimes hundreds of pills in a bottle, making it easy for consumers to take as many as they please. For example, McNeil sells Extra Strength Tylenol in bottles containing up to 325 tablets. Dr. William Lee of the University of Texas Southwestern Medical Center, who has studied acetaminophen toxicity for four decades, had this to say:

The argument goes that if you take acetaminophen correctly you will virtually never get into trouble. But it’s the very fact that it’s easily accessible over-the-counter in bottles of 300 pills or more that puts people in harm’s way.

While Dr. Lee applauded the new warning, he said McNeil’s marketing has contributed to the “freewheeling” way that Americans take the drug. For decades, McNeil has advertised Tylenol as “the safest brand of pain reliever” when used as directed. “That has been their standard ploy in the past, and I would argue that safest it is not,” Dr. Lee says. But Dr. Kuffner as expected takes the company line, saying:

When taken as directed, when people read and follow the label, I believe that Tylenol and the acetaminophen ingredient is one of the safest pain relievers on the market.

Most likely folks won’t stop buying Tylenol, but at least they will have been warned that there is a risk when taking the pain medicine. Consumers will have to weigh the benefits against the risk associated with taking Tylenol.

Source: Associated Press

FDA OVERHAULS PAINKILLER PATCH LABELS AFTER DEATHS OF CHILDREN

The U.S. Food and Drug Administration (FDA) has approved labeling changes for powerful pain-relieving patches made by Janssen Pharmaceuticals, Inc., a division of Johnson & Johnson. This was in response to a dozen instances of children dying after accidental exposure to the patches. The revisions announced last month by the FDA will result in Duragesic patches being stamped with long-lasting ink that more clearly indicates the presence and dosage of narcotic painkiller fentanyl. Makers of generic patches are being asked to take the same action. Previously, ink color varied by strength and “was not always easy to see,” according to the FDA. Douglas Throckmorton, deputy director of FDA’s Center for Drug Evaluation and Research, had this to say about the changes:

We hope that this change will enable patients and caregivers to more easily find patches that need to be removed from patients’ bodies and also to see patches that have fallen off, which could put children, pets or other household contacts at risk for accidental exposure.

In addition, the FDA added fentanyl patches to the list of prescription drugs that should be flushed down the toilet. About 30 products are already on that list, including Purdue Pharma LP’s OxyContin. While there are environmental concerns associated with flushing prescription drugs, the FDA felt the risk is outweighed by the goal of preventing children from inadvertently coming into contact with the medicines. Since 1997, a dozen children have died and another dozen have been hospitalized after accidentally using the patches.

Fentanyl patches are used for constant treatment of moderate to severe pain during the course of several days. They pose a risk to children if they come off and go unnoticed. There also is a risk when normal treatment is completed. That’s because the patches retain 50 percent of their strength after the regular three-day course of treatment. It should be noted that children are more susceptible to strong opioids, because they are smaller and also because they typically haven’t been previously exposed to the products. This makes matters worse. It should also be noted that J&J and Janssen have paid out millions of dollars in litigation for patch-related fatalities in recent years. Most of those lawsuits,

however, dealt with design flaws issues. Mistaken use by children is a totally different issue.

The announcement last month follows an FDA warning in April about risks associated with fentanyl patches and advice to adults to closely monitor the products. The FDA says patches should be kept out of the reach of children, covered with adhesive tape if appropriate, and checked regularly to ensure they remain in place after being applied to a patient. According to Janssen, the company “is strongly committed to the safe use and disposal of Duragesic.” The company says it’s working with the FDA “to improve the visibility of the Duragesic patch.”

Source: Law360.com

**Hackers Find Weaknesses In Car Computer Systems**

A most interesting article appeared in the Claims Journal last month that raises some issues that are somewhat alarming. We all know that cars have become more and more like “PCs on wheels” and that computers control everything relating to starting and stopping driving a car.

It was reported in the article that in recent demonstrations, hackers have shown they can slam a car’s brakes at freeway speeds, jerk the steering wheel and even shut down the engine—all from their laptop computers. It was stated that the hackers are publicizing their work to ensure they remain in place after being applied to a patient. According to Janssen, the company “is strongly committed to the safe use and disposal of Duragesic.” The company says it’s working with the FDA “to improve the visibility of the Duragesic patch.”

Source: Law360.com

**The more technology they add to the vehicle, the more opportunities there are for that to be abused for nefarious purposes. Anything with a computer chip in it is vulnerable, history keeps showing us.**

During the last 25 years, automakers have gradually computerized functions such as accelerating, shifting, steering, and braking. Electronic gas pedal position sensors have replaced the old throttle cables. Electronic parts also reduce weight and help cars use less gasoline. The networks of little computers inside today’s cars are said to be fertile ground for hackers.

Charlie Miller, a St. Louis-based security engineer for Twitter, and fellow hacker Chris Valasek, director of intelligence at a Pittsburgh computer security consulting firm, were said to have maneuvered their way into the computer systems of a 2010 Toyota Prius and a 2010 Ford Escape through a port used by mechanics. Valasek said they “could control steering, braking, acceleration to a certain extent, seat belts, lights, horn, speedometer, gas gauge.” It was stated that these hackers used a federal grant to expose the vulnerability of car computers. But even with their expertise, it seems to have taken them nine months to get in. Valasek and Miller released a report, including instructions on how to break into the cars’ networks, at a hacker convention held in August. It was stated there that the two hackers believed that drawing “attention” to the problems would get automakers to “fix” them. According to the men, automakers haven’t yet added security to the ports.

Ford said in a statement that it takes security seriously, and that Miller and Valasek needed physical access to the cars to hack in. Toyota said it has added security and continually tests it to stay ahead of hackers. The company said its computers are programmed to recognize “rogue commands” and reject them. Two years ago, researchers at the University of Washington and University of California, San Diego did more extensive work, hacking their way into a 2009 midsize car through its cellular, Bluetooth and other wireless connections—even the CD player.

Dr. Stefan Savage, a UCSD computer science professor, said he and other researchers could control nearly everything but the car’s steering. He said they “could have turned the brakes off, could have killed the engine” and “could have engaged the brakes.” Savage didn’t identify which manufacturer made the car they hacked into. But it was reported that the car was from General Motors and the researchers compromised the OnStar safety system, best known for using cellular technology to check on customers and call for help in a crash.

GM issued a statement saying it takes security seriously and is putting strategies in place to reduce risk. It was reported that GM engineers initially dismissed the researchers’ work, but after reading the report, quickly moved to close holes that allowed access to the car’s computers. Dr. Savage says he doesn’t think common criminals will be able to electronically seize control of cars anytime soon. He believes that it would take too much time, expertise, money and hard work currently to hack into the multitude of computer systems.

As reported, it would take “a rarefied group” with “the resources and wherewithal” to accomplish this type hacking. Instead, Savage believes basic theft is a more likely consequence of computerization. Criminals could be able to unlock doors remotely and then start and drive the car by hacking through the diagnostic port. Remote door unlocking could also lead to theft of packages, phones and other items that are stored in a car. I am not sure what will come from this study and report, but it certainly raises some interesting issues.

Sources: Tom Krisher, Law360.com and Claims Journal

**The Telephone Consumer Protection Act Provides A Remedy Against Some Unwanted Calls**

While most all of us know the feeling of having our dinner interrupted by an unwanted call from a telemarketer, few folks know these calls can be illegal. Most folks are not aware that under the Telephone Consumer Protection Act (TCPA), a federal law passed in 1991 in response to consumers’ complaints about unsolicited telemarketing calls, some of these calls are illegal.

Federal Communications Commission (FCC) regulations require anyone making a telephone solicitation call to your home provide his or her name, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which that person or entity can be contacted. The rules also prohibit telephone solicitations to your home before 8
a.m. or after 9 p.m., and require telemarketers to comply with any do-not-call request you make directly to the caller during a solicitation call. Telemarketers covered by the National Do-Not-Call Registry have 31 days from the date you register your telephone number to stop calling you.

A telephone solicitation, as defined by the TCPA, is a telephone call that acts as an advertisement. The term does not include calls placed with your express prior permission, calls by or on behalf of a tax-exempt non-profit organization, or calls from a person or organization with which you have an established business relationship. Many solicitations fall within the “business relationship” exception.

The TCPA may be enforced by an action to recover monetary damages or to receive $500 per violation (whichever is greater). In some cases, a consumer may recover treble damages. Although the TCPA is a federal cause of action, claims may be filed in state court. In appropriate circumstances, a consumer’s claim may be brought as a class action on behalf of a class of similarly situated consumers.

Recently, in the case Gager v. Dell Financial Services a federal appellate court held that prior express consent to be called can be revoked at any time. The Plaintiff, Ms. Gager, went through the credit process to buy computer equipment from Dell. During this process, she provided her cell phone number on the credit application. Ms. Gager defaulted on her payments and Dell used an automated calling system to make repeated calls to her telephone line. She requested that Dell stop calling. Even after the request, Dell continued to call with the automated system—40 times during a three-week period!

The United States Court of Appeals for the Third Circuit concluded that the TCPA affords Ms. Gager the right to revoke prior express consent to be contacted on her cell phone by automated device, and there is no time limitation on that right. While the TCPA does not contain express language giving a consumer the right to revoke consent, the Third Circuit reasoned that Congress passed the TCPA to protect consumers from intrusive and unwanted calls. The lack of express language regarding revocation of consent does not mean that no such right exists.

If you believe you have a claim under the TCPA, or you need additional information on the subject, contact Archie Grubb or Andrew Brasier, lawyers in our Consumer Fraud Section, at 800-898-2034 or by email at Archie.Grubb@beasleyallen.com or Andrew.Brasher@beasleyallen.com.

Source: Bloomberg Law
http://about.bloomberglaw.com/practitioner-contributions/telephone-consumer-protection-act-cases-are-on-the-rise/

**FEDERAL APPEALS COURT APPROVES CLASS ACTION SETTLEMENT IN SUIT AGAINST NVIDIA**

The Ninth Circuit Court of Appeals has affirmed a district judge’s approval of a settlement in a consolidated class action against Nvidia Corp. The company was accused by Plaintiffs of making defective graphic processing units that caused their computers to malfunction. The appeals court found that the settlement was fair and should not be distracted. The court said customers who object can still opt out of the settlement in order to preserve their individual claims. The settlement agreement actually allows objectors to pursue relief through other litigation.

Under the terms of the settlement, Nvidia customers can get replacement computers and motherboards, or be reimbursed for the costs of repairing their computers. Objectors claimed the settlement doesn’t provide any remedy for customers who threw away their defective computers or bought replacements. The three-judge panel ruled that only five objectors, a small number of class members, claimed they threw away their computers. Individual notice was given to about 5 million consumers, according to the court’s order. “In the absence of any evidence that there is a substantial group affected, the settlement remains reasonable.”

The lead Plaintiffs claimed the Nvidia chips at issue overheated, causing the computers they purchased from manufacturers such as Apple Inc., Hewlett-Packard Co. and Dell Inc. to stop working. They also charged that Nvidia’s proposed solution—a software update the company purportedly asked equipment manufacturers to recommend to their customers—was merely a quick fix that in some cases actually exacerbated the problem. After a California federal judge approved the settlement, in September 2010 nine objectors appealed, but the Ninth Circuit ruled against them.

One objector argued that the settlement was unfair because consumers have to prove they bought an affected computer in order to obtain relief. But the appellate court ruled that the requirement is reasonable and would prevent fraud. As for objectors’ assertion that the Plaintiffs and Nvidia colluded in the lead-up to the settlement, the Ninth Circuit noted that both sides battled over class certification, that extensive discovery preceded the settlement and that mediation was required in order to reach it. An objector argued that the class definition was too indefinite and would require mini-trials to determine whether claimants fell within it. But the Ninth Circuit said the class definition was clear and detailed, and that class members only have to send in a simple claim form with documentation proving they are eligible for relief.

Similarly, the Ninth Circuit denied a complaint that the class didn’t meet predominance and adequate representation requirements due to variations in state consumer class action laws and the complaints themselves. The court found that almost all the claims pertained to California and that they didn’t need to be identical. The appellate court also said the class notice was sufficient because the settlement’s website summary linked to the entire court-approved notice, individual notices were sent to millions of consumers and full notice was published in USA Today. The appeals court approved the $13 million fee awarded by the trial judge to Plaintiffs’ lawyers. The court found that the lawyers worked more than 20,000 hours on the case, valued at $10 million. The court said that “although the award is large, it is proportional to the time spent by counsel under the lodestar method that the district court used.”

The lead Plaintiff, Steven Nakash, is represented by Nicole M. Duckett, a lawyer with the Milberg law firm, based in Los Angeles. She did a very good job in the case.

Sources: Kurt Orzec and Law360.com

**FDA BLOCKS IMPORTS FROM ANOTHER RANBAXY DRUG PLANT**

The U.S. Food and Drug Administration (FDA) has banned the importing of drugs from a Ranbaxy Laboratories Inc. plant in India after investigators uncovered rampant violations of U.S.-promulgated manufacturing standards. This is not the first problem of this sort for India’s foremost generic pharmaceutical company. The FDA authorized U.S. customs officials to seize “any and all products” that originated from Ranbaxy’s manufacturing plant in Mohali, India, after determining the plant was not in compliance with a 2012 agreement holding the company to tough
standards for manufacturing practices meant to ensure drug safety.

The agreement originally covered four Ranbaxy facilities. But the FDA has extended it to cover the Mohali plant after inspectors identified “significant violations” of FDA-prescribed protocols there in September and December of 2012. Ranbaxy is now prohibited from shipping FDA-regulated products from the Mohali plant to the U.S. Imports will remain frozen until the drugmaker satisfies agency concerns. Howard Sklamberg, director of compliance in the FDA’s Center for Drug Evaluation and Research, made it very clear that his agency was dead serious, stating:

The FDA is committed to using the full extent of its enforcement authority to ensure that drugs made for the U.S. market meet federally mandated quality standards. We want American consumers to be confident that the drugs they are taking are of the highest quality, and the FDA will continue to work to prevent potentially unsafe products from entering the country.

The FDA will require Ranbaxy to hire an independent expert to inspect the facility and certify that new protocols will ensure “continuous compliance” with the agency’s standards. Ranbaxy says it will review the details and will continue to fully cooperate with the government. Incidentally, this import ban is just the latest run-in with U.S. regulators for Ranbaxy. The company entered into a consent decree with the Mohali plant in September and December of 2012, when inspectors uncovered a number of problems with drug manufacturing practices at its Paonta Sahib, Bata mandi and Dewas plants in India and at a plant in Gloversville, N.Y., owned by its U.S. division. The FDA found that Ranbaxy:

• failed to keep written records showing that its drugs had been manufactured properly;
• did not investigate evidence indicating that drugs did not meet their specifications; and
• lacked procedures to ensure sterile drugs were not vulnerable to microbial contamination.

Ranbaxy also agreed to a landmark settlement in May in which it paid $350 million to resolve a whistleblower’s False Claims Act suit over its sales of allegedly adulterated drugs to several government health care programs. The company also paid an additional $150 million as criminal penalties for related felony charges. The tainted drugs were produced in 2005 and 2006, according to prosecutors involved in the case.

The Paonta Sahib and Dewas facilities had been on an FDA import alert since 2008, when the agency blocked more than 30 drugs manufactured at those two plants from entering the U.S., including generic versions of allergy medication Claritin, cholesterol-lowering drug Zocor and heartburn treatment Zantac. The FDA’s latest inspections of the Mohali plant revealed violations of the 2012 agreement including “failure to adequately investigate manufacturing problems and failure to establish adequate procedures to ensure manufacturing quality.” According to a Form 483, detailing violations from the September inspection, FDA officials found that the company did not properly investigate the source of unexplained discrepancies in drug components “whether or not the batch has been already distributed.”

In their report, the FDA inspectors said that Ranbaxy also lacked written protocols to ensure that its mechanical equipment and airborne exhaust systems were properly maintained. Importantly, the inspectors said Ranbaxy had no procedure designed to ensure that its drugs have the “identity, strength, quality and purity they purport or are represented to possess.” Washing and toilet facilities at the plant also lacked hot and cold water, and employees were sometimes unable to wash their hands after using restrooms, according to the report.

The Mohali facility was also the source of generic versions of cholesterol treatment Lipitor that Ranbaxy was required to recall in November due to concerns that the pills might contain tiny glass fragments. Clearly, this company has health and safety problems of an extremely serious nature. The FDA must do whatever it takes to protect the American people from companies such as this one.

Sources: Andrew Scurria and Law360.com

XVI. RECALLS UPDATE

Another very large number of safety-related recalls are being reported in this issue. We have included some of the more significant recalls that were issued in September. If more information is needed on any of the recalls, 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.

TOYOTA RECALLING 600,000 MINIVANS

Toyota has recalled 615,000 Sienna minivans in the United States for a problem that could allow them to roll away when parked. The minivans involved are from the 2004, 2005 and 2007 through 2009 model years. In these vehicles, a mechanism inside the shift lever could break allowing the minivans to be shifted out of park without the brake pedal being pressed. If that happens Toyota says vehicles could roll away.

Toyota says it’s aware of 21 accidents and two minor injuries resulting from this problem. Owners will be notified by mail when to bring their vehicles to a Toyota dealer for repairs, Toyota said in its announcement. More information about the recall is available at toyota.com/recall.

TOYOTA RECALLS 369,000 VEHICLES

Toyota Motor Corp has recalled around 200,000 hybrid SUVs globally, including the Lexus RX400h, due to a glitch in the hybrid system’s inverter. The Japanese carmaker also said it was separately recalling around 169,000 vehicles including the Lexus GS350 and IS350 due to a problem in the engine assembly process. No accidents or injuries have been reported in either case, according to a Toyota spokeswoman. Due to the hybrid system inverter problem, Toyota is recalling around 141,000 vehicles in North America, 37,000 vehicles in Europe and 15,000 vehicles in Japan.

The recall affects Lexus RX400h SUVs made between March 2005 and June 2011, and Highlander SUVs manufactured between February 2005 and May 2007. Transistors used in the hybrids’ inverters could experience heat damage that could force the vehicles to stop, Toyota said in a statement. Toyota will replace a module inside the inverter, which will take three to four hours, according to the automaker.
Separately, due to a glitch in the engine assembly process, Toyota is recalling the Lexus GS350, made between July 2005 and July 2011, Lexus IS350 manufactured between August 2005 and June 2011, and Lexus IS350C produced between June 2010 and July 2011.

In this case, Toyota is recalling around 106,000 vehicles in North America and 59,000 in Japan. In Japan, Toyota is also recalling certain Crown and Mark X vehicles. Bolts used to secure a device in the engine called the variable-valve timing system, which controls camshafts, could become loose. That increases crash risks as it could lead to engine stoppage, according to Toyota. The automaker will replace the variable-valve timing system, which is said to take more than six hours.

**Toyota Recalling 880,584 RAV4 and Lexus Sedans**

Toyota has also recalled 880,584 RAV4 SUVs and Lexus HS 250h sedans in the U.S. and Canada because a repair announced last year may not have solved a safety problem. RAV4s from the 2006 through 2011 model years and the Lexus HS250h from the 2010 model year are involved in the recall. Toyota says if rear suspension nuts aren’t tightened properly after a wheel alignment, the rear lower suspension arm can rust and separate from the vehicle, increasing the risk of a crash. At least nine crashes and three injuries related to the problem have been reported, according to the National Highway Traffic Safety Administration (NHTSA). At least 131 owners have complained about the issue to NHTSA and Toyota.

Toyota recalled the vehicles last August for the same issue, but the repair procedure in the previous recall was incorrect. Toyota sent out the wrong instructions or technicians at its dealerships may not have followed the correct procedures. Technicians are now receiving additional training. Toyota is recalling 780,584 vehicles in the U.S. and 100,000 in Canada. Owners will be notified during a six-month period that began last month. Toyota technicians will inspect the vehicles and replace suspension arms that are loose or rusted at no charge, according to the automaker.

**Nissan Recalls 908,900 Vehicles For Sensor Problem**

Nissan Motor Co. has recalled 908,900 vehicles around the world for defective accelerator sensors that could cause the engine to stall. The recall affects the Serena minivan, Infiniti M luxury model, X-trail sport utility vehicle and other models, the automaker said. The company says no accidents have been reported related to the problem. Most of the vehicles being recalled are in Japan. Others are in North America, Europe and Oceania, according to Yokohama-based Nissan, which says Sensors, manufactured in Japan, can malfunction, causing the vehicle to slow down and at times stop.

**Ford Recalls 370,000 Cars**

Ford has recalled 370,000 cars due to potential corrosion to their steering shaft that may result in loss of steering. According to Ford, no incidents or injuries have been reported. The cars include 2005 to 2011 Ford Crown Victoria, Mercury Grand Marquis and Lincoln Town Cars. About 355,000 are in the U.S. and 15,000 in Canada. Dealers will inspect the cars and may replace the lower intermediate steering shaft and if necessary resecure a lower steering column bearing and replace the upper intermediate steering shaft.

A number of states are included in the recall. They include: Connecticut, Delaware, District of Columbia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, Wisconsin and West Virginia. Owners in other states can also ask for inspections and repairs.

**Suzuki Recalls 193,936 Vehicles For Airbag Defect**

Suzuki has recalled 193,936 cars and SUVs because of a defective air bag sensor in the front passenger seat. Grand Vitara SUVs from the 2006 through 2011 model years and SX4 small cars from the 2007 through 2011 model years are involved. Sensor mats measure passengers’ weight and determine if the air bag should deploy. Determining who sits in the seat is important because the force of an air bag can injure children or small adults.

According to Suzuki, the mats can stop working after repeated flexing. If that happens, the bag will deploy even if a small person is in the seat. The Japanese automaker says there are no reports of accidents or injuries due to the problem. Suzuki will notify owners this month. Dealers will replace the mats for free.

**Shimano American Recalls Disc Brake Calipers Due To Collision Hazard**

Shimano American Corporation, of Irvine, Calif., has recalled its disc brake calipers. The calipers on the disc brakes can fail, posing a collision hazard. This recall includes all Shimano BR-CX75 aftermarket disc brake calipers and BR-R515 disc brake calipers installed on road and cyclo-
cross bicycles sold by other manufacturers including BMC, Giant, Ibis, Raleigh, Shinola, Specialized and Volagi. “Shimano,” “China” and the model number are embossed on the outside of the brake caliper. Both models have either black or silver finishes.

The brakes were sold at bicycle specialty stores and dealers nationwide from February 2012 through May 2013 for about $75 for the BR-CX75 model disc brake calipers and the BR-RS515 model disc brake calipers price was included in the cost of the bicycles where installed. Consumers should immediately stop using the bicycles with recalled Shimano brakes and contact a Shimano authorized dealer to receive a free installation and replacement of the calipers. Contact Shimano American at 800-353-4719 from 8 a.m. to 5 p.m. PT Monday through Friday or online at www.shimano.com and click on “2013: Updated Voluntary Recall by Shimano” link on the bottom right corner of the page for more information. Photos available at http://www.cpsc.gov/en/Recalls/2013/Shimano-American-Recalls-Disc-Brake-Calipers/.

**Cambridge Metal & Plastics Recalls Motorcycle Training Wheels**

About 4,000 Motorcycle Training Wheels have been recalled by LeMans Corporation Inc., of Janesville, Wis. Bolts and nuts securing the wheel can loosen and cause the rider to lose control, posing a crash hazard. The recalled products are Moose Racing brand training wheels for youth motorcycles and the replacement wheel kit. The training wheels have a black, one-piece, full-length metal axle with a plate that attaches to the underside of the motorcycle frame beneath the engine and two inflatable rubber wheels. The Moose Racing logo appears on the left and right sides of the axle. The replacement wheel kit is a set of two tires mounted on the wheel assembly. Replacement wheel kits and training wheels that fit the following youth motorcycle models are being recalled: Honda XR/CRF 50, Kawasaki KDX/Suzuki JR 50, KTM 50, Suzuki DRZ 70, Yamaha PW50 and Yamaha TTR 50.

The training wheels were sold at motorcycle dealerships nationwide and at Moosering.com, Parts-unlimited.com and other online retailers from July 2012 through June 2013 for about $130. Consumers should immediately stop using the recalled training wheels, remove them from the motorcycle and contact Cambridge Metal & Plastics to have them repaired free of charge. Consumers can call Cambridge Metal & Plastics at 800-457-0580 from 8 a.m. to 5 p.m. CT Monday through Friday or online at www.cmp-www.com and click on Training Wheel Recall for more information. Photos available at http://www.cpsc.gov/en/Recalls/2013/Cambridge-Metal-and-Plastics-Recalls-Motorcycle-Training-Wheels/

**L.L.Bean Recalls Boat Carts For Canoes And Kayaks**

About 2,200 L.L.Bean Deluxe Packaway Boat Carts have been recalled. The cart’s plastic wheel rims can burst when the rubber tires are over-inflated, posing an injury hazard to consumers. This recall involves L.L.Bean’s Deluxe Packaway Boat Carts used to haul canoes and kayaks into or out of the water by hand. The carts have a white and blue aluminum frame with rubber tires and have two black nylon straps marked L.L.Bean. The carts weigh about seven pounds. L.L.Bean says it has received two reports of the plastic wheel rims on the cart bursting, resulting in bruises to a consumer who was struck by broken, flying pieces. No injuries were reported in the second incident, according to the company.

The boat carts were sold exclusively at L.L.Bean stores nationwide, L.L.Bean’s catalog and online at www.llbean.com from March 2012 through June 2013 for about $100. Consumers should call L.L.Bean or go to the company’s website for new instructions and psi stickers to put on the wheels of the cart. Do not add air to the tires until reviewing the new instructions on the maximum inflation level or psi. Contact L.L.Bean Inc., at 800-555-9717 anytime, or online at www.llbean.com and click on Product Recall and Safety Info at the bottom of the home page for more information. Photos available at http://www.cpsc.gov/en/Recalls/2013/LLBean-Recalls-Boat-Carts-for-Canoes-and-Kayaks/

**Big Game International Recalls Shoreline Marine(TM) Disposable Fuel Filter**

Big Game International has recalled disposal fuel filters. The recall was said to be a precautionary safety measure. There is potential for fuel to leak out of the filter once installed and in use with a fuel line associated with an inboard or outboard marine engine. This product is not intended for lawn mowers and other non-marine engines. Fuel leakage poses a potential fire hazard risk. Customers are asked to discontinue using the and return them to where purchased for a refund.

**Visonic Recalls Amber Personal Emergency Response System Kits**

About 24,000 Visonic Amber Classic and Amber SelectX Personal Emergency Response System (PERS) Kits have been recalled by Visonic Ltd., of Westford, Mass. A single Amber Base station set to Common Area Mode will not detect a low battery or dead battery warning signal from the remote pendant that notifies the end user or system administrator to replace the pendant battery.

The recalled Visonic Amber Personal Emergency Response System (PERS) kit enables a user to push a button on a pendant to signal a request for assistance. An Amber kit consists of one wireless pendant worn by the user, one Amber brand base station, generally connected to a phone line, a power supply and backup battery. Base stations are white, rectangular and measure about 9 inches wide by 7 inches deep by 2 inches high with emergency, call and check buttons. The emergency button is red on the Classic model and grey on the SelectX model. Recalled Classic models have catalog number 0-7425 and serial numbers 0408044281 through 4410052723. The first four digits of the serial number are manufacture dates from January 2008 through August 2010 in YYYY format.

Recalled SelectX models have catalog number 0-100729 and serial numbers 2308000299 through 3013079617 The first four digits represent manufacture...
dates June 2008 through July 2013 in WWYY format. The first two digits are week of manufacturer and the second two numbers are the year of manufacture. For example, serial number 2308 600299 indicates a manufacturing date of the 23rd week of 2008 or roughly June 2008. Each unit has an external label on the back of the base station, with the product name and serial number. Only Amber Classic or SelectX base stations that are placed in Common Area Mode by a professionally trained PERS system installer and are used without additional base stations are included in the recall. The company received one report of a pendant that failed to operate due to a low battery undetected by the base station in Common Area Mode. No injuries have been reported.

The kits were sold at Visonic distributors and professional alarm installation firms nationwide from January 2008 through August 2013 for between $220 and $240 for the kits. Consumers should immediately contact their system installer or a Visonic alarm installation professional to determine if their Amber base station is set to Common Area Mode, and if so, to either reset their unit to another mode or make other system changes, such as adding an additional base station. Only a professionally trained PERS system installer can identify and modify the particular mode configuration. Owners are also reminded to manually test their Amber PERS pendant regularly for low battery status. Contact Visonic at 800-238-4244 from 8:30 a.m. to 6 p.m. ET Monday through Friday or online at www.visonic.com and click on the Solutions & Products tab for more information about the recall. Photos available at http://www.cpsc.gov/en/Recalls/2013/Visonic-Recalls-Amber-Base-Station-Kits/

**Sunset Park & RV Recalls 2014 EZ Traveler**

Sunset Park & RV, Inc. has notified the owners of the particular model, and Dometic staff will replace the affected motor with one of a different design. This recall began in early September. For more information on this recall, owners may contact Sunset Park & RV, Inc. at 1-574-238-9081 or Dometic at 1-888-447-0003. Owners may also contact the National Highway Traffic Safety Administration (NHTSA) Hotline at 1-888-327-4236 (TTY 1-800-424-9153), or visit online at www.safercar.gov.

**Crosman Recalls Air Pistols Due To Explosion Hazard**

About 16,000 Air pistols have been recalled by Crosman Corp., of Bloomfield, N.Y. The air pistols can explode at high temperatures, propelling the pistol’s broken plastic pieces into the air, and posing a risk of serious eye and other injuries to users. This recall involves Crosman semi-automatic style air pistols with model numbers C21, C31 and 9-C31BRM with serial numbers beginning with 12J, 12K, 12L, 12M, 13A, 13B or 13C. The model and serial numbers are located on the side of the air pistol. The air pistols use a CO2 cartridge to propel plastic BBs and are used for recreational shooting. The air pistols are black, measure 8 ½ inches long and weigh 1 ½ lbs. Crosman’s name and partial address are printed in the “Warning” information on the left side of each pistol.

The air pistols were sold at sporting goods stores, mass merchandisers and other stores nationwide from November 2012 through June 2013 for between $45 and $60. Consumers should immediately stop using the recalled air pistols, remove the CO2 cartridge and contact Crosman for instructions to return the air pistols to Crosman for a free replacement air gun or a full refund. Call Crosman Corp. toll-free at 866-583-7340 anytime, or online at www.crosman.com and click on Important Safety Notice at the top of the web page. Photos available at http://www.cpsc.gov/en/Recalls/2013/Crosman-Recalls-Air-Pistols/

**Target Recalls Threshold Floor Lamps Due To Fire And Shock Hazard**

Target Corp. of Minneapolis, Minn., has recalled its white 2-Bulb Floor Lamps. The lamp can short when a standard one-way bulb is fully tightened in the lamp’s three-way socket, posing a fire and shock hazard to consumers. This recall includes white plastic, turned-spindle design floor lamps with white fabric drum lamp shades and two 3-way pull-chain switches. Lamp is illuminated by two 3-way 100-watt or 29-watt CFL bulbs and stands approximately 60 inches tall. The model number PL1071 is located on a sticker on the bottom of the lamp. Target has received six reports of short circuiting which have resulted in fires, minor property damage and two consumers being shocked.

The lamps were sold exclusively at Target stores nationwide and Target.com from September 2012 through May 2013 for about $70. Consumers should immediately stop using the recalled lamp, unplug it and return it to any Target store for a full refund. Contact Target at 800-440-0680 from 7 a.m. to 6 p.m. CT Monday through Friday or online at www.target.com and click on Product Recalls under the Help tab, then click on Home & Kitchen for more information. Photos are available at http://www.cpsc.gov/en/Recalls/2013/Target-Recalls-Threshold-Floor-Lamps/

**Ceiling-Mounted Light Fixtures Recalled By Dolan Designs Due To Fire And Shock Hazards**

About 8,000 Ceiling-Mounted Light Fixtures have been recalled by Dolan Designs Inc., of Portland, Ore. The fixture’s socket wire insulation can degrade and lead to charged wires becoming exposed, causing electricity to pass to the metal canopy of the fixture. This poses a fire and electric shock hazard to consumers. This
The lights were sold at Builders Lighting, Globe Lighting, Seattle Lighting and other lighting showrooms nationwide and online at destinationlighting.com between September 2008 and October 2009 for about $47. Consumers should immediately stop using the recalled light fixtures and return them to the place of purchase to obtain a free replacement fixture, or contact Dolan Designs to schedule a free in-home repair toll-free at 888-853-2802 from 8 a.m. to 8 p.m. ET Monday through Friday, and on Saturday from 9 a.m. to 3 p.m. ET, or online at www.greusa.com and click on Recall for more information. Photos are available at http://www.cpsc.gov/en/Recalls/2013/Frigidaire-Recalls-Professional-Blenders/.

**FRIGIDAIRE RECALLS PROFESSIONAL BLENDE DS DUE TO LACERATION HAZARD**

About 14,000 Frigidaire Professional blenders have been recalled by Electrolux Home Care Products Inc., of Charlotte, N.C. The blender’s blade shaft assembly can break during use, posing a laceration hazard to consumers. This recall involves Frigidaire Professional® brand blender model FPJB56B7MS with a serial number between FFP 49 1203 0001 and FFP 49 1237 00974. The model and serial numbers are located on a serial plate on the underside of the blender’s motor base. Frigidaire Professional is printed on the front base of the blenders. The 5-speed blender is brushed aluminum and has black buttons on the front. The blender container is a 56-oz. clear glass jar with a black lid and a black base. Frigidaire has received eight reports of the blender’s blade shaft assembly breaking. No injuries have been reported.

The blenders were sold at Best Buy, Target and other stores nationwide and online at amazon.com, bedbath.com and other online retailers from March 2012 through July 2013 for about $130. Consumers should stop using the recalled blenders immediately and contact Frigidaire for instructions on returning the blenders for a free replacement blender.

**GREE RECALLS 12 BRANDS OF DEHUMIDIFIERS DUE TO SERIOUS FIRE AND BURN HAZARDS**

Gree Electric Appliances of China has recalled its Dehumidifiers, which can overheat, smoke and catch fire, posing fire and burn hazards to consumers. This recall involves 20, 25, 30, 40, 45, 50, 65 and 70-pint dehumidifiers with brand names Danby, De’Longhi, Fedders, Fellini, Frigidaire, Gree, Kenmore, Norpole, Premiere, Seabreeze, SoleusAir and SuperClima. The brand name and the pint capacity are printed on the front of the dehumidifier. The model number and date code are printed on a sticker on the back, front or side of the unit. The dehumidifiers are white, beige, gray or black plastic and measure between 19 and 24 inches tall, 13 and 15 inches wide, and 9 and 11 inches deep. The firms have received reports of 165 incidents, including 46 fires and $2.15 million in property damage. But no injuries have been reported, according to the company.

The dehumidifiers were sold at AAFES, HH Gregg, Home Depot, Kmart, Lowe’s, Menards, Mills Fleet Farm, Sam’s Club, Sears and other stores nationwide and in Canada, and online at Amazon.com and eBay.com, from January 2005 through August 2013 for between $110 and $400. Consumers should immediately turn off and unplug the dehumidifiers and contact Gree to receive a full refund toll-free at 866-853-2802 from 8 a.m. to 8 p.m. ET Monday through Friday, and on Saturday from 9 a.m. to 3 p.m. ET, or online at www.greusa.com and click on Recall for more information. Photos are available at http://www.cpsc.gov/en/Recalls/2013/Gree-Recalls-12-Brands-of-Dehumidifiers/.

**HACHETTE BOOK GROUP RECALLS CHILDREN’S BOOKS DUE TO CHOKING AND LACERATION HAZARDS**

About 70,000 Children’s books titled “Count my Kisses, 1, 2, 3” and “Red, Green, Blue, I Love You” have been recalled by Hachette Book Group, Inc., New York, N.Y. A metal rod holding small beads on the cover of books can detach and release small parts that present a choking hazard. A detached metal bar can expose a sharp edge posing a laceration hazard. The board-shaped children’s books have cut-out covers that serve as a handle and include an embedded bar in the handle with beads for children to play with. “Ages 3+” is printed on the back cover and the ISBN number is also on the back cover near the bar code. Two titles are included: Count my Kisses, 1, 2, 3, ISBN: 978-0-316-13354-8, has five colored cylindrical wooden beads with printed hearts on the rod; and, Red, Green, Blue, I Love You, ISBN: 978-0-316-13353-1, has five colored circular wooden beads on the metal rod.

The books were sold at Barnes & Noble, online at Amazon.com and by other booksellers and retailers from June 2013 to August 2013 for about $8. Consumers should immediately take the recalled books away from children and return them to the place of purchase for a full refund. Contact Hachette Book Group at 888-965-5802 from 8 a.m. to 5 p.m. ET Monday through Friday, or online at www.hachettebookrecall.com or www.hachettebookgroup.com and click on the link in the Recall/Important Safety Notice box on the home page for more information. Photos available at http://www.cpsc.gov/en/Recalls/2013/
Hachette-Book-Group-Recalls-Childrens-Books/

THE CHILDREN’S PLACE RECALLS FOOTED PAJAMAS DUE TO VIOLATION OF FEDERAL FLAMMABILITY STANDARD

About 38,000 Children’s one-piece footed pajamas have been recalled by The Children’s Place, of Secaucus, N.J. The footed pajamas fail to meet the federal flammability standard for children’s sleepwear, posing a burn hazard to children. The garments are being recalled because they do not meet the tight-fitting sizing requirements. This recall involves three styles of The Children’s Place bunny-themed one-piece cotton footed pajamas. One style is pink with dark pink bunnies and a ruffle at the neck. It was sold in size 9-12 months. This style has a sewn-in label at the side seam with both 2158 and one or more of the following numbers: 042521, 042523, 042571, 042572, 042774 or 042816. The other two styles are both blue/green with bunnies on the feet and bunny print fabric. They were sold in sizes 9-12 months, 12-18 months, 18-24 months, 2T and 3T. One style has bunnies with eyeglasses. The other has bunnies and yellow chicks. Both styles have a sewn-in label at the side seam with both 2598 and one or more of the following numbers: 030647, 030779, 038826, 670409, 670602, 670603 or 945210. “Made with love by PLACE” with a heart outline is printed at the neck of the pajamas.

The Pj’s were sold exclusively at The Children’s Place stores nationwide and online at www.childrensplace.com from January 2012 through May 2013 for about $15. Consumers should immediately take the recalled pajamas away from children and return them to any The Children’s Place store for a full refund. Contact The Children’s Place toll-free at 877-752-2387 between 9 a.m. and 5 p.m. ET Monday through Friday, or online at www.childrensplace.com and click on Customer Service for more information. Photos available at http://www.cpsc.gov/en/Recalls/2013/The-Childrens-Place-Recalls-Footed-Pajamas/.

W.S. BADGER COMPANY VOLUNTARILY RECALLS SELECT LOTS OF DAILY SPF 30 KIDS & BABY SUNSCREEN LOTIONS DUE TO MICROBIAL CONTAMINATION

W.S. Badger Co. Inc. has recalled all lots of its 4-ounce SPF 30 Baby Sunscreen Lotion and one lot of its 4-ounce SPF 30 Kids Sunscreen Lotion (lot # 3164A) due to microbial contamination. The products were tested and found to be contaminated with Pseudomonas aeruginosa, Candida parapsilosis and Acremonium fungi. No adverse reactions have been reported in connection with these products, according to the company.

Both sunscreens are sold in the USA & Canada online and at major retailers as well as independent food co-ops and pharmacies. This product can be identified by matching the UPC with the Lot code, which can be found on the top front of the tube crimp.

Consumers who have purchased the SPF 30 Baby Sunscreen Lotion should not use these products and may return product to the original point of purchase for a full refund, or contact Badger directly at 800-603-6100 or email recalls@badgerbalm.com between the hours of 8:30-4:30 ET, Monday-Friday. Adverse events that may be related to the use of this product may be reported to the FDA’s MedWatch Adverse Event Reporting Program either online, by regular mail or by fax. Online: www.fda.gov/medwatch/report.htm; and regular mail: MedWatch Adverse Event Reporting Program either online, by regular mail or by fax. Online: www.fda.gov/medwatch/report.htm; and regular mail: use postage-paid, pre-addresses Form FDA 3500 available at: www.fda.gov/MedWatch/getforms.htm. Mail to address on the pre-addresses form or Fax: 1-800-FDA-0178.

Once again there have been a large number of recalls since the September issue. While we weren’t able to include all of them in this issue, we included 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.

XVIII.

EMPLOYEE SPOTLIGHTS

DIANNE BROWN

Dianne Brown, who has been with the firm for 10 years, is a Legal Nurse Consultant/Medical Advisor. As a consultant, Dianne is responsible for researching drug side effects; collecting, organizing, and reviewing medical records and other relevant health care or legal documents; summarizing and analyzing the information in medical records, and preparing reports of reviewed material.

Dianne is a graduate of Troy University with a degree in Nursing. Prior to her employment with the firm, her clinical practice was as a perioperative nurse. Dianne completed the Legal Nurse Consultant Program with Kaplan College and currently works as a Legal Nurse Consultant. She is a member of the Association of Operating Room Nurses (CNOR), and a member of American Association of Legal Nurse Consultants.

Dianne has been married for 32 years to Randall Brown, who is employed by the Montgomery County Sheriff’s Department. Randall holds the rank of Lieutenant. Their oldest son, Jeff Brown, a State Trooper in Baldwin County, is planning to marry Lyndsey Cowling of Robertsdale on May 17, 2014. Another daughter, Amanda Chapman, is married to Jonas Chapman. She is currently a busy stay-at-home mom taking care of the Brown’s only grandaughter, Rileigh-Ann Faith. Their youngest son, Nathan Brown, recently graduated from the Police Academy and he is currently employed by the city of Opelika Police Department.

In her spare time, Dianne enjoys playing music (piano, organ, keyboard, and accordion), singing and, as she puts it “using her talents for the Glory of God.” The Browns are members at Taylor Road Baptist Church where Dianne is an active member of the choir and accompaniment team. Dianne also enjoys spending time with immediate and extended family as well as friends old and new. She enjoys the beach and time away for rest and relaxation. Dianne especially enjoys playing with her grandaughter and watching her as she grows and develops into her “little individual and unique person.” Dianne says she also enjoys every minute God allows her to


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share with her aging parents and mother-in-law. 

Dianne is a very good employee whose background and experience in the nursing field is very important and needed in the firm. We are blessed to have Dianne with us.

**BEVERLY LARKIN**

Beverly Larkin, who came to work for the firm in August of 2003, currently works as an Accounting Administrative Assistant. Her job duties include daily trust reports, scanning checks, mail, accounting mail box, accounting mail distribution, interoffice routing and performing other various tasks. Beverly also worked in our Consumer Fraud Section and Mass Torts Sections before transferring to her current job.

Beverly, a 1981 graduate of Wetumpka High School, graduated from Coastal Training Institute in Montgomery. Before coming to Beasley Allen, Beverly was the secretary of Rehoboth Baptist Church for more than 10 years. She has been married to John Larkin for 29 years, and they have one daughter, Saundra Larkin, who recently graduated from Troy University Montgomery School of Nursing. Saundra is now working as a Registered Nurse at Baptist South. They also have 24-year-old twin boys, Lester and Sylvester Larkin. Beverly is the proud grandmother of six grandchildren, four girls and two boys. They are Kaniya, 6; Tameyah, 4; Kayden, 3; Leya, 2; Uriah, 2; and LJ, 3—quite a group!

Beverly enjoys reading, spending time with her family, exploring new things and encouraging people. The Larkins attend church at Northview Christian Church, Safe Harbor in Montgomery. Beverly is a very good employee who takes her work seriously. We are blessed to have her with us.

**LAURA REAVES**

Laura Reaves has been with the firm for more than 12 years. She is a Legal Assistant who works with Chris Glover in our Personal Injury/Products Liability Section. Laura has been working on product liability cases for approximately nine years. She assists Chris with case management and file maintenance. She also helps with the drafting and filing of lawsuits and legal documents. Laura assists in trial preparation. She also acts as a liaison between Chris and clients and works closely with consultants and case experts. Receiving, digesting and indexing information obtained from defendants in cases is also an important part of her work.

Laura had previously worked in our Consumer Fraud and Nursing Home Sections. She received her Bachelor of Arts degree in International Business from Huntingdon College in Montgomery. Laura also received an Associate of Science degree in Legal Studies from Faulkner University in Montgomery and she is certified through the National Association of Legal Assistants, Inc.

Laura has been married to Jamie Reaves for 11 years. Jamie is a Headend Engineering Supervisor at Charter Communications in Montgomery. They have one son, Hunter, who is 7 years old and in the second grade at Pine Level Elementary School. I hear that Hunter is a very good athlete and a talented baseball player. The Reaves live in Deatsville. They attend and are very active in Centerpoint Fellowship Church in Prattville. Laura enjoys spending time with family and friends, watching Alabama football, spending time at the beach, spending time on the river boating with friends and family, running, and keeping up with her 7-year-old.

Laura, a hard-working employee, is totally dedicated to her work. She says her desire is to get the best results possible for all of the clients she works with. We are also blessed to have Laura with the firm.
Kids Coalition groups in your area, and allow you to search for a seat inspection site near you.

National Child Passenger Safety Week is sponsored annually by the National Highway Traffic Safety Administration (NHTSA). You can find more information about child safety seats and vehicle safety at the NHTSA website. The Centers for Disease Control and Prevention (CDC) also has a helpful website with information about child safety seats. If you would like more information on this subject, contact Helen Taylor, Public Relations Coordinator for our firm, at 800-898-2034 or by email at Helen.Taylor@beasleyallen.com.

**GRANT ENFIELD GETS BIG WIN IN IOWA**

Grant Enfinger gave Fox Sports' viewers exactly what they were looking for in his tremendous win last month at the Prairie Meadows 150 at the Iowa Speedway. It was an exciting nail-biting finish. Grant led all but one lap from laps 90 through 114, but fell back in the pack. Then at lap 144 of the 150-lap race, Grant passed then-leader Kyle Weatherman and hung onto the front spot all the way to the checkered flag.

Grant hopes the exciting finish, with his battle to edge out Weatherman and keep the other drivers at bay for the final laps, will result in more sponsor dollars and more opportunities to race. After just seven races this season, Grant is tied for the second-most wins on the ARCA Racing Series circuit with two wins. The leader, Frank Kimmel, has three wins, but he has run all 18 of the ARCA races this season. Grant hopes more time on the track will bring about more marks in his win column, and a shot at the top spot for the season. While he seems to have little trouble excelling when he can get on the oval, Grant still needs to find financial support to participate in the sport he truly loves. In an interview with al.com sports writer Mark Inabinett, Grant said:

> *I feel like performance-wise, we've obviously been in contention to win. But the business side of the sport is obviously just as tough as ever, and it is for me. It's tough for everybody financially to make all this stuff feasible.*

Grant managed to compete in the first five races of the season, including a first-place victory at home, in Mobile, Ala., when he won the ARCA-Mobile 200 at Mobile International Speedway on March 9. After that, though, he has only been able to race in two ARCA events of 13 scheduled. His last race before Iowa was June 14. The Iowa win was televised on Fox Sports 2 live nationally and replayed on Fox Sports 1 on Sunday morning. In the final two races of the ARCA season, both nationally televised on Fox Sports 1, Grant placed fourth at Kentucky Speedway on Sept. 21 and he plans to race at Kansas Speedway Oct. 4.

Grant hopes the high visibility granted by television, especially if he can take Team BCR's No. 90 Motor Honey-Casite-Advance Ford into the win zone one more time, will attract the attention of more big sponsors, allowing him the opportunity to further his racing career. I predict bigger things and many more wins for Grant in the coming months and year. He is truly a rising star.

**XX. FAVORITE BIBLE VERSES**

Sara Beasley, my wife of many years, furnished several verses for this issue. I know firsthand that Sara loves the Lord and serves Him faithfully on a daily basis. She says these three verses are amongst her favorites.

> *May the God of hope fill you with all joy and peace as you trust in Him, so that you may overflow with hope by the power of the Holy Spirit.*

Romans 15:13

> *For apart from me (Jesus) you can do nothing.*

John 15:5

> *I will give you another counselor to be with you forever...you know Him, for He lives with you and will be in you.*

John 14:16-17

Mike Northcutt, the Pastor at Eastmont Baptist in Montgomery, sent in a verse for this issue. Mike said that "when troubles come, we can either resign, whine or shine," and that "God wants us to shine."

> *But despite all this, overwhelming victory is ours through Christ who loved us enough to die for us.*

Romans 8:37

Dianne Brown, who was spotlighted in the Firm Activities Section, submitted her encouragement verse for this issue.

> *Be anxious for nothing, but in everything by prayer and supplication, with thanksgiving, let your requests be made known to God; and the peace of God, which surpasses all understanding, will guard your hearts and minds thought Christ Jesus.*

Philippians 4: 6-7

Gail Royal, the owner and operator of Gail's Down the Street Cafe' and Catering, sent in a verse for this issue. She says running a business can be very challenging at times, but that God is always faithful. Gail says she knows she has God's strength to depend on and that the verse she sent in, Philippians 4:13, has been of great comfort to Gail.

> *I can do all things through Christ who strengthens me.*

Philippians 4:13

**XXI. CLOSING OBSERVATIONS**

**ALABAMA'S CAPITAL CITY IS ON THE MOVE**

It's rather hard to believe, but Montgomery has now been my home for more than 40 years. The time has flown by and a lot has happened involving the Beasley family. While I have seen many changes since moving to Montgomery in 1971, I believe the most exciting has been the recent renaissance of this great city. Without any doubt, in recent years Montgomery has made tremendous progress. It's truly been an exciting time for the Capital City.

The year 2012 continued the pattern of economic growth and development. In terms of job creation, the City ranked number three in the State. Montgomery created 2,234 jobs in new and expanding businesses, with Hyundai Motor Manufacturing of Alabama (HMMA) leading the
way with 900 new jobs. The total investment in Montgomery in 2012 exceeded $181 million. Montgomery is also the home of Maxwell/Gunter Air Force Base, which, along with HMMA is one of the largest employers in the state. These are strong and impressive numbers by any standard.

Economic investment also has included investment in our infrastructure, including the renovation of Crampton Bowl. A badly needed sports complex was built next to the existing football field, which was also updated. No doubt as a result of that investment, Mayor Todd Strange was able to announce recently that Montgomery will host the 2014 Camelia Bowl, an all-new football matchup between the Mid Atlantic Conference and the Sunbelt Conference. The game will be nationally televised by ESPN.

There is growth everywhere you look. Montgomery continues to focus on the revitalization of downtown, building on the progress made during the past several years. Increasing development in the mid-City also has been a priority. Progress is visible on the so-called “outer loop” project, a regeneration of the I-65 Corridor. A brand new public high school opened this fall in East Montgomery. A recently released U.S. News & World Report poll revealed that the number one magnet school in the nation, LAMP, is located right here in Montgomery. Our retail sales are growing by roughly 3 percent, and average housing prices have increased by about 13 percent. Montgomery’s per capita personal income is 10 percent above the state average, and is the third highest in the state. These are all good indicators for the future.

It’s true we have been operating both nationally and in Alabama during the past several years with limited revenues. The severe lack of funds needed for legitimate government resources has become a reality. Many are asking for a redefinition of the appropriate role of the government in our economic system. The outcome of this debate could have a significant impact on the future economic landscape in Alabama, including that of the Capital City. We should recognize that government spending in the past 40 years was a major contributor to the prosperity of the middle class in this country. I have never believed that government at any level should refuse to adequately fund essential programs. But I also recognize that it’s very easy to sell a political program of “no new taxes” to the public. But that’s another story for another day.

I remain very optimistic about Montgomery’s future. We have an outstanding mayor and a progressive city council, and that combination is extremely important. Mayor Strange frequently says, “If you haven’t been to Montgomery in the last five years, then you really haven’t been to Montgomery.” I must say that the new Montgomery is quite impressive. The Montgomery Area Chamber of Commerce has done a tremendous job of selling our city and the entire River Region. Montgomery County government, under the leadership of County Commission Chairman Elton Dean, has been a partner with the City in a number of programs. It has been a mutually beneficial partnership for the city and county.

If any of our readers who live anywhere in Alabama outside the River Region, or live in other states, and are coming to or through Alabama for any reason, I hope they will stop off in Montgomery to experience some of the great Southern hospitality our area is known for. I can assure all that it will be a most enjoyable experience.

**Beasley Allen Legal Conference & Expo Set For November 21-22**

The seventh annual Beasley Allen Legal Conference and Expo is scheduled for November 21-22, 2013. The conference has grown steadily each year, from about 400 lawyers attending in 2007, to more than 1,400 last year. This event is open to all Alabama lawyers in private practice. There is no charge to the attendees at the event. Registration and all events are free to our guests.

In 2013, for the first time, we will offer a full 12 hours free CLE credit, including one hour of Ethics. By attending the Beasley Allen Legal Conference, lawyers from throughout the state can enhance their knowledge of current legal issues, while earning free CLE credits. Practice areas addressed at the conference will include Personal Injury and Product Liability, Mass Torts and Fraud.

As the largest event of its kind for Alabama lawyers, the Conference is also a great time to meet lawyers who are knowledgeable in many areas of the law. This is a valuable chance to build relationships that will assist lawyers in developing their law practice.

We have been fortunate to have individuals from outside Beasley Allen speak at our conferences. This year will be no exception. Speakers for this year’s event include:

- Alabama Governor Robert Bentley;
- Alabama Chief Justice Roy Moore;
- Associate Supreme Court Justice Lyn Stuart;
- Associate Supreme Court Justice Michael Bolin;
- Circuit Judge Charles Price;
- Dr. David Bronner, Chief Executive Officer, RSA;
- Greg Cusimano, a lawyer with the Gasden firm Cusimano Roberts Knowles & Mills;
- Mike Hahn, Senior Director Product Management—Sanction; LexisNexis;
- Jeff Rickard, the current President of Alabama Association for Justice; and
- Jeremy McIntire, Assistant General Counsel, Alabama State Bar.

An important part of the conference is the Legal Services Expo, where vendors provide demonstrations of products and answer questions about how attorneys can best enhance their practice. Platinum sponsors for the conference this year are LexisNexis, Jackson Thornton Valuation & Litigation Consulting Group, and Baker Reporting and Video Services, Inc. We appreciate their support, which helps us grow and improve this event each year.

Legal and community groups including the Alabama State Bar Volunteer Lawyer Program, Alabama State Bar Lawyer Referral Program, Alabama Law Foundation, Alabama Civil Justice Foundation, Alabama Association for Justice, and Jones School of Law also have representatives present.

We are extremely pleased and honored to be able to offer this conference as a service for lawyers throughout the state of Alabama. This is a valuable opportunity for lawyers to get continuing education hours, as well as providing them the chance for networking with other lawyers.

**Some Monthly Reminders**

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

2 Chron 7:14
All that is necessary for the triumph of evil is that good men do nothing.

Edmund Burke

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

Isaiah 10:1-2

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

Louis Brandeis, 1937
U.S. Supreme Court Justice

XXII.
PARTING WORDS

During the past several months, the American people have been wondering what our nation’s ultimate role will be in the civil war being waged in Syria. Things in that country escalated recently, and in a very bad way, when chemical weapons were used by the government against the people in Syria. It appears that most Americans don’t want to see our military involved in another ground war in the Middle East. But the use of chemical weapons by a deranged leader in Syria can’t go unchallenged. In my opinion, to do nothing would be a tragic mistake. Doing the right thing, however, must only come after careful planning and negotiations have taken place. We certainly don’t need a politically motivated decision. Neither do we need opposition to any plan of action by President Obama that is partisan in nature. We badly need unity in dealing with this critically important and extremely sensitive issue.

The world is filled with problems—wars and economic uncertainty, droughts, floods, fires, disease and poverty, broken homes and terrorism—and sometimes it seems things are totally out of control. Folks from all walks of life, and all ideologies, have their own theories, ideas and plans on how to make things better. But sometimes, it seems the harder we try, things just seem to get worse.

Perhaps we can all learn more about how to deal with life’s problems by reading some of the words of the Apostle Paul. As we either already know, or will learn by reading, Paul lived in an age filled with severe problems, trials and tribulations. He also encountered many problems of his own after he became a follower of Jesus. But Paul was aware of the only real answer to life’s problems. He knew that the power of God provided the answer in his day and fortunately for us that’s still true today. Paul knew this power to be real and that it can answer prayers, meet human needs and literally change lives. But Paul also knew that many Christians fail to experience the true depth of this awesome power. He understood that while a spiritual dimension is available to every Believer, it takes a revelation of God in our lives to make this dimension real and truly meaningful.

In his letter to the Ephesians, Paul prayed that God would give each person a spirit of wisdom and revelation in the knowledge of Him; that God would help each to recognize the hope of His calling and that they would realize the inheritance that came because of a personal relationship with Jesus. Grasping the greatness of God’s power and acknowledging that this power is not for just a select few is very important. The power is available to anyone who believes in Jesus and is filled with the Holy Spirit. It’s said in Acts 1:8 that we shall receive power when the Holy Spirit comes upon us. That’s as true as anything we will ever hear.

The bottom line is—regardless of all of the world’s problems, trials and tribulations—we can’t be discouraged. We can’t let our lives be dominated by concern, worry or fear. We must ask God to give us a spirit of wisdom and revelation and a spirit of courage and conviction. We can rest assured that God is always available to us and always ready to help us in times when unexpected trials and tribulations occur—and they will. But remember that His promises are true. If we seek God diligently, He will unlock a vast spiritual dimension for us. The following prayer was sent to me last month by my good friend, Corky Hawthorne, and I felt it was quite appropriate for this issue.

Lord, give me a spirit of wisdom and revelation. Help me to receive the full inheritance You have prepared for me and the exceedingly great power You’ve given me in the Holy Spirit! In Jesus’ name. Amen.

That’s a very good ending for this section of the report. I wish for each of our readers, their families, friends, and co-workers a blessed Fall of the year.
Jere Locke Beasley, founding shareholder of the law firm Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. is one of the most successful litigators of all time, with the best track record of verdicts of any lawyer in America. Beasley's law firm, established in 1979 with the mission of “helping those who need it most,” now employs over 75 lawyers and more than 200 support staff. Jere Beasley has always been an advocate for victims of wrongdoing and has been helping those who need it most for over 30 years.