I. **CAPITOL OBSERVATIONS**

**TOYOTA SUDDEN UNINTENTIONAL ACCELERATION LAWSUIT ENDS IN LANDMARK VERDICT**

Our law firm tried the first sudden acceleration lawsuit last month against Toyota involving the Camry’s electronic throttle control system. An Oklahoma City jury returned a multi-million dollar verdict after a three-week trial in favor of Jean Bookout and the family of Barbara Schwarz. Mrs. Bookout was seriously injured and Barbara Schwarz was killed when the Bookout’s 2005 Toyota Camry surged out of control and crashed. Mrs. Bookout and the Schwarz estate sued Toyota Motor Corp. and Toyota Motor Sales in an Oklahoma state court. Defects in the car’s electronic throttle control system (ETCS) were directly responsible for the Camry’s sudden acceleration and resulting crash.

We attempted at trial that the software that controlled the ETCS was defectively designed and failed to conform to industry standards. Moreover, the jury was convinced that Toyota was fully aware of problems with the system, but concealed them from the National Highway Traffic Safety Administration (NHTSA), the public and its customers. After the introduction of the ETCS in 2001, NHTSA put Toyota on notice of a 400 percent increase by 2004 of unintended acceleration (UA) claims involving the Camry. In searching its own database, when using the term “surge,” Toyota found 60,000 claims. But in reporting to NHTSA, Toyota removed the search term “surge” and only used the term “mat,” which resulted in only 124 claims being reported to the government agency. This was a deliberate move on Toyota’s part and was designed to hide a known defect.

Internal emails showed that Toyota employees worked extremely hard to “coach” NHTSA to use Toyota’s language when completing unintended acceleration investigations. Toyota contained the escalating UA claims by convincing NHTSA that the claims were caused by loose all-weather floor mats or a sticky pedal defect related to pedals provided by one supplier. James Lentz, president of Toyota’s U.S. based company, told Congress in 2010 that floor mats and sticky pedals were not related to 70 percent of the unintended acceleration claims. In its investigation, Congress also determined that floor mat recalls and sticky pedal recalls only addressed 16 percent of the UA claims. Although NASA investigated Toyota’s software, Toyota withheld certain important software source code from NASA and misrepresented the existence of vital memory protection characteristics of the Camry throttle control system.

Toyota denied that the ETCS was defective and argued that Mrs. Bookout accidentally pressed the accelerator instead of the brake pedal. But Toyota could never explain why the Bookout vehicle left a 150-foot skid mark from a locked right rear tire prior to impact. Mrs. Bookout had first applied the service brakes and then pulled the parking brake, but she couldn’t stop the car. Toyota’s own litigation testing proved the vehicle should have stopped before its impact with a dirt bank if everything was functioning properly.

The jury found the Toyota software defective and answered a question on the verdict form finding that Toyota acted in “reckless disregard of the rights” of Plaintiffs. The software in the Toyota Camry that controlled the ETCS was poorly designed and did not conform to industry standards. This was the first personal injury and wrongful death case to go to trial that blamed the Toyota UA problems on electronic throttle control defects.

Toyota’s conduct from the time the ETCS was designed has been shameful. This jury had the courage to let Toyota and the public know that Toyota was reckless and that the automaker had covered up a known defect in the ETCS. Hopefully, Toyota will recall all of their questionable vehicles and install a computer system in its vehicles that will be safe.

The jury returned a landmark verdict for the Plaintiffs in the first phase of the trial, and we were all set to proceed to the second phase to determine the amount of punitive damages to be awarded. But after the compensatory damages verdict, Toyota’s lawyers approached us and requested a settlement. We were able to resolve the entire case for a confidential amount for both Mrs. Bookout and the Schwarz estate.

Safety advocates have long contended that the UA problem is related to a defect in Toyota’s electronic throttle control software. Our firm was one of the first in the country to file a lawsuit against Toyota alleging that sudden unintended acceleration caused a personal injury and wrongful death. We were the first to take Toyota to trial on that issue. Hopefully, this result will cause Toyota to make safety a real priority in the design and manufacturing of vehicles.

Judge Patricia G. Parrish presided over the three-week trial. The following lawyers from our firm tried this landmark case: Jere L. Beasley, Cole Portis, Graham Esdale and Ben Baker. Larry Tawwater of the Tawwater Law Firm in Oklahoma City, and Paul Martin from Ponca City, Okla., were also involved with us in this extremely important case.

Interestingly, after the judge announced to the jury that the case had been settled, the jurors asked if they could stay around and discuss the trial. For more than two hours, Judge Parrish, the 12 jurors and our lawyers had a very good discussion about...
the case. It was obvious that this jury was ready to punish Toyota for its conduct and cover-up. We all learned a great deal by listening to the jurors’ assessment of the case.

**Alabama Settles Lawsuit Over Ill-Advised Immigration Law**

Opponents of Alabama’s ill-advised and politically motivated immigration law won a big victory last month. In a settlement, the State of Alabama agreed not to pursue key provisions of the law that was doomed to failure from the start. Earlier this year, the U.S. Supreme Court refused to hear the state’s appeal of a federal court’s ruling that virtually gutted the law. Considered to be the toughest immigration law in the country when it took effect in 2011, the measure was challenged soon after it was approved. Opponents to the law included the U.S. Justice Department, a coalition of civil rights groups, and a number of religious groups. The suit’s challengers in civil rights groups, and a number of religious groups. The suit’s challengers in court included the Southern Poverty Law Center. The following provisions of the law are now permanently blocked:

- Requiring schools to verify the immigration status of newly enrolled K-12 students.
- Criminalizing the solicitation of work by unauthorized immigrants.
- A provision that made it a crime to provide a ride to undocumented immigrants or to rent to them.
- A provision that infringed on the ability of individuals to contract with someone who was undocumented.
- A provision that criminalized failing to register one’s immigration status.

This past spring, Supreme Court justices voted 8-1 to let a lower court ruling stand that blocked essential parts of the law. The Court of Appeals for the 11th Circuit had ruled that the immigration law was primarily the responsibility of the federal government. It was quite obvious that the law had serious constitutional and enforcement problems. It was passed with little real thought and has resulted in tremendous problems. It was passed with little real thought and has resulted in tremendous problems.

As part of the settlement, Alabama will have to pay some $350,000 to cover the opposing coalition’s legal costs. At press time, final resolution of the case was pending a court review. Hopefully, those who pushed this legislation for purely political purposes and with no real consideration for its consequences have learned a good lesson.

Source: NPR.org

**II. A REPORT ON THE GULF COAST DISASTER**

**Federal Judge Sets Rules For Submission Of Summary Documents In BP Oil Spill Trial**

U.S. District Judge Carl Barbier has ordered parties in the second phase of the BP oil spill trial, which ended last month, to submit summaries of the evidence presented in the trial and proposed “findings of fact and conclusions of law” by December 20. Responses to the post-trial briefs are to be filed by Jan. 24, 2014. The second phase of the trial will be focused on determining the actions taken by BP and its drilling partners to stem the flow of oil from BP’s Macondo well in the first three days after its blowout.

The blowout and explosion resulted in the release of millions of barrels of oil into the Gulf of Mexico. The exact total was the subject of the second part of Phase Two of the trial. In his order, Judge Barbier has limited the post-trial briefs to 40 pages for each set of parties that presented witnesses during the source control and quantification segments. The responses to those briefs were limited to 25 pages. During the source control segment, which lasted four days, BP presented evidence defending its actions on its own, and will be allowed to present a 40-page brief and 25-page response. Transocean, the owner of the Deepwater Horizon, and cement contractor Halliburton combined with the Plaintiffs’ Steering Committee lawyers representing private claimants and the states of Alabama and Louisiana. That group, referred to as the “aligned parties,” will be allowed a 40-page brief and a 25-page response.

BP joined with Anadarko Petroleum Corp., which owned 10 percent of the Macondo well, in presenting evidence supporting a conclusion that 2.4 million barrels of oil leaked into the Gulf during the accident, and will be allowed a 40-page brief to recap those arguments, as well as a 25-page response. The U.S. Justice Depart-

ment presented evidence outlining the federal government’s contention that at least 4.2 million barrels of oil were released in the Gulf during the spill. The Justice Department will be allowed a 40-page brief and a 25-page response. The parties for each trial segment also will be allowed to submit their proposed “findings of fact and conclusions of law,” which will recommend to Judge Barbier how he should write his own opinion. The aligned parties and BP will submit the proposed opinions on the source control issue. The Justice Department and BP will submit their proposals for the oil spill quantification issue.

Judge Barbier did not indicate in his order when he will convene a third, penalty phase of the trial. He will then combine the information from the second phase with testimony and evidence presented earlier this year during the first phase of the trial. As you will recall, the first phase focused on the liability of BP and its drilling partners in their actions during the drilling of the well, the blowout and its immediate aftermath. Judge Barbier, who is hearing the case without a jury, will determine whether BP and its drilling partners were negligent, grossly negligent or acted willfully in its misconduct.

Under the Clean Water Act, parties responsible for oil spills can be fined up to $1,100 per barrel if found negligent or $4,300 per barrel if their actions constituted gross negligence or willful misconduct. That could result in fines ranging from $2.7 billion to $18 billion. Judge Barbier will consider eight factors in determining the fines, including whether the responsible parties moved to stem the flow of oil, and the effect of the fines on their business.

Source: The Times-Picayune

**The Fifth Circuit Remands BP’s Business Economic Loss Appeal**

In a much-publicized appeal to the Fifth Circuit, BP claimed the Settlement Agreement required all revenues and “corresponding” expenses to be matched—regardless of whether the claimant kept its books on an accrual or cash basis. The company also argued that where spikes in revenue occurred in a claimant’s records, those spikes should be smoothed out (also known as the “smoothing” argument). Judge Clement wrote the majority opinion, and was joined by Judge Southwick on the matching and smoothing issues. Judge Dennis wrote the dissenting opinion.

The Court overruled BP’s smoothing argument and remanded the matching appeal to Judge Barbier for further clarification. On remand, the Court directed Judge Barbier to clarify whether all claims should be matched and, if so, how the matching analysis would apply. While the Court worked out the details, the Fifth Circuit ordered that Judge Barbier issue a “narrowly tailored” preliminary injunction.

Judge Barbier immediately issued a temporary stay on the issuance of any final determination notices or payments on certain business economic loss (BEL) claims within the Program.

In the meantime, the Court conferred with and received input from the parties, including in camera proposed preliminary injunctions. Ultimately, the Court disagreed with the Plaintiffs’ Steering Committee as “under-inclusive,” and BP as “over-inclusive.” Instead, the Court ordered Claims Administrator Pat Juneau (among other things) to process and pay all business economic loss claims “presented on the basis of ‘properly matched accrual-basis records,’ which are ‘claims supported by sufficiently matched, accrual basis accounting.’” All other business economic loss claims will be temporarily stayed, and the Claims Administrator is to provide a declaration outlining the matching criteria within seven days of the Court’s Oct. 18, 2013, Order.

**AN UPDATE ON THE BP BUSINESS ECONOMIC CLAIMS**

There have been several events taking place relating to the current status of the BP appeal, the 5th Circuit opinion and the current injunction issued by Judge Carl Barbier. I will attempt to summarize the events leading to where we are today, as well as what we can reasonably expect in the future. Please note that the comments are those of this writer, and do not necessarily represent the views of class counsel or the Plaintiffs’ Steering Committee (PSC), and hopefully they will clean up some of the uncertainty relating to the states of claims.

We discussed the 5th Circuit ruling above. As we pointed out, the question of how certain business economic loss (BEL) claims are to be calculated was backed back to the District Court. Much has been written about the ruling and its impact and a great deal of speculation about the states of claims. I personally believe BP “lost” on alternative causation (if it was ever even before the court) and on the issue of revenue “smoothing.” I believe it’s safe to say that class counsel had a different reading and interpretation of the 5th Circuit ruling and potential impact than that of BP. I am sure Judge Carl Barbier will look at both sides and then come to a fair decision regarding all of the relevant issues on remand.

On Oct. 18, Judge Barbier entered a Preliminary Injunction Related to BEL Claims. He noted that the issue before the court was the measurement of claimants’ losses under Exhibit 4C of the Settlement Agreement, not the Exhibit 4B (Causation Requirements). The Court allows “properly matched accrual basis records” business claims to be processed and paid. A temporary suspension was put in place for those BEL claims where the Claims Administrator determines that matching of revenues and expenses is an issue. Seafood, Subsistence, VoO Charter Payments, Vessel Physical Damage, Coastal Real Property Damage, Wetlands Real Property Damage and Real Property Sales Damage claims were not impacted and continue to be processed and paid. The Court also instructed the Claims Administrator to file a declaration outlining the criteria to be used in determining whether a claim is supported by “sufficiently-matched, accrual-basis accounting” and where the matching of revenues and expenses is not an issue for a BEL claim.

After the Preliminary Injunction was issued by Judge Barbier, Class Counsel and BP made several filings outlining their positions. On Oct. 25, the Court issued a Scheduling Order relating to the BEL Remand, outlining future filings that can be made by class counsel and BP as well as setting a hearing on these issues (if necessary) for Dec. 2, 2013. On Oct. 28, the Declaration of Patrick Juneau, Claims Administrator, was filed setting out guidelines to determine which BEL claims were “sufficiently matched.”

It appears to me that whatever evidentiary issues remain on remand will be submitted before Dec. 2 and Judge Barbier will give them all due consideration. I believe that a workable solution can be reached to assure that all business claims are sufficiently matched, processed and paid. This would be a good thing in order for the Settlement Agreement to be implemented and those claimants with filed business claims can be paid.

It seems obvious to me that BP is doing whatever it can to get out of a legitimate settlement agreement—one it negotiated and agreed to. I hope I am wrong on that belief, but I have to admit I have great difficulty trusting BP.

For those clients and lawyers involved in the settlement claims process, I strongly encourage patience. I can certainly understand a certain amount of frustration, but remember this settlement process is still much quicker and more efficient (with less risk) than case-by-case litigation. Lawyers and support staff in our firm and many others will continue to work as hard as possible to support the proper implementation of this settlement and to fight BP’s arguments and attempts to undermine it. If you need more information on the BP litigation, contact Rhon Jones, John Tomlinson, Parker Miller, Chris Boutwell, or Grant Cofer, lawyers in our firm who are working on the BP litigation, at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com, John.Tomlinson@beasleyallen.com, Parker.Miller@beasleyallen.com, Chris.Boutwell@beasleyallen.com, or Grant.Cofere@beasleyallen.com. You may also contact our Section Head Administrator Sandra Walters at Sandra.Walters@beasleyallen.com.

**HYPOCRISY AT ITS BEST**

In an ironic twist, BP CEO Bob Dudley chastised the Indian Government recently for not honoring the signed contracts Dudley claims the two parties agreed to. BP is threatening India’s current oil minister that if the country doesn’t see things BP’s way, the oil giant will halt its investments in oil to the country. Meanwhile, in the United States, BP has mounted a multi-million dollar public campaign to renegotiate its signed settlement agreement with the Plaintiffs’ Steering Committee and the Gulf Coast.

What the company has done in an attempt to destroy its settlement with the PSC is nothing short of unprecedented. BP is systematically picking on key portions of the settlement with businesses to uncover ambiguities—portions the company supported in open court after negotiating them for months with a high-powered cast of experts and lawyers. The company is hopeful that with enough prodding and manufactured argument, a court will listen and render the settlement unenforceable. All the while, the company’s website lauds its “commitments” and “relentless focus on safety ... [as a] top priority for everyone at BP” Hypocrisy, it seems, knows no bounds at the headquarters of BP.
A Close Look at BP’s Record

Given BP’s antics in the media lately, any real progress the company has made to repair its image has seemingly dissipated. The public has learned that BP was a convicted felon on probation for three prior disasters just before the explosion that killed 11 workers aboard the Deepwater Horizon drilling rig. In one of those disasters, a Texas City oil refinery owned by the company exploded and killed 15 workers and injured another 170. At that time, the company was cited for hundreds of safety violations—including outdated equipment, inoperable safety alarms and level sensors.

The U.S. Occupational Safety and Health Administration (OSHA) levied more fines on BP when the agency discovered the company had failed to implement appropriate safety improvements at the refinery after the explosion.

In fact, the refinery (which was loaded with explosive petroleum chemicals and had more than 100 employees working at the facility) was so poorly maintained and lacking in capital investment that the Telos Group, a consulting firm hired to examine conditions at the plant, said only two months before the disaster: “We have never seen a site where the notion ‘I could die today’ was so real.” Investigations of the explosion were scathing. The United States Chemical Safety Board concluded that the explosion was “caused by organizational and safety deficiencies at all levels of BP.” Sound familiar?

Even after the Texas City explosion and all the promises for increased safety, the company’s colors showed again—this time in Prudhoe Bay, Alaska. The company was responsible for the worst oil spill ever on the North Slope (267,000 gallons of oil) and, again, the cause was preventable. The piping system was heavily corroded, under maintained and poorly inspected. In 2005, BP almost lost another rig, the Thunder Horse, due to the company’s rush to put the rig online to impress its shareholders.

Matters came to a head on November 3, 2005, when BP was cited by the U.S. Occupational Safety and Health Administration (OSHA) for a lack of corporate integrity, pled guilty to 11 counts of manslaughter for the Deepwater Horizon oil spill, and lied to the Federal Government about the disaster. Remembering who BP is as a company will tell you a lot about where the company’s intentions lie.

Criminal Pleas Continue in the Deepwater Horizon Oil Spill Case

Anthony Badalamenti, who had been a cementing technology director for Halliburton Energy Services Group, pled guilty last month to destroying evidence in the aftermath of the Deepwater Horizon oil spill. Prosecutors claimed that Badalamenti ordered two Halliburton employees to delete data during a post-spill review of the cement job on BP’s blown-out Macondo well. The Court had already accepted a separate guilty plea agreement from Halliburton, whereby the company agreed to pay a $200,000 fine for a misdemeanor stemming from Badalamenti’s conduct. In addition, Halliburton agreed to a three-year probationary period, and to make a $55-million contribution to the National Fish and Wildlife Foundation.

Source: New York Times

III. Drug Manufacturers Fraud Litigation

Louisiana Files Suit Against Pharmaceutical Companies

The State of Louisiana has filed a lawsuit against 38 pharmaceutical companies it claims received Medicaid reimbursement for drugs that were never approved by the U.S. Food & Drug Administration (FDA). The lawsuit alleges the drug makers used phony National Drug Codes (NDC) to trick the state into certifying the drugs as eligible for reimbursement under Louisiana Medicaid, and put patients at risk because of potentially unsafe drugs.

According to complaint allegations, the codes were used to file reimbursement claims for over-the-counter medications like cough medicine and dietary supplements, and unapproved prescription medications. Because the state’s health agencies do not have access to the FDA approval process, they remained unaware for years that reimbursement claims had been falsified.

The lawsuit accuses the pharmaceutical companies of violating the state’s Unfair Trade Practices and Consumer Protection Law and Medical Assistance Programs Integrity Law. It seeks to hold the companies liable for fraud, negligent misrepresentation, unjust enrichment, and redhibition, which is a Louisiana legal statute that protects consumers who purchase allegedly defective products. The complaint notes that a series of qui tam whistleblower complaints brought the fraudulent scheme to the attention of federal authorities.

Lawyers in our firm’s Consumer Fraud Section are representing the State of Louisiana in this lawsuit against the drug companies. The case is State of Louisiana v. Abbott Laboratories Inc. et al., in the U.S. District Court for the Middle District of Louisiana. If you would like more information about this case, contact Dee Miles, the head of our Consumer Fraud Section, who will lead the litigation effort, at 800-898-2034 or Dee.Miles@beasleyallen.com.

Source: Law360.com

Boston Scientific Agrees to Settle Medicaid Fraud Suit for $30 Million

The U.S. Department of Justice announced last month that Boston Scientific Corp. has agreed to a $30 million settlement under the False Claims Act (FCA) in a case alleging the company’s Guidant LLC division fraudulently billed Medicare for defective implantable heart defibrillators. The FCA lawsuit accused Guidant of knowingly submitting thousands of fraudulent claims for Medicare reimbursement between 2002 and 2005.

The qui tam lawsuit was brought by whistleblower James Allen, who had been implanted with a Prizm device, which malfunctioned twice before he had it replaced. Allen accused the company of knowingly defrauding Medicare by selling devices it knew were defective, and then filing for reimbursement from the federal program. U.S. District Judge Donovan W. Frank ruled that the lawsuit was properly filed under the False Claims Act because Judge Frank’s reasoning was that since Allen was a user of the device, his personal experience provided an original source for the allegation.

Folks who file qui tam complaints under the False Claims Act are entitled to a portion of any money the government recovers as a result of their whistleblowing, often as much as 20 to 30 percent. The
IV. PURELY POLITICAL NEWS & VIEWS

TEA PARTY TOOK OUR COUNTRY’S ECONOMY TO THE EDGE OF DEFAULT

It’s hard to believe that the Tea Party controlled U.S. House of Representives was willing to take our country to the edge of a financial disaster, but they did. Fortunately, Congress finally came to its collective senses and averted the disaster. The Senate approved a compromised proposal to fund the government until Jan. 15, 2014, and extend the debt limit until Feb. 7, 2014. There were 81 Senators voting in favor of the bill, with only 18 Senators voting against it. Shortly thereafter, the United States House of Representatives voted 285 to 144 to approve the bill. As expected, President Obama immediately signed the bill into law. Passage of the bill ended the shutdown of the federal government. It also approves the continuing resolution that allows the government to continue borrowing money, avoiding a default.

Approximately 450,000 furloughed federal workers were able to get back to work immediately. All federal employees who were considered “essential” worked for more than two weeks without any income. They will now be paid. But this resolution only “kicks the can down the road.” It will not resolve the bitter and underlying partisan differences on such things as Obamacare, entitlements, taxes or spending. This showdown in Congress could have been avoided, but only in a bipartisan manner. The approved bill requires the House and Senate to appoint budget negotiators and reach an agreement by Dec. 13, 2013. In the past, these “super committees” have failed miserably. The clock will be ticking immediately since government funding will run out on Jan. 15, 2014, with the debt ceiling being extended only to Feb. 7, 2014.

This fight in Congress was very ugly and took the country to the very brink of default. There can be no real winners in this partisan political battle. But it’s very clear that the Republican Party came out of the fray as the biggest loser. Despite all the rhetoric, Republicans failed to extract any major concessions from Democrats and President Obama on changes to the Affordable Care Act. The attempts to strip the law of all funding, to delay the entire law, and to delay the medical device tax were all unsuccessful. The only change under the bill that passed was to provide some strengthening to the anti-fraud protection for government subsidies in the new health insurance marketplace. Democrats in Washington have dubbed the shutdown a “manufactured crisis” by Tea Party Zealots in Congress. One real lesson learned from this latest battle is that the Tea Party now calls the shots in the House of Representatives.

Hopefully, Congress has learned a good lesson, although a painful one and will change their ways. Most reasonable Americans want the House and Senate to work together and to start working to solve the many problems that face our nation. The bottom line is that the attempt to shut down the federal government was nothing more than a Tea Party plan to embarrass President Obama. The sad commentary is that our country did not need another world-wide embarrassment. At some point, I hope and pray that reasonable minds will prevail and that Congress will work together and forge a deal regarding the budget. That will be best for the majority of Americans. Perhaps the one positive that will come from the latest shutdown will be that Congress, with a 5 percent approval rating, will wake up and put the country’s interest first for a change.

GOVERNMENT SHUTDOWN CONTINUES TO PUT PUBLIC HEALTH AND SAFETY AT RISK

Although, as stated above, Congress ended the government shutdown with furloughed employees back at work, a number of federal agencies that help ensure the public’s health and safety are still struggling to rebound. Agencies such as the U.S. Food and Drug Administration (FDA), Consumer Product Safety Commission (CPSC), National Highway Traffic Safety Administration (NHTSA) and the Centers for Disease Control and Prevention (CDC) were severely limited in their services during the 16-day shutdown.

The time frame seems short until you consider the thousands of safety concerns not addressed, dangerous products not recalled, foodborne illnesses not contained, and important legislation left undressed during that time period. The shutdown affected millions of people, and will continue to do so.

Returning to work, the agencies’ already thinly stretched staffs are being met with a mountain of consumer complaints and unresolved investigations, which they must
handle simultaneously with new concerns. Additionally, many agencies were tasked to comply with new legislation and safety rules they were unable to implement on schedule during the shutdown. As a result, some agencies are now facing legal complications tied to their failure to meet deadlines.

The shutdown, even though it was finally resolved, hurt lots of folks. Important work and legislation left hanging during the shutdown includes:

- FDA Food Safety Modernization Act—the agency must propose rules by Nov. 30, including an anti-terrorism rule, which it now has less time to develop;
- FDA rules on tobacco products and the marketing of electronic cigarettes;
- FDA routine inspections of drug and food facilities, which were suspended during the shutdown;
- NHTSA missed a deadline to put into place a rule requiring automakers put rearview cameras in new vehicles;
- NHTSA did not conduct any automotive defect investigations during the shutdown;
- CPSC is behind schedule in its evaluation of whether or not to establish guidelines for how voluntary recalls should be communicated to the public; a vote is set for Oct. 23, with very little time for debate or discussion;
- CPSC was unable to evaluate consumer product hazard concerns and issue necessary recalls;
- CDC estimated for every day of the government shutdown, about one million emails at the agency went unread;
- With about 68 percent of its staff furloughed, the CDC’s skeleton crew worked to respond to clusters of illness including Legionnaire’s Disease in Alabama, a fatal case of Rocky Mountain Spotted Fever on an Indian reservation in Arizona, a serious health care-related outbreak in Baltimore, as well as reports of tuberculosis, hepatitis B, meningitis, and infant deaths in other areas of the country.

Sources: Law 360, Wired magazine

V. COURT WATCH

ALABAMA AMONG TOP SPENDERS IN STATE JUDICIAL RACES

It was reported last month that Alabama once again was among the top tier in spending on state judicial races. During 2011-2012, candidates raised more than $4 million in Alabama, even though most races for the Alabama Supreme Court were uncontested. During that election cycle, Alabama finished fifth in the nation in the amount raised by state judicial candidates. The fundraising and spending was driven by a very tough battle for chief justice in both the Republican primary and in the general election. However, the election spending was well under the $14.5 million spent in 2006. Several entities, including the Montgomery Advertiser, released the report, “The New Politics of Judicial Elections” outlining concerns about outside spending in judicial races and the negative used. It also explained how special interest groups are threatening fair and impartial courts.

Bert Brandenburg, executive director of Justice at Stake, said interest groups began to pour money into state judicial races in 2000 and ever since there has been an increasing concern about “justice being for sale.” While spending in judicial races doesn’t receive a lot of attention, Brandenburg says it’s “one of the biggest democracy issues that has been flying under the radar screen of American politics.” He was correct when he declared that state judicial systems are the “engines of our justice system.” Alicia Bannon, counsel with the Brennan Center for Justice, had this to say:

State courts are extremely important with the overwhelming majority of cases resolved in state court and with the rulings affecting almost every aspect of people’s lives.

Brandenburg pointed out that “judges are being forced to become big fundraisers,” adding that “those who contribute, and the issues they push, are coming before state courts.” Justice at Stake, the Brennan Center for Justice at NYU School of Law, and the National Institute on Money in State Politics released the report.

I was interviewed last year by the Montgomery Advertiser concerning the cost of judicial races in Alabama. I told the Advertiser, for an August 2012 report, that I planned to stay out of the 2012 race. I reminded them that “lawyers don’t need to be participating (financially) in judicial elections,” and that “neither do corporations.” As I told the Advertiser reporter, “it’s time to change.” Regardless of where the campaign money comes from that sort of support could give the “impression” that judges hand down “biased decisions.” The public could certainly reach that conclusion.

Nationally, the cost of state judicial elections has soared in recent years with spending in 2011-2012 at an estimated $56.4 million, according to the report. Bannon and Brandenburg noted the jump in spending in judicial races began in 2000 with business interests and the U.S. Chamber of Commerce spending heavily on one side and lawyers and labor unions spending heavily on the other. “What we started to see was an arms race,” Bannon said. She said the sides began “pouring money into these races and spending ratcheted up very quickly.”

Brandenburg believes that judges are now “trapped in the system.” He said three in four Americans believe that campaign contributions affect judicial decisions. Brandenburg said the system is placing more and more political pressure on judges. With the Citizens United v. FEC decision by the U.S. Supreme Court, which allowed unlimited independent spending on elections, the spending has continued to increase with the formation of so-called Super PACs and other organizations that are now becoming involved in state judicial races.

Bannon also pointed out that there has been a dramatic increase in outside spending by special interest groups and that many of those groups are spending the money independently instead of directing it to candidates’ campaigns. Those outside groups are more likely to engage in misleading attack ads that hurt the image of the judicial system, according to Bannon, and that contributes to the perception that “justice is for sale.”

Bannon and Brandenburg argued the increased outside spending reduces transparency for those interested in who is seeking to influence court outcomes and is adding to nastier campaign fights. Bannon, one of the authors of the report, said television is increasingly becoming where the state judicial races are fought. “At the same time, mudslinging ads are becoming the order of the day in many states,” Bannon said. She said they contribute to misrepresented records and have “created a carnival
atmosphere” with judges becoming indistinguishable from other politicians. Bannon added: “That hurts public confidence in our courts. The public needs to be confident that our courts are not for sale.”

Also, in the last decade, Bannon said they have seen a trend of groups targeting judges regarding votes on specific issues. So, she said, they are being put on notice that controversial decisions could open them up to attacks and lead to expensive re-election fights.

The possible solutions, according to Bannon, include stronger spending disclosure laws, reforms to recusal rules about when judges are expected to step aside when contributors are before them, and public financing for judicial races. Bannon and Brandenburg said judges know where the money is coming from. Brandenburg said any reform “cannot be seen as led by one side or the other,” and I totally agree with that opinion. “Judges across the political system are sounding the alarm about the role of money on judicial elections,” according to Bannon. “The New Politics of Judicial Elections” has tracked the increased politicization, increased spending in judicial races, and the expanding role of money from special interests since 2000. Hopefully, the manner in which judicial elections are carried out will change, and for the better, very soon.

Source: Montgomery Advertiser

VI.
THE NATIONAL SCENE

JPMorgan to Pay $100 Million in Latest London Whale Fine

It is being said that the “London Whale” is the gift that keeps giving for regulators. Former London-based JPMorgan trader Bruno Iksil, whose team is thought to be responsible for the complex derivatives bet, was nicknamed the “London Whale” due to the massive trading position. JPMorgan Chase & Co has now agreed to pay the latest in a string of fines for the disastrous trades. Joe Evangelisti, a spokesman for JPMorgan, said the bank neither admitted nor denied the U.S. Commodity Futures Trading Commission’s (CFTC) legal conclusion that there was a violation, while admitting to “certain facts set out in the order.”

As we have come to expect, that’s a typical response by a corporate wrongdoer. According to the CFTC, JPMorgan Chase agreed to settle by paying $100 million and admitting its traders acted recklessly. The bank was instructed to send the funds to accounts receivable at the CFTC’s division of enforcement. The settlement comes about one month after JP Morgan Chase paid $920 million to four other U.S. and British regulators to resolve probes of the bank’s $6.2 billion in derivative losses involving its chief investment office.

The Justice Department, even after filing criminal charges against two former JPMorgan traders who allegedly helped conceal the losses, is still investigating and will decide whether to bring further action against the bank. The settlement with the CFTC comes as JPMorgan continues to deal with regulators and U.S. authorities on a number of fronts. The bank is in the middle of attempting to negotiate a global settlement with federal prosecutors for its role in the packaging and selling of faulty mortgage-backed securities that could result in a potential $11 billion settlement. JPMorgan announced last month that it has set aside up to $23 billion in reserves to pay for all its potential legal bills to come.

The CFTC charged JPMorgan with violating a prohibition on manipulative conduct when it traded in credit default swaps. By selling a huge volume of “swaps” in a concentrated period, the bank’s traders “recklessly disregarded” the principle that legitimate market forces should set prices, according to CFTC officials. According to the CFTC the bank admitted that JPMorgan traders acted recklessly with respect to this fundamental precept by employing an aggressive trading strategy.” JPMorgan’s traders tried to defend their position in credit derivatives “by dumping a gargantuan, record-setting, volume of swaps virtually all at once, recklessly ignoring the obvious dangers to legitimate pricing forces,” according to David Meister, the CFTC’s head of enforcement. The bank admitted to the charge that led to that statement. The reckless conduct occurred on one day, Feb. 29, 2012, according to the settlement agreement.

By charging the bank with “employing a manipulative device,” the CFTC relied on new powers granted it by the 2010 Dodd-Frank financial regulatory overhaul. The agency previously had to prove a defendant intended to engage in manipulative conduct, a bar so high that the commission was able to bring few cases under it. The new authority, introduced by Democratic Senator Maria Cantwell, allows the CFTC to rely on evidence of “reckless misconduct” rather than any specific intent. While discussing the new authority under Dodd Frank, Sen. Cantwell said in a media interview that the CFTC case against JPMorgan “is exactly what we’re looking for.” Sen. Cantwell also said, “It really does create a bright line in the marketplace.”

According to the CFTC charges, a JPMorgan portfolio in credit default indices with a net value of more than $51 billion started to plummet in January 2012. In February, as daily losses were large and growing, traders were trying to reduce their market-to-market losses. The chief investment office of JPMorgan had a $65 billion short position on one index, CDX NA.IG9 10 year index, and on Feb. 29, the bank sold $7 billion in a protective effort. The sales substantially dropped the market price of the index and improved the book value of JPMorgan’s position, according to the CFTC. Two former JPMorgan employees have already been criminally charged with trying to hide some of the losses by deliberately giving inaccurate values to the securities involved in the trades.

Source: Reuters

JPMorgan to Pay $5.1 Billion to Fannie Mae and Freddie Mac Over Mortgages

In another significant development involving JPMorgan Chase, the bank has agreed to pay $5.1 billion to resolve claims that it misled Fannie Mae and Freddie Mac about risky home loans and mortgage securities it sold them before the housing market collapsed. The Federal Housing Finance Agency (FHFA), which oversees Fannie and Freddie, announced the settlement last month with JPMorgan. It was reported that an even broader deal with the Justice Department is still being negotiated. JPMorgan sold $3 billion in mortgage securities to Fannie and Freddie between 2005 and 2007. That was the second-most sold to Fannie and Freddie ahead of the crisis, behind only Bank of America. The securities soured after the housing bubble burst in 2007, losing billions in value.

In a statement, JPMorgan called the agreement with the FHFA “an important
step towards a broader resolution of the firm’s mortgage-related matters. Edward DeMarco, the FHFA’s acting director, claimed that the settlement with JPMorgan “provides greater certainty in the marketplace and is in line with our responsibility for preserving and conserving Fannie Mae’s and Freddie Mac’s assets on behalf of taxpayers.” It’s believed that this settlement will be the start of what could be the largest penalty the government has extracted from a company for actions related to the financial crisis. The crisis, triggered by vast sales of risky mortgage securities, plunged the economy into the deepest recession since the Great Depression.

It should be noted that Fannie and Freddie own or guarantee about half of all U.S. mortgages, worth about $5 trillion. Along with other federal agencies, they back roughly 90 percent of new mortgages. However, the two companies don’t directly make loans to borrowers. They buy mortgages from lenders, package them as bonds, guarantee them against default and sell them to investors.

Source: Associated Press

**Bank Of America Faces $6 Billion Fine In Mortgage Lending Case**

The Federal Housing Finance Authority (FHFA) is asking for more than $6 billion in penalty fees from Bank of America for the bank’s role in misleading mortgage agencies such as Fannie Mae and Freddy Mac during the housing boom. The FHFA is the regulatory agency that oversees the two government-backed mortgage agencies, both of which nearly failed in 2008 as a result of subprime mortgage lending.

The FHFA has sued 17 financial institutions that it says broke securities laws. It’s alleged that the banks misled government-sponsored mortgage agencies about the quality of mortgages they sold them. Fannie Mae and Freddie Mac back about half the existing U.S. home loans.

Bank of America acquired Countrywide Financial Corp. in 2008, which is the mortgage lender tied to the bad subprime mortgages. Bank of America has already spent more than $40 billion in litigation related to mortgage litigation and has set aside an additional $500 million for mortgage litigation in the latest quarter. Additionally, while Bank of America purchased Countrywide for $4 billion in 2008, analysts say they believe Bank of America has already paid close to $50 billion in fines and settlements.

On Oct. 23, a jury found Bank of America liable for civil fraud and for defrauding Fannie Mae and Freddie Mac by selling them defective home loans. The jury also found a former Countrywide Financial executive officer, Rebecca Mairone, liable on civil fraud charges. The judge will determine the amount of penalties, but the U.S. attorney’s office in Manhattan, which brought the case, has previously said it was seeking $848 million in penalties. Regardless, in the midst of settlement negotiations and ongoing cases with other banks, the Bank of America matter gives the government a resounding victory.

While Bank of America continues to fight the claims in court, it appears that this bank has the most at stake, with securities valued at more than $52 billion. In comparison, JPMorgan has securities with a national value of $33 billion. UBS, Citigroup and General Electric have already settled their cases with the FHFA. Litigation is still pending for Royal Bank of Scotland, Credit Suisse, Golman Sachs and Barclays, among others. If you need more information on this subject, contact Chad Stewart, a lawyer in our firm’s Consumer Fraud Section, at 800-898-2034 or by email at Chad.Stewart@beasleyallen.com.

Sources: MSN.com, Financial Times, dealbook.nytimes.com

**Janet Yellen Appointed To Lead The Federal Reserve**

President Barack Obama has nominated Janet Yellen to succeed Ben Bernanke as Federal Reserve chairman. The president said Yellen, a former professor at the University of California at Berkeley and president of the Federal Reserve Bank of San Francisco, would fully pursue the Fed’s “dual mandate” of reaching maximum employment while controlling inflation. Once confirmed by the Senate, Ms. Yellen will also play a key role in the financial regulatory system, since the central bank also oversees the country’s largest, most systematically important financial institutions. When Ms. Yellen takes the lead at the Federal Reserve, big banks will remain on a tight leash as the new chairman plans to focus on reining in their size, riskiness and the ways they fund themselves, observers say. Yellen, currently the Fed’s vice chairman, has not spoken often on financial regulatory policies, instead focusing the bulk of her public speeches on how monetary policy tools can be used to boost the still struggling economy and ease elevated unemployment rates.

But when Yellen has ventured into the realm of regulatory policy, she has followed other Fed governors on issues including hiking capital requirements for the biggest banks, improving the regimes intended to take them apart when they fail, and bringing more rules governing the repo markets and other short-term funding mechanisms employed by big banks. On Oct. 9, President Obama had this to say:

Janet is committed to both sides of the Fed’s dual mandate, and she understands the necessity of a stable financial system where we move ahead with the reforms that we’ve begun—to protect consumers, to ensure that no institution is too big to fail, and to make sure that taxpayers are never again left holding the bag because of the mistakes of the reckless few.

Janet Yellen’s experience as the head of the San Francisco Fed—where she spotted many of the faulty lending practices employed by Countrywide Financial Corp. and other subprime lenders, but was told by Washington colleagues not to act—may give her more of a pulp in push banks. Because she has not worked for a major financial institution, instead working in academia and at the Fed. Ms. Yellen will have credibility with some big bank critics. Robert Weissman, President of Public Citizen, had this to say:

She is not known as a creature of Wall Street like Larry Summers, [former Obama Treasury Secretary] Tim Geithner or [former Clinton Treasury Secretary] Robert Rubin, who believe in the failed notion that unregulated financial institutions that engage in excessively risky activities somehow serve our economy.

It appears that the Yellen appointment was a good one. Hopefully, she will be able to keep the big banks in line. If her history and tenacity are any indication of what she will do, I believe that she will make the banks toe the line.

Source: Law360.com
Rabobank settles charges of manipulating key global interest rate

Rabobank of the Netherlands has agreed to pay about $1 billion to settle U.S., British and Dutch charges of manipulating a key global interest rate. The bank’s chairman resigned as it became the fifth financial firm sanctioned in the international rate-rigging scandal. The amount Rabobank is paying includes $325 million in an agreement with the U.S. Justice Department that allows the bank to avoid criminal prosecution in exchange for its continued cooperation in the investigation of major banks’ conduct regarding LIBOR.

Rabobank, one of the world’s largest banks, engaged in rigging of the London interbank offered rate, or LIBOR, from 2005 to 2011. The LIBOR rate affects trillions of dollars in contracts around the world, including mortgages, bonds and consumer loans. A British banking trade group sets the rate daily after more than a dozen big banks submit estimates of their borrowing costs. Britain’s Barclays and Royal Bank of Scotland, Switzerland’s biggest bank UBS and British brokerage ICAP have paid a total of about $2.6 billion to settle charges of rigging the LIBOR.

The U.S. Commodity Futures Trading Commission (CFTC) levied a $475 million civil penalty against Rabobank, saying its traders engaged in “hundreds of manipulative acts” that hurt the integrity of the LIBOR rate. The traders caused inaccurate submissions of its borrowing costs to be made that benefited banks’ trading positions, the agency said. It said some Rabobank employees themselves called the submissions at the time ludicrously high or low. During the six years, more than two dozen Rabobank employees in six offices in Europe, the U.S. and Asia were involved in the violations, the CFTC said. Rabobank settled the CFTC’s charges of manipulation and false reporting, and aiding the attempts of traders at other banks to manipulate the LIBOR. In addition to paying the penalty, the bank agreed to take steps to ensure that it submits accurate estimates of its borrowing costs used to calculate the rate.

In addition, Britain’s Financial Conduct Authority fined Rabobank about $170 million, citing “serious, prolonged and widespread misconduct.” Rabobank’s London office was one of those where traders and desk managers were said to have engaged in manipulation. The Dutch Public Prosecutor’s Office signed a deferred prosecution agreement with Rabobank in which the bank is paying $96.5 million. According to the U.S. Justice Department, Rabobank admitted manipulating its submissions that affected the LIBOR rate and agreed to cooperate in the broad LIBOR investigation. It appears that this joint investigation is far from over.

Under a change announced in July, the London-based company that owns the New York Stock Exchange, NYSE Euronext, will take over supervising the setting of LIBOR from the British Bankers’ Association. The changeover is scheduled to be completed by early next year.

Source: Startribune.com

VII. THE CORPORATE WORLD

Federal government joins whistleblower lawsuit against contractor

The federal government has intervened in a whistleblower lawsuit against United States Investigations Services LLC (USIS), a company that provides most of the vetting and investigations of employee candidates for sensitive and high-security positions within the U.S. government. Beasley Allen lawyers Dee Miles and Larry Golston filed the lawsuit in June 2011 under the False Claims Act on behalf of former USIS employee Blake Percival. As counsel for Mr. Percival, however, due to the nature of the case they are unable to comment on this pending litigation.

It was alleged that USIS, based in Falls Church, Va., failed to perform quality-control reviews when investigating the backgrounds of potential employees for the U.S. Office of Personnel Management (OPM). USIS performed the vetting services for former CIA employee and NSA contractor Edward Snowden before he leaked U.S. documents about U.S. surveillance and spying practices. They also vetted former technology contractor Aaron Alexis, who shot 12 people to death at the Washington Navy Yard in September. Each of these incidents occurred after Mr. Percival filed his whistleblower complaint and are not mentioned in his lawsuit. It’s alleged in the lawsuit:

Since 2008, USIS used a special proprietary software program to automatically release background investigations before they were complete in an effort to meet revenue targets and maximize its profits. USIS has investigators in the field go out and gather information on an individual for whom a background check is requested by some federal department or agency. There may be multiple investigators on one case who are assigned to cover different issues concerning a person. The investigators all do a report and send it in to another USIS employee called a reviewer. The reviewer looks over the information to make sure it is complete and accurate and/or if there is any follow-up questioning needed.

USIS gets paid each month by the government for completed background checks, which are then investigated and reviewed. However, because background checks are time- and fact-intensive, the lawsuit alleges USIS decided to submit background investigations to the government as complete that had not been fully vetted. USIS did this through a process called “dumping” or “flushing”—that is, they would simply tell the reviewers to go into the computer software they used to submit a background investigation to the government. In some cases, these investigations would be submitted without an investigator having ever done anything on the file.

The lawsuit alleges that USIS conducted this practice, known as “dumping,” in secret and billed OPM for its improper, unfinished work. Mr. Percival claims in the lawsuit that USIS fired him in 2011 for refusing to “dump” unfinished background investigations. Stuart Delery, Assistant Attorney General for the Justice Department’s Civil Division, said in a statement:

We will not tolerate shortcuts taken by companies that we have entrusted with vetting individuals to be given access to our country’s sensitive and secret information. The Justice Department will take action against those who charge the taxpayers for services they failed to provide, especially when their non-performance could place our country’s security at risk.

A federal judge in Alabama unsealed the case when the U.S. Justice Department decided to join it. For more information on this case contact Helen Taylor at Helen.
There have not been many Foreign Corrupt Practices Act (FCPA) “tips” in the U.S. Securities and Exchange Commission’s (SEC) whistleblower program. But one large bounty in a bribery case could change that drastically. As you will recall, the Dodd-Frank Act was passed in July 2010, creating the SEC Office of the Whistleblower. During October 2011 and September 2012 there were about 3,000 complaints, and referrals to the SEC Office of the Whistleblower. Only about four percent included allegations under the FCPA. The Chief of the SEC’s office, Sean McKessy, indicated that four percent is a conservative number because 28 percent of the complaints, tips, and referrals classified their allegations as “other.”

McKessy claims he isn’t concerned about the statistics, saying that’s because he believes many whistleblowers may not understand the importance of specifically citing the FCPA. He pointed out that the message from the SEC’s office is that all securities violations are in the scope of the office and if there is a violation, it should be reported. The purpose of the FCPA is to prevent companies from making or offering payments to foreign government officials to help acquire or maintain business. FCPA cases usually generate large penalties. Because of these large awards, public attention may be drawn and encourage individuals to file FCPA tips.

Mike Koehler, author of FCPA Professor Blog, predicted in 2010 that the whistleblower’s impact on anti-bribery would be insignificant, noting that the provision would only apply to FCPA scrutiny of public issuers. Koehler also noted that most FCPA investigations arise from voluntary company disclosures and eliminate whistleblowers as the middle man. Because it may take two to four years for a FCPA case to materialize, it’s much too soon to see the full impact of the whistleblower program.

Much of the recent activity involves foreign countries. For example, recent enforcement activity in China has highlighted bribery allegations developing from within a company’s ranks. Also, in July, GlaxoSmithKline reported that some senior executives in China may have bribed physicians and hospitals to increase drug sales. An internal whistleblower brought similar allegations to the company in January. In August, Sanofi SA reported accusations from a whistleblower of paying kickbacks to Chinese doctors for prescriptions and masking the payments as research grants.

The U.S. Supreme Court in Morrison v. National Australia Bank, Ltd. ruled that federal securities laws are presumed to not apply overseas. That 2010 ruling may complicate efforts to increase FCPA whistleblower activity. In June 2012, GE Energy USA LLC won a favorable ruling in light of the Morrison ruling. Clearly, that decision is in conflict with the policy objectives of Dodd-Frank. Financial institutions regularly conduct transactions in multiple countries in a short period of time. Encouraging the tipping program overseas may increase the number of FCPA whistleblowers. Many are paying attention to this statute and more people will likely come forward with claims when they see that someone has been rewarded for the risk they have taken to their career.

Lawyers in our firm’s in our Consumer Fraud Section continue to vigorously investigate fraud against both the federal and state governments. They encourage anyone who knows of fraudulent activities to step forward. Potential whistleblowers have the right to not be retaliated against for doing the right thing and reporting the fraud they have witnessed. Anyone considering doing the right thing and blowing the whistle are strongly urged to seek legal advice before doing so. The lawyers in our Consumer Fraud Section are very familiar with the federal False Claims Act and its state counterparts and can guide whistleblowers along the process. If you have any information and would like to speak with a lawyer, contact Andrew Brasher or Archie Grubb, lawyers in our Consumer Fraud Section, at 800-898-2034 or by email at Andrew.Brasher@beasleyallen.com or Archie.Grubb@beasleyallen.com.

Sources: SEC.gov, Justice.gov

SEC AWARDS WHISTLEBLOWER $14 MILLION FOR EXPOSING FINANCIAL FRAUD

A whistleblower who provided information to the U.S. Securities and Exchange Commission (SEC) helped federal regulators recover millions of dollars in investor funds. For his efforts the whistleblower was awarded $14 million, the largest award made by the SEC’s whistleblower program to date. SEC officials said that the whistleblower, who chose to remain anonymous, provided original information and assistance that allowed the agency to investigate a case of financial fraud more quickly than otherwise would have been possible. The SEC announced in a statement:

Less than six months after receiving the whistleblower’s tip, the SEC was able to bring an enforcement action against the perpetrators and secure investor funds.

The Commission also withheld the name of the company that it sanctioned in a further effort to shield the whistleblower’s identity from the public. The SEC established its Office of the Whistleblower in 2011 under the Dodd-Frank Act, a series of sweeping reforms signed into law in 2010 to address financial-industry fraud and avert a crisis like the one that spawned a deep recession in the late 2000s.

Under the SEC’s whistleblower program, those who potentially risk their careers and professional reputations by exposing fraud and providing regulators with high-quality, original information that leads to an enforcement action and sanctions of at least $1 million will share in the recovery. Awards under the SEC whistleblower program range from 10 to 30 percent. SEC Chair Mary Jo White stated:

Our whistleblower program already has had a big impact on our investigations by providing us with high quality, meaningful tips. We hope an award like this encourages more individuals with information to come forward.

The SEC made its first payment to a whistleblower in August 2012 for $50,000. In August and September of 2013, the SEC awarded more than $25,000 to three whistleblowers who helped the Justice Department stop a sham hedge fund. The ultimate recovery in that case—once all the sanctions are collected—is expected to exceed $125,000.

Sources: Securities and Exchange Commission, RightingInjustice.com (Kurt Niland)
One of my favorite people, John Anazalone, sent me a copy of a recent report from a survey done by his company that is most interesting and in my opinion quite accurate. John is recognized as being one of the best in his field. As usual, he is on target in his report. With his permission, I am including parts of the report below.

The Public’s Mood Has Soured

Almost half of Americans (48 percent) think the budget dispute has “seriously damaged” the economy, resulting in one of the most negative outlooks on the country’s direction in recent history. According to a recent Pew Research poll, only 14 percent of Americans are satisfied with the way things are going, while 81 percent say they are dissatisfied. The only time in the last two decades that Pew recorded lower satisfaction was in October 2008, during the height of the financial crisis.

Views on the economy are also increasingly negative. Almost half of Americans (48 percent) rate economic conditions as poor, up 16 percent from last month. And Gallup’s Economic Confidence Index fell 12 points in the first week of the shutdown, the largest weekly decline since Lehman Brothers collapsed in September 2008.

Broad opposition to Republican negotiation tactics

Americans overwhelmingly disapproved of the partial government shutdown—81 percent disapproved while only 17 percent approved. And most do not support the stand House Republicans took to cause the shutdown. A National Journal poll finds that by more than a 2-to-1 margin, the public opposed tying the funding of the federal government to the future of the Affordable Care Act. Overall, 65 percent of adults thought “Congress should provide the funding to keep the government operating and deal with the health care issue separately” versus just 24 percent who believed the House “is right to fund the continuing operations of the federal government only if Obama agrees to delay or withdraw his health care plan.” Even a majority of Republicans (50 percent) believed that the issues should be kept separate.

Similarly, by a 2-to-1 margin or more, Americans thought an increase in the federal debt ceiling should be dealt with separately from agreements on a variety of other proposals, including a one-year delay in the implementation of the Affordable Care Act, cuts in spending for either discretionary or entitlement programs, and an authorization for the construction of the Keystone pipeline.

Record level of anti-incumbent sentiment

Americans’ frustration with the shutdown has translated into record-high anti-incumbent sentiment. Almost three-quarters of registered voters (74 percent) believe that most members of Congress should not be reelected in 2014, while only 18 percent believe they should. In comparison, merely a month before the wave 2010 election, just half of voters thought most members of Congress should not be reelected.

When asked specifically about their own representative in Congress—a measure that historically has been more positive—66 percent of adults in the ABC News/Washington Post poll said they were “inclined to look around for someone else to vote for,” while only 24 percent said they were inclined to reelect their own member. This is the highest level of openness to a new representative in Congress in over two decades.

Republicans take the brunt of the damage

While no one looks particularly good in the aftermath of the shutdown, Republicans have fared the worst. In an ABC News/Washington Post poll, 77 percent of Americans disapproved of the way Republicans in Congress were handling negotiations over the federal budget, while 61 percent disapproved of the way Democrats were handling negotiations. President Obama received less criticism, but a majority of Americans (54 percent) still disapproved of his handling.

A majority (55 percent) of Americans place more blame for the shutdown on Republicans in Congress in both an NBC/Wall Street Journal poll and an ABC/Washington Post poll, while less than a third (31 percent and 29 percent respectively) place more blame on President Obama.

The dichotomy voters see between President Obama and Republicans in Congress is evident in views on their motivation. While 50 percent of registered voters believe Obama is “interested in doing what’s best for the country (47 percent believe he is “interested in doing what’s best for himself politically”), just 19 percent believe Republicans in Congress are interested in doing what’s best and 78 percent believe they are looking out for themselves politically.

Amidst the public’s disapproval of recent GOP tactics, Gallup finds Americans’ view of the Republican Party has sunk to an all-time low. While 43 percent of Americans view the Democratic Party favorably, only 28 percent of Americans now view the Republican Party favorably—a 10 percent drop from last month, and the lowest favorable rating measured for either party since Gallup started asking the question in 1992.

Much of this drop in support is driven by internal angst in the Republican Party. A majority of self-identified Republicans (58 percent) disapproved of the way Republicans in Congress handled budget negotiations. And now more than a quarter (27 percent) of self-identified Republicans view their own party unfavorably—an eight percent increase from last month, and more than double the percent of Democrats who see their own party unfavorably (13 percent).

Growing Tea Party divide emerges

Americans’ views on the Tea Party have also greatly soured, according to a recent Pew Research poll. Now nearly half of Americans (49 percent) view the Tea Party unfavorably, while just 30 percent view it favorably. Moderate Republicans in particular have turned increasingly against the Tea Party—in just the last four months,
Tea Party favorability among these Republicans has dropped from 46 percent to 27 percent.

The Pew survey also finds a wide divide between Republicans who agree with the Tea Party movement, and those who do not. Tea Party Republicans are more likely to be older, male, and have higher levels of income and education than non-Tea Party Republicans. And they are more likely to take the hardline conservative approach on a range of issues including maintaining a smaller government, opposing marriage equality and abortion rights, and protecting gun rights.

Tea Party Republicans also take a hard line when it comes to compromise in Congress. By a 36-point margin, Tea Party Republicans say Congressional Republicans “have compromised too much” with Congressional Democrats, rather than not enough. In contrast, by an 18-point margin, non-Tea Party Republicans believe Congressional Republicans “have not compromised enough.” And by a 42-point margin, Tea Party Republicans want Republican leaders to move in a “more conservative” direction, rather than a more moderate one. Meanwhile non-Tea Party Republicans want Republican leaders to become more moderate by a 5-point margin. This is best symbolized in these two groups’ views of Ted Cruz—who is viewed favorably by 74 percent of Tea Party Republicans and only 25 percent of non-Tea Party Republicans.

Tea Party supporters, however, don’t see themselves as going against the grain. A CBS News poll finds that while only 28 percent of Americans overall see the Tea Party as reflective of the views of most Americans, two-thirds (67 percent) of Tea Party supporters believe that it is.

A look ahead to 2014

Three different public polls conducted since the end of the shutdown have found Democrats with an eight-point advantage among registered voters on the generic Congressional ballot. Furthermore, the percent of Americans who identify with the Republican Party is at a record low, with only 20 percent considering themselves Republican. And for the first time since Republicans took control of the House in 2010, a majority of Americans (54 percent) think it is “bad for the country that the Republican Party is in control of the U.S. House of Representatives.”

Hopefully, the American people will demand a better performance in our Nation’s capitol. If we continue on the present course—with the Tea Party zealots calling far too many shots—I fear that things will get much worse. I believe that most folks badly want to see more cooperation between the two political parties and without delay. A bi-partisan approach to problem-solving is not much to ask from the folks we elect and send to Washington.

Source: Anzalone Liszt Grove Research (ALG)

IX.
PRODUCT LIABILITY UPDATE

MISSISSIPPI JURY AWARDS MORE THAN $52 MILLION TO PARALYZED CHILD

For years, it has been a primary goal of Beasley Allen to educate parents on the importance of restraining a baby, toddler or young child in a child safety seat that is designed for the child’s age. Each year, Beasley Allen is a major sponsor of Seat Check Saturday, a program held in Montgomery during the National Child Passenger Safety Week. At Seat Check Saturday, trained technicians examine the child seats in every car that comes to the event to insure that the child seats are properly installed in the vehicles.

Sadly, even a properly installed car seat cannot prevent injuries and deaths if the car seat manufacturer defectively designs the seat. Such is the tragic case of Graceyn Thrailkill, who at the age of 4 was rendered a paraplegic because the car seat she was riding in at the time of accident was defectively designed.

Recently, a Mississippi jury awarded Graceyn Thrailkill more than $52,000,000 in a case her mother filed against Dorel Juvenile Group, Inc., the manufacturer of the Cosco Protek belt positioning booster seat Graceyn was riding in at the time of the accident. The facts of this case are indeed tragic, but preventable had Dorel not chosen to put its own profits ahead of the safety of consumers. On March 25, 2008, Graceyn was a passenger in a Nissan Quest minivan operated by her mother, Holly Thrailkill. Graceyn was situated in the right rear of the vehicle in the booster seat. The minivan collided head-on with another vehicle that had veered into the minivan’s lane. Graceyn fractured her spine and was rendered a paraplegic. Her mother suffered two broken legs, but fully recovered. The passengers in the other vehicle walked away from the accident. The ONLY injury Graceyn received was to her spine. She did not have a head injury. The first witnesses on the scene thought Graceyn was fine until it became obvious that she could not move her legs.

The Thrailkills sued Dorel and the driver of the other vehicle. At trial, Plaintiff expert Dr. Jeremy Cummings testified that the shoulder belt positioning guide on Graceyn’s Protek belt positioning booster seat was defectively designed in that the belt guide would not properly retain the shoulder belt in the event of a crash. During the crash, Graceyn’s shoulder belt popped out of the Protek’s belt positioning guide. The shoulder belt then became hung on Graceyn’s elbow. As a result of the Protek’s failure to retain the shoulder belt in the guide, Graceyn’s upper body was unrestrained and she flexed over the lap portion of her seat belt, causing damage to her spinal cord.

It was revealed during trial that Dorel Juvenile Group, Inc. knew from internal crash testing conducted on the Protek that the shoulder belt was popping out of the Protek shoulder belt guide. The evidence at trial demonstrated that the original design of the Protek booster seat included a steel rod that ran across the back of the seat. Internal documents revealed that Dorel management was concerned about the cost of the Protek. The Dorel designers originally looked at cutting cost in the seat cover fabric of the Protek. However, this alone was not sufficient to get the cost down. One Dorel executive stated in an e-mail, “More importantly, what can we do besides looking at seat cover to reduce costs?”

In December 2003, the Protek was tested and certified by an outside testing facility to FMVSS 213, which is the Federal Motor Vehicle Safety Standard on booster seats. However, in early 2004, Dorel Juvenile Group, Inc. removed the steel rod to save $0.15 per seat. The document authorizing the removal of the steel rod gives “cost improvement” as the reason for removing the steel rod. Thus, Protek seats manufactured after March 15, 2004, did not have the steel rod. Subsequent internal
testing performed in 2004 by Dorel on Protek seats without the steel rod showed a problem with the shoulder belt popping out of the belt guide.

Graceyn suffered a fractured spine from the accident, and was rendered a paraplegic with no feeling below the chest. She underwent a total of 10 surgeries at the time of trial, including a spinal fusion. Plaintiff claimed $1,080,450.00 in past medical costs, and in excess of $60,000,000.00 in life care planning, as well as pain and suffering damages. The jury found Dorel 50 percent at fault and Gann 50 percent at fault.

Sadly, even the most diligent parent cannot prevent injuries to their young ones if manufacturers ignore safety standards and their own testing in order to save money. Manufacturers that would risk the health, safety and welfare of the little ones their products are supposed to protect should be held accountable when they put defective products on the market.

The only purpose for a child safety seat is to protect children. Yet, some child seats fail in the one task they were designed to perform, as shown tragically by the Thrailkill case. What are some signs that a safety seat may have failed in a collision? The child safety seat may be the issue if a child in a child safety seat is seriously injured or killed in a wreck in which others aren’t seriously injured. Many times the child safety seat fails, breaks or detaches from its base. Unfortunately, the problems with car seats are extensive. Edward L. Sanders and John L. Davidson, who are with Davidson Bowie Sanders, located in Flowood, Miss., and Edward Blackmon, Jr., with Canton-based Blackmon & Blackmon, represented the family in this case. They did a very good job for their clients.

If you have any specific questions about child safety seats, contact Dana Taunton, a lawyer in our firm’s Personal Injury/Product Liability Section, at 800-898-2034 or by email at Dana.Taunton@beasleyallen.com.

Source: Davidson Bowie Sanders

TIRE CASE AGAINST CHINESE TIRE MAKER AND IMPORTER SETTLES

Our firm recently settled a case for our client and her son who received serious injuries when the right front tire on their truck suffered a complete tread separation causing the vehicle to become uncontrollable, leave the roadway and strike a tree. Nankang Rubber Tire Company, a Chinese tire maker, manufactured the tire, a Mudstar Radial tubeless steel-beltd radial tire, LT 285/75 R16. Tireco, a California company and the exclusive distributor for Nankang for the United States, imported the tire.

One of our experts identified numerous defects with the Nankang tire that caused the tire to fail. Even more troubling is that our expert actually inspected the Nankang plant that manufactured the tire and documented manufacturing and quality control measures utilized by this company that were outdated by nearly 30 years.

The most troubling aspect of this case were the actions, or inactions, of the company that imported the Mudstar tire. As more and more of the products we buy, including tires, are being made in China and other foreign countries, the “importers” role is becoming more critical. In too many instances, “importers” are not taking the appropriate steps to assure that foreign tire makers’ tires are safe, despite the National Highway Traffic Safety Administration (NHTSA) standards requiring them to do so.

Under Federal law, “importers” must take steps to assure that the tires they import are free of defects. Good manufacturing processes require “importers” to conduct on-site inspection(s) of a foreign tire makers’ facilities to assure that adequate testing, manufacturing, quality control and other measures are in place. Further, “importers,” once they import tires into this country, should perform random sampling, testing and inspection of foreign tires before they distribute and/or sell the tires to consumers in this country.

In this case, we learned that while Tireco imports more than 400,000 tires a month, it does nothing to assure that the tires, including the Nankang tires it imports, sells and profits from, are safe. In fact, Tireco admitted it never inspected the manufacturing plant that produced the tire line at issue. In addition, Tireco never observed any tire testing or required verification that the minimum FMVSS testing was even being performed. Further, Tireco admitted that it took no steps to assure Nankang’s manufacturing processes were reasonable or that the Chinese manufacturer employed any quality control measures at all.

Finally, Tireco conceded that it never performed one post-“import” inspection, test and/or took any other step relative to one single tire it sold despite the Federal requirements to do so. This conduct is particularly troubling when you consider how important tires are to our safety. I have often written that tires are one of the most important safety components on a vehicle. Indeed, tires are the only thing between your vehicle and the road. If a tire fails at highway speeds, we have seen that the consequences can be tragic. Companies that import tires, or any product for that matter, should be held accountable when they do nothing to assure these products are safe for American consumers.

Rick Morrison, a lawyer in our firm’s Personal Injury/Product Liability Section, represented our clients in this case and he did a very good job for them. If you need additional information on this case, contact Rick at 800-898-2034 or by email at Rick.Morrison@beasleyallen.com.

ANTI-LOCK BRAKE SYSTEMS INCREASE MOTORCYCLE SAFETY

Anti-lock braking systems (ABS) are now standard on cars and are becoming an increasingly available option for motorcycles. In fact, more and more police departments are trading in their old bikes in favor of those equipped with ABS. Unfortunately, the general public may not be as aware of the significant benefits of ABS when it comes to emergency braking on motorcycles.

Emergency braking, one of the most important survival skills for bikers, is in and of itself dangerous. The problem with emergency braking without ABS is that just a little additional pressure over the maximum on either side of the brake controls will cause the corresponding wheel to lock, causing both the bike and the driver to go down, which can result in injury or death. On the other hand, when a motorcycle has ABS, emergency stopping becomes simple. ABS senses wheel rotation multiple times per second, and if the wheel reduces excessively under braking, indicating that locking is imminent, it pulses the brake pressure to prevent the wheels from locking up. This allows the driver to keep the bike upright and straight in an emergency braking situation.

Interestingly, some models of motorcycles are being sold in America without ABS as an option, while they are sold in other countries with ABS. Our firm was recently very successful in handling one such case. In that case a driver applied his brakes after an oncoming vehicle swerved into his lane. The motorcycle wheels locked and both the driver and his passenger were...
thrown off of the motorcycle, into oncoming traffic, and were killed. The motorcycle involved is not sold in America with ABS. Had the motorcycle been equipped with ABS, the wheels would not have locked and the motorcycle would have remained upright without throwing the driver and passenger into harm’s way.

There is no doubt that these two lives and many more could be saved if manufacturers began equipping motorcycles with ABS and helped to educate the public on the benefits of ABS. If you would like more information or have questions concerning this topic, contact Rick Morrison, a lawyer in our Personal Injury/Products Liability Section, by e-mail at Rick.Morrison@beasleyallen.com or by phone at 1-800-898-2034.

Source: www.bikesafer.com

$11 MILLION VERDICT AGAINST CONTINENTAL TIRE

A Florida jury has ordered Continental Tire North America Inc. to pay nearly $11 million to a woman who was seriously injured in a 2009 car accident. It was alleged in her lawsuit that the accident was caused by a faulty tire. The Palm Beach County jury found in favor of Tracey Parker in the case. Ms. Parker spent 102 days in the hospital following a tire blowout in May 2009 that caused her vehicle to roll over three times. The jury found that a defect in the tire caused the sudden and catastrophic tire failure.

Ms. Parker was driving to her job in Port Saint Lucie, Fla., on I-95 when her car’s right rear tire failed. She had to be airlifted to a trauma center in West Palm Beach, Fla., where she spent more than a month in a coma and had to undergo 17 surgeries. The tire failed because it was defective. The tire was, at the time of the accident, well-maintained and did not have uneven tread wear or repairs and had three years left on its warranty.

Ms. Parker was represented by Hampton Keen, Don Fountain and Julie Littky-Rubin with the Clark Fountain La Vista Prather Keen & Littky-Rubin firm, located in West Palm Beach. The case is Parker V. Continental Tire North America in the Circuit Court of the Fifteenth Judicial Circuit of Florida.

Source: Carolina Bolado and Law360.com

PROBLEMS WITH HYUNDAI GENESIS BRAKES PROMPT NHTSA INVESTIGATION AND RECALL

The National Highway Traffic Safety Administration (NHTSA) is investigating a number of reports of problems with brakes in model year 2009-2012 Hyundai Genesis automobiles. The investigation has focused primarily on the 2009 model year vehicle, involving about 40,000 cars. Subsequently, Hyundai announced on Oct. 21 that it would recall about 27,500 of the Genesis sedans to fix the brakes.

NHTSA reported 23 complaints involving the 2009 model Genesis from vehicle owners who said they had to push the brake pedal harder than normal to make the vehicle stop. In at least one report, the defect led to a crash, when a Florida driver reported she could not stop her vehicle in time, even after pumping the brakes, to avoid a collision with a line of stopped automobiles ahead of her.

The recall will include cars manufactured between April 1, 2008, and March 16, 2012. Hyundai says repairs will focus on "potential durability issues" in the brake system’s Hydraulic Electronic Control Unit. Hyundai conducted a limited service campaign on Hyundai Genesis vehicles last March, although the manufacturer said it didn’t “catch” all the vehicles affected by the problem. In that recall, the automaker replaced the brake fluid in the subject vehicles.

Hyundai says the March service campaign resulted in brake fluid replacement in about 60 percent of the affected vehicles. The recall will strengthen efforts to contact vehicle owners, with letters scheduled to be mailed to owners in November. Hyundai dealers will conduct brake inspections and change the brake fluid. The replacement fluid will contain an anti-corrosive additive, a Hyundai spokesman said. These services will be done at no cost to vehicle owners.

A number of other models of Hyundai vehicles have been involved in safety investigations and recalls in the past several months. In April, the auto manufacturer recalled 1.1 million vehicles including Accents, Tuscons, Elantras and Santa Fe SUVs for problems with brake lights and air bags. In July 2012, almost 200,000 model year 2007 to 2009 Santa Fe SUVs were recalled for concerns about air bag problems.

X. MASS TORTS UPDATE

TRANSVAGINAL MESH LITIGATION UPDATE

To date, more than 30,000 transvaginal mesh (TVM) lawsuits have been filed in the U.S. District Court for the Southern District of West Virginia as part of ongoing Multidistrict Litigation (MDL). An MDL has been formed for each of six TVM manufacturers, including C.R. Bard, Inc., American Medical Systems, Inc., Boston Scientific Corp., Ethicon, Inc. (Johnson & Johnson), Coloplast Corp., and Cook Medical Inc. Several thousand additional cases are pending in consolidated state court litigations against these manufacturers and other TVM manufacturers around the country.

The TVM discovery process has revealed an increasing amount of complications and severe injuries associated with Trans-Obturator Tape (TOT) mesh slings compared to retropubically placed slings. Prior to the development of TOT slings, mesh slings placed to repair stress urinary incontinence were implanted retropubically by placing the mesh through a vaginal incision and pulling the mesh behind the pubic bone to two stab incisions made in the lower abdomen. In an effort to minimize the potential for bladder and bowel injuries associated with the retropubic approach, the transobturator approach was developed.

The transobturator approach involves the passage of mesh through the obturator foramen on the sides of the groin. The mesh is then pulled to two stab incisions made on each side of the patient’s groin. Although intended to minimize injuries during implantation, the transobturator approach introduces increased risks for vascular and nerve injury by the passing the mesh and tools used to implant the mesh through the nerve-rich obturator foramen. In addition to these increased injuries, which occur at the time of placement, increased risks of nerve injury and irritation after placement have also been associated with TOT slings as compared to slings implanted using the retropubic approach.

Lawyers in our firm’s Mass Torts Section continue to be heavily involved in the TVM litigation and discovery process. These lawyers and their support staff continue to investigate 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 surgery following the transvaginal placement of mesh for pelvic organ prolapse or stress urinary incontinence repair. If you or a loved one has suffered such an injury, contact Leigh O’Dell or Chad Cook, lawyers in our firm’s Mass Torts Section, at 1-800-898-2034 or by email at Leigh.Odell@beasleyallen.com or Chad.Cook@beasleyallen.com.

$2 Million Verdict in Bard Transvaginal Mesh Bellwether Trial Upheld

U.S. District Judge Joseph R. Goodwin has ruled in favor of the Plaintiff in allowing a $2 million verdict against transvaginal mesh manufacturer C.R. Bard to stand. The jury verdict was handed down in the first federal lawsuit to go to trial related to injuries caused by defective vaginal mesh implants.

Plaintiff Donna Cisson filed the product-injury complaint against C.R. Bard after suffering severe injuries and debilitating pain she received from an Avaulta transvaginal mesh device that she had implanted in 2009 to correct a form of pelvic organ prolapse. Her case was the first to be tried out of more than 23,000 lawsuits against Bard and five other transvaginal mesh manufacturers that have been consolidated for multidistrict litigation (MDL) in federal court in West Virginia. More than 4,000 of those complaints name Bard as a defendant.

The jury in the Cisson case awarded the Plaintiff $250,000 in compensatory damages and $1.75 million in punitive damages. Ms. Cisson is one of thousands of women who have received transvaginal mesh to repair common pelvic floor disorders including stress urinary incontinence and pelvic organ prolapse.

Judge Goodwin ruled that Ms. Cisson did not need to prove the precise nature of a defect as a required element under Georgia product liability law. He ruled the jury had reasonable evidentiary basis for the complaint’s design defect claim. In his ruling, Judge Goodwin said:

*It was not necessary for the plaintiffs to specify the exact defect in the Avaulta Plus that injured Ms. Cisson, as long as they presented evidence to demonstrate that the device did not function as intended, and that it proximately caused Ms. Cisson’s injuries.*

Related to the failure-to-warn claim, Judge Goodwin ruled that Bard allegedly knew the composition of its product increased the risk of complications, but the company did not let physicians know about the risk. Additionally, the judge said there was “abundant evidence” that the physician would not have implanted the device if he had access to all the information Bard had.

This case is *Cission et al. v. C.R. Bard Inc.* in the U.S. District Court for the Southern District of West Virginia. The MDL is *In re: C.R. Bard Inc. Pelvic Repair System Products Liability Litigation*, in the same court.

Sources: Law360; Bloomberg and RightingInjustice.com

Jury Awards $4 Million in Janssen Birth Defect Case

Johnson & Johnson’s Janssen Pharmaceutical unit must pay $4.02 million in a lawsuit claiming that its seizure drug Topamax caused birth defects. The Philadelphia state court jury deliberated less than an hour before rendering their verdict in favor of Virginia resident April Czimmer, who took the drug for six months and gave birth to a boy with cleft lip. Czimmer said her son, born in September 2007, had injuries requiring four surgeries. This is believed to be the first case of this sort against Jansen to go to trial. Ms. Czimmer’s case is the first of about 134 cases pending in state court in Philadelphia related to the drug. Another trial began on Oct. 29 involving injuries suffered by a 5-year-old boy from South Carolina.

Topamax, approved by the U.S. Food and Drug Administration (FDA) in 1996, was one of New Brunswick-based J&J’s top sellers before it lost patent protection in 2009. Ms. Czimmer took the drug from August 2006 through February 2007 to treat migraines. The birth defects, known as oral clefts, range from a small notch in the lip to a groove that runs into the roof of the mouth and nose. Lawyers for the company argued that oral clefts are a common congenital malformation with about 4,500 babies born each year in the U.S. with cleft lip. Tommy Fibich, who is with Fibich, Hampton, Leebron, Briggs & Josephson, a Houston firm, represented the Plaintiff. He did a very good job in her case.

Source: NJ.com

Jury Finds Talcum Powder Causes Cancer

Recently, a South Dakota federal jury found in favor of Deane Berg in her claim that Johnson’s Baby Powder and Shower to Shower caused her ovarian cancer, but declined to award any money damages to her and against Johnson and Johnson. Both parties said they were pleased with the verdict. It is believed that this suit was the first in the U.S. to claim that Talcum Powder can cause ovarian cancer.

Ms. Berg applied the power to her genital area from 1975 to 2007. She was diagnosed with ovarian cancer in December 2006 at the age of 49. Ms. Berg claimed that Johnson and Johnson has known for decades that studies exist linking the use of Talcum Powder to ovarian cancer but has failed to warn of this hazard to this day. If you have any questions regarding these types of cases or if you would like to have us review a potential claim, contact Ted Meadows, a lawyer in our Mass Torts Section, at 800-898-2034, or by email at Ted.Meadows@BeasleyAllen.com.

Source: Law360

Januvia Lawsuits On The Rise

Four popular diabetes drugs are rapidly gaining critical notoriety in the United States. Januvia (Merck), Janumet (Merck), Byetta (Amylin / Bristol-Myers Squibb) and Victoza (Norvo Nordisk) have been associated with increased risk of pancreatic cancer and thyroid cancer in humans. However, none of the manufacturers of these drugs has seen fit to properly warn the public about these potentially fatal side effects. Consequently, lawsuits have begun springing up around the nation, evidencing a growing public awareness, and a growing number of cancer victims who have taken these drugs.

In August, the Judicial Panel on Multidistrict Litigation established MDL No. 2452—*In re: Incretin-Based Therapies Products Liability Litigation* in Federal District Court for the Southern District of California, the Honorable Anthony J. Battaglia presiding. At the time of its creation, 55 lawsuits were consolidated, with an additional 44 cases expected to be transferred from other jurisdictions. Lawyers in the Mass Torts Section at Beasley Allen are

www.BeasleyAllen.com
actively involved in this litigation. They continue to review new cases as they come in.

The following is how the incretin-based therapies work. The human body breaks down ingested sugars and starches into glucose, the fuel that gives us energy. Most of this conversion occurs in the liver. Insulin delivers the glucose from the bloodstream into individual cells. Type 2 Diabetes is a disease whereby the body either fails to produce enough insulin to deliver the glucose, or the cells for some reason refuse to receive the insulin. This breakdown in the insulin delivery system causes the blood to accumulate too much glucose (hyperglycemia), which can lead to a myriad of serious and potentially life-threatening diabetic complications. The problem can be compounded if the liver produces too much sugar during this process.

Incretin is a natural hormone that prompts the pancreas to release insulin when blood sugar levels are high, such as after we eat. Januvia (sitagliptin), Janumet (sitagliptin combined with Metformin), Byetta (exenatide) and Victoza (liraglutide) are “incretin mimetics.” These drugs “mimic” incretin by prompting the pancreas to release insulin when blood sugar is rising, while at the same time minimizing the pancreatic production of glucagon, the hormone that causes the liver to release its sugar. Ideally, a balance is created between glucose production and glucose consumption.

But stimulating the pancreas to create additional insulin (and to reduce glucagon production) can lead to serious pancreatic inflammation, known as pancreatitis. Acute pancreatitis is defined as a sudden attack causing inflammation of the pancreas, often accompanied by severe abdominal pain. Acute pancreatitis is fatal in approximately 5 percent of cases, and survivors are at increased risk of recurrent pancreatitis or other pancreatic disorders or dysfunction. Chronic pancreatitis is a known risk factor for pancreatic cancer.

Pancreatic cancer has a notoriously poor prognosis for survival. The five-year survival rate is usually estimated around 5 percent. The majority of pancreatic cancer cases occur in people older than age 50. It has few early symptoms or warning signs, often resulting in late-stage diagnosis with few treatment options.

Another troubling observation among the users of incretin-based therapies is an increase in thyroid cancer reports. Early animal studies showed development of thyroid tumors in clinically relevant exenatide and liraglutide exposures. In fact, Victoza now includes a black box warning acknowledging that it causes thyroid C-cell tumors in rodents, and that patients with a family history of thyroid cancer should avoid this drug. While thyroid cancer risk among incretin-therapy users is certainly alarming, most studies have focused more on the pancreatitis/pancreatic cancer threat.

A comprehensive review of the U.S. Food and Drug Administration (FDA) Adverse Event database by researchers at the UCLA School of Medicine and Department of Biometrics showed the “use of sitagliptin or exenatide increased the odds ratio for reported pancreatitis six-fold as compared with other therapies. Pancreatic cancer was more commonly reported among patients who took sitagliptin or exenatide as compared with other therapies.” Pancreatitis, Pancreatic, and Thyroid Cancer With Glucagon-Like Peptide-1-Based Therapies, Elashoff, et al., Gastroenterology 2011; 141. These five clinical researchers observed the reported event rate for pancreatic cancer to be nearly three times greater in patients taking exenatide and sitagliptin, concluding that their findings “raised caution about the potential long-term actions of these drugs to promote pancreatic cancer.”

A Johns Hopkins study published this year in JAMA Internal Medicine focused on increased incidence of acute pancreatitis in patients taking sitagliptin or exenatide. After studying 1,269 patients hospitalized with acute pancreatitis, as compared to 1,269 diabetic control subjects, these six research physicians concluded even relatively short-term users of these drugs (less than two years) experienced “significantly increased odds of acute pancreatitis relative to the odds in nonusers.” Glucagonlike Peptide 1-Based Therapies and Risk of Hospitalization for Acute Pancreatitis in Type 2 Diabetes Melitus, A Population-Based Matched Case-Control Study, Singh, et al., JAMA Intern. Med., Feb. 25, 2013.

Last year, incretin-based treatments for Type 2 Diabetes reached approximately 17 million prescriptions according to IMS Health data. Eleven million (66 percent) of those prescriptions were for sitagliptin. (QuarterWatch, Institute for Safe Medication Practices, April 18, 2013) With the rising popularity of these drugs, we are certain to see a rise in pancreatic and thyroid cancers. Patients considering these drugs should weigh carefully the risks and benefits, and discuss these concerns in depth with their prescribing physician.

For more information about the ongoing litigation in MDL 2452 and related cases, contact David P. Dearing, a lawyer in our firm’s Mass Torts Section, at 800-898-2034 or by email at David.Dearing@Beasley-Allen.com.

JOHNSON & JOHNSON SETTLES HIP IMPLANT CASE IN CALIFORNIA

Two weeks before a trial was set to begin, Johnson & Johnson settled a bellwether case in coordinated litigation in California. The case involved injuries allegedly caused by the company’s ASR metal-on-metal hip implants. The terms of the settlement agreement are confidential.

The trial had been scheduled to begin on Oct. 15. The next bellwether trial is scheduled for early 2014 in Los Angeles. Johnson & Johnson and subsidiary DePuy Orthopedics Inc. face thousands of lawsuits at the federal and state level regarding the ASR implants. In March, a Los Angeles jury ordered DePuy to pay $8.3 million in damages to a retired prison guard who said he was injured by the device, the first such trial against the orthopedic company. A month later, an Illinois jury sided with DePuy in an ASR case, finding against a registered nurse implanted with the device in 2008.

Robert Ottoman, the Plaintiff in the case that settled, underwent a total hip replacement using an ASR device in August 2008. It was alleged that the implant caused him severe pain and made it more difficult for him to walk. He had revisionary surgery in November 2011, allegedly as a result of the device’s failure.

Johnson & Johnson and DePuy knew that the ASR devices were failing at a high rate for the five-plus years they were on the market, including prior to Ottman’s initial surgery. Johnson & Johnson recalled the implants in August 2010. The first bellwether trial in the multidistrict litigation over the device was supposed to begin in September, but an Ohio federal judge continued it as a result of unresolved discovery issues. The plaintiff is represented by Brian Panish and Peter Kaufman of Panish Shea & Boyle, a firm located in Los Angeles.

The case is Ottman v. Johnson & Johnson in the Superior Court of California, San Francisco County. The coordinated litigation is DePuy ASR Hip System.
Cases in the Superior Court of California, San Francisco County.
Source: Law360.com

COURT REJECTS WYETH’S APPEAL OF $11 MILLION PREMPRO SUIT

The Pennsylvania Supreme Court last month rejected an appeal by Wyeth Pharmaceuticals Inc., a unit of Pfizer Inc. The appeal was over $11.3 million in compensatory and punitive damages awarded to a woman who developed breast cancer after taking the menopause drug Prempro.

The justices rejected a petition by Wyeth asking the appeals court to reconsider a January 2010 decision by the state’s Superior Court agreeing that the drugmaker systematically ignored warning signs that the hormone replacement drugs Prempro and Provera were linked to breast cancer. The justices did not comment on the case in issuing their order rejecting the appeal.

The refusal by the justices to hear the case leaves intact a decision by a three-judge Superior Court panel finding that plaintiff Connie Barton had presented ample evidence that the subsidiaries had ignored studies linking the drug to breast cancer, squashed dissenting studies, and even ghostwritten medical articles denying the cancer links. The Superior Court, in an opinion written by Judge Kate Ford Elliott, stated:

The record indicates that Wyeth’s conduct in this matter was reprehensible and fully merited the imposition of punitive damages. Wyeth was on notice years prior to Barton’s being prescribed [the] drugs that they may cause breast cancer, yet purposefully failed to study the matter further and even discouraged others from doing so.

The appeals decision found that a judge in the Philadelphia County Court of Common Pleas had improperly reduced a $75 million punitive damage award. Ms. Barton had received to $5.6 million, or one-and-a-half times the $3.7 million in compensatory damages she was awarded by a jury. Instead, the Superior Court found that a punitive damage award double the compensatory damages, or $7.4 million, would be sufficient to deter pharmaceutical companies from engaging in similar conduct. Wyeth had argued that its compliance with FDA standards insulated the company from punitive damages. This was an argument that the drugmaker also made in the Supreme Court on appeal.

Ms. Barton is represented by Samuel Abloeser, Esther Berezesofy, Kevin Haverty and Michael Quirk with the Philadelphia firm Williams Cuker Berezesofky. They did a very good job in this case.
Source: Law360.com

LIPITOR LAWSUIT FILED AGAINST PFIZER

We wrote last month on litigation involving Pfizer’s blockbuster cholesterol treatment Lipitor. A lawsuit has been filed against Pfizer by a Louisiana woman, alleging that she developed Type 2 diabetes after taking Lipitor for roughly a decade starting in the late 1990s. It was alleged that Pfizer fraudulently hid Lipitor’s potential link to blood sugar levels until 2012. Gladys Board claimed in her suit, filed in Louisiana federal court, that Pfizer had not included a warning about increased glucose levels associated with Lipitor until after the U.S. Food and Drug Administration (FDA) requested that it do so in 2011, based on its review of the drug.

It was alleged in the suit that the warning does not sufficiently warn consumers about the “serious” risk of developing diabetes by taking the drug. Ms. Board claimed that Pfizer and its predecessors have had data at least since 1996 that suggested a link between Lipitor and Type 2 diabetes.
Source: Law360.com

BRAUN ANTIBiotic RECALLED FOR Contamination With life-threatening Particles

An injectable antibiotic created by B. Braun Medical Inc., the German medical and pharmaceutical company, was recalled last month due to the discovery of visible, floating particles found within vials of the drug. A sample of the recalled lot was found to contain visible specks of organic matter. While Braun did not specify what type of particulate matter was found in its product, it noted that metal, cotton fibers or hair may lead to life-threatening chronic or acute inflammatory reactions, like anaphylaxis. If used with a cardiac shunt, these particles could result in heart attack, stroke, respiratory failure, renal failure, or tissue necrosis. Other adverse events associated with this type of particulate matter are irritation of blood vessels and granulomata, especially in the lungs.

The U.S. Food and Drug Administration (FDA) posted the notice in order to warn health care professionals about the company’s recalled lot H3A7444 of its Ig Cefepime for Injection USP and Dextrose Injection USP. The product is used as a cephalosporin antibacterial to treat infections caused by particular strains of designated microorganisms. The recalled lot expires January 2015. It was distributed nationwide to licensed distributors, hospitals and pharmacies in a Duplex single dose intravenous, plastic container with 24 units per case. The product was also distributed to customers between the dates of February 4 March 1, 2013. Thus far, according to the company, no reports of injuries or deaths have been reported to B. Braun after the usage of this recalled injectable. Source: Law360.com

CANADIAN COURT REFUSES TO REDUCE PXAL birth defect class

A Canadian appeals court has rejected GlaxoSmithKline Inc.’s efforts to significantly limit class certification on failure-to-warn issues in a suit claiming the antidepressant Paxil causes birth defects. The court approved a 19-year class period rather than the three-year period the company sought. The Court of Appeal for British Columbia rejected GSK’s appeal of a lower court order that certified a class of consumers who were prescribed Paxil between the date it was first sold in 1993 and the December 2012 class certification. The company had sought on appeal to limit certification on the issue of duty to warn to those who used Paxil between 2003 and 2005, a move the court said “would be contrary to the object of judicial economy and unduly limit access to justice.”

Source: Law360.com

XI. BUSINESS LITIGATION

JUDGE DISMISSES TRADEMARK LAWSUIT FILED BY UNIVERSITY OF ALABAMA

A federal judge last month dismissed the University of Alabama’s trademark lawsuit against artist Daniel A. Moore and his
company New Life Art. U.S. District Court Judge Abdul Kallon ruled in favor of Moore and against the University in the eight-year legal fight. This lawsuit received a great deal of national media attention.

Photographs and artistic renderings are carved out as a protected area for artists and the artists can transfer those works onto items. Moore has painted realistic scenes from Alabama football games since 1979. He also reproduced the artwork as prints, calendars, and on mugs and other items. The University in 2002 told Moore he would need permission to depict the team’s uniforms because they are trademarks. But Moore contended that he didn’t have to do so because he was portraying historical events. He also claimed his First Amendment rights. The university sued him and his company in 2005 for breach of contract, trademark infringement, and unfair competition.

In an appeal of a district court decision, the 11th Circuit Court of Appeals in June 2012 ruled in favor of Moore on the most significant issues of the University’s lawsuit. But the appeals court sent the case back to Judge Kallon to resolve the remaining contractual issues related to Moore’s depiction of the University of Alabama’s uniforms on mini-prints, mugs, cups, flags, towels, t-shirts, “or any other mundane products.” Judge Kallon was asked by the 11th Circuit to determine whether New Life re-issued one product whose licensing agreement specifically prohibited issuance without first receiving the University’s permission. New Life has failed to pay royalties when it later re-issued certain works that had explicitly been the subject of a licensing agreement.

The University contended New Life breached licensing agreements regarding five “limited edition” prints of paintings depicting scenes of the University’s football team when New Life reissued the prints in “mugs and other mundane products.” The University also argued that even if the court found that New Life had not breached the agreements, it was still due to win based on New Life’s unjust enrichment from the sale of the re-issued products. Judge Kallon stated in his ruling:

> selling ‘mugs and other mundane products’ containing this print, and is therefore precluded from recovering damages based on the theory of breach of contract. The court further determines that the University is not entitled to damages based on the theory of unjust enrichment. Accordingly, New Life’s motion for summary judgment is due to be granted, and the University’s motion is due to be denied.

Steve Heninger, who is with the Birmingham firm of Heninger Garrison Daris, represented Moore in this lawsuit. Steve did a very good job for his client. Hopefully, this recent order will resolve and bring to an end this ongoing battle once and for all. I believe it’s in the interest of all parties.

Source: AL.com

### XII. AN UPDATE ON SECURITIES LITIGATION

#### SEC IS A MIXED BAG OF SUCCESSES AND FAILURES ON ENFORCEMENT ACTIONS

After the financial collapse of 2008, the Securities Exchange Commission (SEC) rightfully came under fire for not doing enough in advance to regulate the toxic investments known as mortgage backed securities. After the collapse, the corporate bailouts, the bonus scandals, and all the Hollywood movies and documentaries, the American taxpayers still have not received justice. So far, there has been no “big case” that everyone has wanted to see and no “major” players have been held accountable. What is all the more troubling is that we are approaching the five-year statute of limitations that restricts the sanctions the SEC can get for the gross misconduct. In total, the SEC has filed crises-related enforcement actions against 105 individuals. Fifty-nine of those individuals have reached settlements and six others were either dismissed or dropped. The rest are pending. As usual, justice delayed is justice denied.

But fortunately all of the news from the SEC isn’t bad. After a series of scathing attacks from those outside the Commission—particularly from Judge Jed Rakoff—the SEC has changed its policy on allowing corporations to enter into settlement agreements without “admitting” any wrongdoing. The SEC has now indicated that defendants will have to admit wrongdoing as a condition of settling claims against them. It is too early to tell if the SEC will stick to its guns and require all defendants to admit liability, or if they will quickly start creating exceptions to this common sense minded policy.

Another area where the SEC should get some credit is in the enforcement of actions for “insider trading.” According to the Securities Exchange Commission, insider trading cases continue to be a high priority area for enforcement and allocation of additional resources. The SEC brought 58 insider trading actions in FY 2012 against 131 individuals and entities. In the last three years, the SEC has filed more insider trading actions (168 total) than in any three-year period in the agency’s history. These insider trading actions were filed against nearly 400 individuals and entities with illicit profits or losses avoided totaling approximately $600 million. Many of these actions involved financial professionals, hedge fund managers, corporate insiders, and attorneys who unlawfully traded on material non-public information, undermining the level playing field that is fundamental to the integrity and fair functioning of the capital markets. Again, it is too early to tell if this trend is an aberration or a good sign of things to come.

Sources: Zero Hedge, Compliance Week

### XIII. INSURANCE AND FINANCE UPDATE

#### JUDGE CLEAR ATLANTA-AREA REVERSE-REDLINING CASE TO PROCEED

Fulton, DeKalb, and Cobb counties in Atlanta, Ga., have brought claims against a British bank alleging that the bank engaged in lending practices damaging their property tax by encouraging minority homeowners into loans that they could not afford. The counties claim the bank implemented a reverse redlining scheme that targeted minority neighborhoods and stripped the equity from the properties the bank financed. Judge Steve Jones of the Northern District of Georgia, by denying a motion to dismiss, has allowed the $100...
When a bank engages in reverse-redlining, they refuse to extend credit to borrowers because of their race or the neighborhoods where they live. In this case, the Atlanta counties claim a reverse-redlining scheme, meaning that the mortgage and financial companies targeted certain neighborhoods and targeted certain individuals based on their race. Some of the unfair practices engaged in by these companies were “exorbitant interest rates, equity stripping, acquiring property through default, repeated foreclosures,” and loan servicing procedures involving excessive fees.

HSBC targeted minorities in the Atlanta-area counties and offered FHA loans in the highest foreclosure risk areas of the counties. For example, in DeKalb County alone, nearly 70 percent of FHA loans were made to minority borrowers, many of whom were located in the highest foreclosure risk areas according to census tracts. Cobb County experienced 63 percent of FHA loans to minority borrowers in the highest foreclosure risk areas while Fulton County had 48 percent between 2004 and 2007. James Evangelista, the lawyer representing the counties, as well as county officials, were obviously quite pleased with the results thus far in this case. Their focus is on holding the financial institutions accountable for their discriminatory practices. They believe that homeownership is a “key threat” to our communities and that it forms the basis of the American dream. When financial institutions engage in this type of practice they are depriving individuals of homeownership. The Fair Housing Act provides a remedy for the communities to recover damages.

The bank attempted to have the case dismissed, claiming that the practices engaged in by the HBSC were a part of their general practice and that the communities failed to show they had suffered harm associated with the foreclosures in the area. The federal judge disagreed, stating that the claims and findings in the financial industry “raise the pleadings above the speculative level.” The judge found the counties had engaged in policies and practices leading to an unfair impact on minorities, holding that the data relating to HSBC’s lending practices was sufficient for the case to proceed.


FINANCIAL REQUIREMENTS FOR COMMERCIAL VEHICLES

On July 18, 2013, U.S. Representative Matt Cartwright (D-Pa) introduced the Safe and Fair Environment on Highways Act, H.R. 2316, achieved through Underwriting Levels Act of 2013. This bill was aimed at the minimum amount of liability that trucking companies are required to have in order to operate in the United States. This was set by Congress more than 30 years ago.

When Congress deregulated the trucking industry in 1980, concern arose as to how the Federal Government would be able to assert and maintain effective oversight of a large and growing number of trucking companies in the industry. A minimum insurance requirement was established to protect the motoring public from negligent drivers and companies by providing appropriate compensation to crash victims and also to assist oversight with the intent that through effective underwriting the insurance market would provide incentives for safe operating companies.

The Motor Carrier Act of 1980 authorized the Secretary of Transportation to set minimum levels of insurance and to increase such amounts to appropriate levels that would achieve the intended purpose. The minimum level of insurance for motor carriers transporting property was set at $750,000 and $5 million for motor carriers transporting hazardous materials. These levels had not been increased since they were set 30 years ago. However, inflation and escalating medical costs since 1980 have created a much different situation for a trucking company if one of its vehicles is involved in a major accident.

While the minimum level of $750,000 may not have been sufficient to cover a catastrophic event in 1980, it is nowhere near sufficient to cover a catastrophic event in today’s world. A recent study has shown that in present dollars adjusted for increase in cost of medical and inflation it would take about $4.5 million to provide the equivalent coverage of $750,000 that was set in 1980. Because the Federal Government has failed to keep these regulations up-to-date, minimum insurance requirements are not fulfilling the Congressional intent of protecting truck crash victims and promoting safe operations through the underwriting process.

Some would argue the minimum financial levels have in fact had the opposite effect of their intended purpose. While the minimum limits were set to protect the public and improve safety within the trucking industry, they have allowed irresponsible companies to operate by creating an environment of wrongdoing and unfair competition. In order for the minimum insurance requirements to perform as they were originally intended by Congress, the Secretary of Transportation should increase the levels to amounts that provide appropriate compensation to catastrophic crash victims and effectively function as a mechanism that protects safe operation through the underwriting process.

Rep. Cartwright’s bill was assigned to the House Transportation and Infrastructure and Highway and Transit Committee. Currently, there is no time table as to when this bill may even be reported out of committee. Hopefully, Congress will take the necessary action to increase the minimum limits of insurance for the trucking industry. Victims of truck crashes should be adequately compensated if the truck drivers and his or her company are at fault. If you need more information on this subject, contact Mike Crow, a lawyer in our Personal Injury/Product Liability Section, at www.BeasleyAllen.com
healThcare workerS have filed a ment of Labor's final rule concerning LIABILITY UPDATE PREMISES X.V.

Source: www.dol.gov bathing), provided such duties do not (e.g., dressing, grooming, feeding, and monitoring the person's safety and well-ning the person on walks, errands, conversation, reading, games, crafts, accompa-nying the person on walks, errands, appointments, or to social events, and monitoring the person's safety and well-being). Incidental care duties are allowed (e.g., dressing, grooming, feeding, and bathing), provided such duties do not exceed 20 percent of the total hours worked.

Source: www.doi.gov

XIV. EMPLOYMENT AND FLSA LITIGATION FLSA Protections Extended To Home Healthcare Workers Effective Jan. 1, 2015, the U.S. Depart-ment of Labor’s final rule concerning domestic service workers goes into effect, providing minimum-wage and overtime protection to many workers. The new rule better defines “companionship services” and disallows use of the companionship exemption by third-party employers, such as home health care agencies.

Currently, an employee who works for a home health care company and provides care, fellowship and protection for people who cannot care for themselves due to advanced age or mental infirmity is not guaranteed the minimum wage or over-time pay. After the rule goes into effect, to be exempt a home health care worker must be employed by the individual receiving the companionship services or the individ-ual’s family.

The worker’s duties must be limited to fellowship and protection duties (e.g., con-ver-sation, reading, games, crafts, accompa-nying the person on walks, errands, appoint-ments, or to social events, and monitoring the person’s safety and well-being). Incidental care duties are allowed (e.g., dressing, grooming, feeding, and bathing), provided such duties do not exceed 20 percent of the total hours worked.

Source: www.doi.gov

XV. PREMISES LIABILITY UPDATE LAWSUIT Filed over Fatal Explosion At Oklahoma Refinery Two women whose husbands were killed in a boiler explosion at a crude oil refinery in Wynnewood, Okla., have filed a lawsuit. The lawsuit filed in Fort Bend County, Texas, by LeeAnna Mann and Kari Smith seeks damages against CBR Energy and Wynnewood Refining Co. The suit was filed in the Texas county where the head-quarters of CVR Energy, the parent company of Wynnewood Refining Co., is located.

The Sept. 28, 2012, explosion killed 45-year-old Russell Mann and 34-year-old Billy Smith. The lawsuit alleges the company was using an outdated boiler that had to be restarted manually instead of a system that would allow employees to restart the boiler from a remote location.

Sources: The Oklahoman and Claims Journal

WROngful Death SuiT Filed AgainST Colorado Bar AftEr TriPle-FaTal Crash The parents of a teenager who was killed in a car crash have filed a wrongful death lawsuit against a Glenwood Springs bar. It was alleged in the suit that the bar served the underage driver alcohol before the accident. The parents of 16-year-old Jenni-fer Nevarez filed the suit against the Bayou Cajun Restaurant and Bar and one of its bartenders. The teenager and two others were killed in the April 14 crash in Glenwood Canyon.

According to the Colorado State Patrol, all three of the youngsters had a blood-alcohol level above the legal limit for driving. Sadly, the driver had more than three times the limit, with a blood-alcohol content of 0.241 percent. The car driven by the drunk driver ran into a tractor-trailer and the lives of three youngsters were tragically ended.

Sources: The Post Independent and Insurance Journal

FAMILY FILES LAWSUIT IN HOTEL POOL ELECTROCUTION DEATH A lawsuit, arising out of a swimming pool electrocution death at a Hilton Hotel swimming pool has been filed by a Mis-souri City family. The victim, Raul Hernan-dez Martinez, and his family spent the Labor Day weekend at the Hilton Houston Westchase hotel in West Houston. They were at the swimming pool at dusk when the pool lights came on automatically. It appears that an electrical current immediately surged through the water. Brown Electric Inc., a Houston-area electrical con-tractor, and the hotel were named as defen-dants. The contractor had performed recent upgrades to the pool’s electrical system.

Another of the children was shocked while swimming in the pool. It was reported that the boy’s mother reached for her son and she was also shocked and knocked unconscious. The mother was revived by CPR. She suffered several broken ribs when family members and bystanders dragged her from the pool. The young boy’s brother, Raul Hernandez Mar-tinez, fought through the electrical current to retrieve his little brother and was able to push him to the edge of the pool where others helped pull him out. His brother would survive, but Raul became motion-less as the electrical current continued to surge through the pool. He was pulled from the pool and rescuers tried to save him. But he was pronounced dead at a hospital six days later.

An investigation into the electrocution death found that the pool at the Hilton Westchase “did not meet applicable city, state and national electrical codes” and did not have Ground Fault Circuit Interrupters on the pool light system. These are normal installations in pool construction to prevent electrical surges. Brown Electric had been hired by Hilton to bring the pool into compliance. But, according to a City of Houston inspector, Brown Electric per-formed the work without obtaining the proper permits. After the death, Hilton and Brown were cited for “use of electrical system which constitutes a hazard to safety, health and public welfare.”

The lawsuit also alleges that several days before the accident staff at the hotel called on Brown Electric to troubleshoot a problem pool light again. It was alleged that the electrician reconnected wires in a junction box and determined the pool system operational. John B. Thomas, a lawyer with the Hicks Thomas law firm in Houston, Texas, filed the suit on behalf of the family.

Source: KHOU.com

PARENTS AWARDED $3.75 MILLION IN COLORADO WRONGFUL DEATH SUIT A Colorado jury has awarded $3.75 million in a wrongful death lawsuit filed by the parents of a 12-year-old boy who drowned in the shallow end of a country club pool. It was reported that the parents filed suit against the Country Club after their son drowned during a private birth-day party on June 6, 2010. It was reported that two lifeguards were on duty at the

time. The youngster, who was found near the base of an unmanned lifeguard chair, was pulled out of the pool by another 12-year-old boy. The lawsuit alleges that the lifeguards were inattentive and that the club’s pool safety policies were inadequate. Source: Denver Post

XVI.
WORKPLACE
HAZARDS

Pennsylvania Court Refuses To Upset $8 Million Damage Award Against Consol

The Pennsylvania Supreme Court has refused to hear an appeal of a decision affirming $7.8 million in damages against Consol Energy Inc. The personal injury suit was brought by two workers who were seriously injured when a metal staircase they were descending collapsed. The Supreme Court let stand a 2012 ruling by the state’s Superior Court that upheld the 2011 ruling in favor of David and Debra Gillingham and Clifford and Pamela Decker. David Gillingham and Clifford Decker were working at a Consol facility in Allegheny County, Pa., in 2007 when they were injured in the staircase collapse.

David Gillingham tore the rotator cuff in his right shoulder, requiring three surgeries, broke his foot and suffered a compound fracture in his spine from the accident. Decker suffered three fractures to his left femur as well as a bruised knee, and received two surgeries as a result of the accident. Decker and his wife and Gillingham and his wife filed separate suits against Consol over the accident in the Allegheny County Court of Common Pleas. In May 2011, a jury awarded Gillingham $1,877,000, Mrs. Gillingham $923,000, Decker $4,543,000 and Mrs. Decker $457,000.

Consol appealed the decision, asking for either a judgment overturning the jury verdict or a new trial. It argued, among other issues, that the damages were excessive and that the trial court allowed improper testimony. In reviewing the case, the Superior Court concluded that

- the corrosion caused those bolts to fail;
- Consol was at fault for not discovering the corrosion;
- the trial court was also correct in submitting the question of whether Gillingham counted as a Consol employee under the state’s Workers’ Compensation Act to the jury; and
- an agreement signed by Gillingham releasing Consol of all liability was void because he did not have the ability to decline to sign it.

The court said that was due to the company’s superior bargaining power and the fact that he was employed by a contractor for Consol. The appeals court also reviewed the damages determined by the jury, concluding that the sums awarded were appropriate.

Timothy Conboy of Pittsburg-based Caroselli Bechler McTiernan & Conboy, represented the Plaintiffs in this case. He did a very good job for them. The cases are Gillingham et al. v. Consol Energy Inc. and Decker et al. v. Consol Energy Inc. in the Supreme Court of Pennsylvania. Sources: Dan Padicki and Law360.com

OSHA Levies $175,000 in Fines in Fatal Arkansas Crane Accident

The Occupational Safety and Hazard Administration (OSHA) has levied $175,000 in fines against a crane company, Entergy and other firms over a fatal crane accident at Arkansas Nuclear One in Russellville. OSHA levied the fines over the death last March of 24-year-old Wade Walters, who was killed when a crane collapsed. Eight others were injured. The agency listed 26 alleged violations against Precision Surveillance Corp., Bigge Crane and Rigging Co., Siemens Power Generation Inc. and Entergy Operations Inc. OSHA Area Director Carlos Reynolds says Walters’ death could have been prevented had the work been properly planned, with appropriate safeguards. Walters’ mother has filed a wrongful death lawsuit. Her son was killed when a crane lifting a 525-ton piece of equipment collapsed. Source: Insurance Journal

18 Safety Citations Issued at Georgia Plant Since 2009

Sewon America, a car parts manufacturing company, has apparently remedied several issues and increased training after receiving the most federal safety violations ever in Georgia. It was reported that Sewon America, which manufactures components for Kia, has been inspected nine times and received 18 citations since 2009 from the Occupational Safety and Health Administration (OSHA).

Among other things, federal officials have accused the company of failing to provide workers adequate hand and eye protection, and exposed employees to crush hazards. The Atlanta Journal-Constitution reported that ambulances have been sent to the facility 23 times for trauma calls since the plant opened four years ago. The plant’s general manager Ken Horton says employees had to overcome a learning curve. According to the company most of the citations were issued in 2009 and 2010. Source: The Atlanta Journal-Constitution

OSHA Cites 24 Violations in Fatal Blast at Texas Plant

The Occupational Safety and Health Administration (OSHA) has issued 24 citations to the owners of the fertilizer plant in West, Texas, that exploded in April. Senator Barbara Boxer reported that the company owning the plant was fined $118,300 by OSHA for “serious violations.” Sen. Boxer said she had to make the announcement disclosing the penalties in Washington because the government shut-down prevented the agency from making an announcement. As we previously reported, the Adair Grain Inc. fertilizer facility in West, Texas, caught fire and exploded on April 17, killing 14 and leaving a crater 95 feet by 10 feet. Sources: Mark Draegem and Claims Journal

Work Halted Briefly at Football Stadium Construction Site After the Death of a Second Worker

Following the second workplace death in less than four months, construction of the new San Francisco 49ers football stadium was temporarily halted last month. Construction firm Turner-Devcon is overseeing the $1.2 billion project, located in Santa Clara, Calif., about 40 miles south of

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team's current home in Candlestick Park. The new Levi Stadium is slated to be completed in time for the 2014 season.

In June, a 63-year-old elevator mechanic, Donald White, was killed on the job when he was struck by a counterweight while working in an elevator shaft. White, who was employed by Schindler Elevator Corp., had worked as an elevator mechanic for more than 40 years.

The latest worker death occurred when a delivery truck driver was crushed by rebar that was being unloaded from his truck on the morning of Oct. 14. The worker, Edward Lake, II, was employed by Gerdau, a multinational steel company headquartered in Tampa, Fla. But he worked from the company’s Napa Reinforcing Steel subsidiary, which fabricates rebar.

Cal/OSHA, the state agency that investigates workplace deaths and injuries, cited another Gerdau division, Gerdau Reinforcing Steel West of San Diego, for an unspecified violation earlier this year, for a job at another location. However, there is no history of any Cal/OSHA violations for Turner-Devcon, which is a joint venture between Turner Construction Co. and Devcon Construction Inc. The company was not cited for any faults related to Mr. White’s death in the elevator shaft. The job site was closed following Mr. Lake’s death, but reopened the following day. Workers were offered counseling, and were scheduled to participate in safety meetings.

Sources: Insurance Journal and San Francisco Gate

**Worker Sues Builders Over Miami Garage Collapse**

A construction worker and his wife have filed a lawsuit in a Florida state court against the builders erecting the $22 million Miami Dade College parking garage that collapsed in October 2012, killing four other workers. Juan Carlos Fernandez and his wife Ivonne Munoz are seeking damages for injuries, including post-traumatic stress disorder, suffered by the worker as a result of the collapse. Fernandez was working on the second floor of the garage approximately five feet from the section that collapsed. Shortly before the incident, Fernandez was in the location where the garage collapsed.

The suit claims negligence and gross negligence against the general contractor and several other defendants, including engineering and architectural companies. Two subcontractors that were hired to erect the precast concrete slabs and concrete building components of the structure were also named as defendants. The Occupational Safety and Health Administration (OSHA) had levied thousands of dollars in penalties for multiple violations, including columns not being properly braced or inspected.

The filing of this lawsuit is the latest development arising from the Oct. 10, 2012, accident at Miami Dade College’s West Campus in Doral, Fla. Some of the workers were crushed under the collapsing concrete, according to news reports. One worker died in a hospital after being trapped in the rubble for 17 hours. The body of another worker, an electrician, was recovered from the garage nine days after the collapse. The families of the four workers killed and five of the injured in early May reached a confidential settlement in their lawsuits.

In those cases, the Plaintiffs claimed that the general contractors decision to use a cheaper precast concrete construction method caused the collapse and also 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. Fernandez, who was employed as a plumber and heavy machine operator, cites the crane accident in his complaint and the decision by the defendants’ inspectors to allow the site to re-open even though the area where the collapse would occur was unstable and a crane was being used to place a beam there.

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. Fernandez’s suit says. At the time of the collapse, he claims, the pieces had not yet been fully secured. The suit 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 Plaintiffs in the recently filed case are represented by Herman J. Russomanno and Robert J. Borrello of the Miami firm Russomanno & Borrello. The case is **Fernandez et al. v. Ajax Building Corp. Inc.**

**24-Hour Fitness Settles Wage-And-Hour Case For $17.5 Million**

A federal court in California has approved a settlement between 24 Hour Fitness and more than 850 claimants. The claimants in the suit were managers, sales counselors and trainers for the company who claimed they were misclassified as exempt employees and thus wrongfully denied overtime pay under the Fair Labor Standards Act of 1938. The value of the settlement is nearly $17.5 million. The claimants will receive about $20,000 each on average.

Source: www.courthousenews.com

**XVII. TRANSPORTATION**

**Black Box Technology**

Many people around the U.S. are becoming familiar with the term “black box” and most likely associate the technology with airplanes and airplane crashes. But what the average person does not know, however, is that they likely have a “black box” in their personal automobile that records many of their actions and the car’s functions. This is not new technology. It has been used to monitor airbags for nearly two decades in passenger automobiles. In fact, nearly 96 percent of the automobiles produced last year include “black boxes,” or Event Data Recorders (EDRs).

EDRs function much the same way as a “black box” on an airplane. Although the device is constantly recording data, it does not transmit the data, and only saves a segment of data preceding a crash. The installation of these devices has been voluntary by car manufacturers and has gone largely unnoticed by the average consumer and unregulated.

The National Highway Traffic Safety Administration (NHTSA) is pushing to mandate that all new vehicles come equipped with EDRs. Just this year, NHTSA initiated Final Ruling 49 CFR Part 563, which set minimum standards as to the data that must be recorded if auto manufac-

Source: www.JereBeasleyReport.com
turers choose to include an EDR in their vehicles. Prior to these standardized rules, auto makers were left to determine what data was collected, how they collected it, and how it was transferred off the EDR.

Final Ruling 49 CFR Part 563 sets a minimum requirement for crash data that must be recorded by an EDR. Some of the minimum requirements are that the EDR record the vehicle’s speed just prior to impact, throttle and brake application, seat belt use, and airbag deployment. Also included in the new standards is a requirement that if auto manufacturers choose to place an EDR in a vehicle they must disclose this fact in the vehicle’s owner’s manual.

Although the new standards address many of the issues regarding what EDRs must record, many questions remain as to what the data can be used for, and who is entitled to collect the data. To date, there is not a national standard as to who the data belongs to and what a permissible use of the data is. Many states are taking matters into their own hands and passing laws to clarify who is entitled to retrieve the data. Fourteen states have passed laws that deem the EDR data as the vehicle owner’s property, however, law enforcement officers and those involved in civil litigation can petition a court for an order granting access to the data.

There is no requirement in other states for a court order for third parties to access the data. One of the greatest unanswered questions surrounding the rise in EDR prevalence is “what can the data be used for?” As one can imagine, auto makers, law enforcement agencies, insurance companies and individuals involved in civil litigation all potentially want this valuable crash data for various reasons.

Many questions remain unanswered about EDRs, but what is clear is that NHTSA is attempting to standardize the use of EDRs and what data they record. With today’s technology, there is no reason that crash data not be recorded in a standard format that is easy to access. This is certainly a step in the right direction. Regardless of who is entitled to access the data, or what data can be used for, it is important to preserve the EDR after an accident. The clues needed to piece together what occurred in a collision are often times located on the EDR. For this reason it is imperative to preserve the EDR after an accident and retrieve the data as the law permits. If you need more information on this subject, contact Evan Allen, a lawyer in our firm’s Personal Injury/ Product Liability Section, at 800-898-2034 or by email at Evan.Allen@beasleyallen.com.

Source: New York Times

UNSAFE MEXICAN TRUCKS ENDANGER THE AMERICAN PUBLIC

The United States and Mexico signed a trade agreement in March 2011 that ended a Mexican tariff on U.S. products in return for opening the border to Mexican trucks meeting American safety and environmental regulations. Unfortunately for the motoring public, the drivers of the trucks and the trucks themselves many times fall short of the American safety and environmental regulations.

Some of the safety efforts for the Mexican companies driving in the United States are abysmal. This is especially the case for maintenance items that impact the ability of the truck to operate safely on the roadway. One truck was stopped 18 times in a one-year period. Of the many violations, that truck was found to have defective or missing axle parts, brake defects, a cracked frame, inoperative signals, oil and grease leaks, and a brake violation. One Mexican company was cited 44 times in a single day for maintenance violations. The Mexican trucking company operating the most trucks on U.S. roadways has a vehicle-maintenance record poorer than 77 percent of all American trucking companies.

Driver fitness scores have long been an indicator of a truck driver’s qualifications to safely operate a tractor trailer. The same Mexican trucking company that was cited 44 times for maintenance violations in a single day also has driver fitness scores lower than 99 percent of American trucking companies. The trade regulations require that these Mexican drivers be able to fluently speak English. This requirement is in place to assure these drivers can safely understand highway signs and signals, respond to official inquiries and fill out regulatory reports. Many of these drivers have been found unable to speak English despite the requirements. If you have questions regarding tractor trailer accidents, contact Chris Glover, a lawyer in our Personal Injury/Products Liability Section, at 800-898-2034 or by email at Chris.Glover@beasleyallen.com.

Fatigued Truck Drivers Present a Danger On Our Highways

Since July 1, 2013, commercial truck drivers have new Hours of Service (HOS) regulations with which they must comply when operating commercial motor vehicles. The stated purpose of the rule is set a maximum number of hours a driver is allowed to work on a continuing basis, to reduce the possibility of driver fatigue. Long daily and weekly hours are associated with an increased risk of crashes.

Drivers are not allowed to drive more than 11 hours following a 10-hour break. Neither can the driver be on duty more than 14 hours following that same 10-hour break, even if all that time doesn’t involve driving. Those and other new rules were implemented in an effort to keep drivers fresh and alert.

Lawyers in our firm have learned through litigation involving highway crashes that fatigue for truck drivers is a very serious problem. A 2006 Driver Fatigue and Alertness Study by Wylie and others found that fatigue leads to:

- increased lapses of attention;
- slower information-processing and decision-making;
- longer reaction time to critical events;
- more variable and less effective control responses;
- decreased motivation to sustain performance;
- increased subjective feelings of drowsiness;
- decreased watchfulness; and
- decreased alertness to danger.

These problems caused by fatigue clearly have the potential to create hazards on the highways. When a person who is fatigued is behind the wheel of a tractor trailer rig, others on the road are put at risk of injury or death. It is no surprise that researchers found that driving while drowsy increased an individual’s crash risk by four to six times.

Lawyers in our firm have handled a number of cases where driver fatigue clearly resulted in accidents. Unfortunately, many trucking companies do not have the procedural safeguards in place that will reduce the likelihood of driver fatigue and prevent violations of the Federal on-duty hour regulations. In a
recent case lawyers in our firm handled, we discovered that a trucking company had in excess of 100 fatigue-related Federal regulation violations. It was only a matter of time before this corporate culture of law-breaking would result in someone being seriously injured or killed. In fact, a death caused by driver fatigue did occur and we were able to successfully resolve the case for the family of the person who was killed.

Lawyers in our firm will continue to push for safer roadways by holding trucking companies accountable for violating laws designed to keep fatigued drivers off the roadway. If you have any further questions regarding this issue, contact Chris Glover, a lawyer in our Personal Injury/Product Liability Section, at 800-898-2034 or by email at Chris.Glover@beasleyallen.com.


JURY AWARDS $150 MILLION IN SOUTHERN CALIFORNIA WRONGFUL DEATH CASE

A jury awarded more than $150 million in damages last month to a 13-year-old girl who watched her family burn to death in a fiery crash on a Southern California freeway. The Los Angeles jury found a California trucking company and one of its drivers at fault in the case.

Kylie Asam was 9 when she and her 11-year-old brother, Blaine, managed to escape from their family’s mashed sport utility vehicle after it struck and got caught under a big rig parked on the shoulder of an expressway nearly four years ago. The two youngsters saw their parents and older brother burn alive after the vehicle they were trapped in caught fire. The verdict included $8.75 million the jury awarded to Blaine, who committed suicide before the trial began on his mother’s birthday. That money will go to Kylie as her brother’s successor-in-interest, but all of the award will be placed in a trust until she is 18 years of age.

The jury found that the truck driver was at fault for parking on the side of the freeway in the early morning darkness without leaving on any light or emergency reflector. The driver and his employer, Watsonville-based Bhandal Bros. Trucking, were found jointly responsible. The wrongful death lawsuit alleged that the truck driver pulled over to sleep, ignoring written warnings that stopping there was allowed only in emergencies. The family was headed north to Oregon to visit relatives for a holiday when the crash occurred on November 22, 2009. Brian Brandt represented the Plaintiff. He did a very good job in the case.

Source: Insurance Journal

FAMILY MEMBERS SUE OVER FATAL CALIFORNIA VEHICLE FIRE

We reported recently about the fiery crash in May of a limousine in California. Recently, family members of the five nurses who died in the fire that took place on a San Francisco Bay Area bridge have filed a wrongful death lawsuit against several companies, including those that maintained the limousine and customized it. The lawsuits—filed last month—claim the companies were responsible for design and manufacturing defects with the 1999 Lincoln Town Car that caused the fire. The fire trapped nine women celebrating a friend’s recent wedding, killing five of them. The limousine’s driver survived.

The California Highway Patrol reported that the fire was caused by a catastrophic failure of the rear suspension system. It was reported by authorities involved in the investigation that the air suspension failure allowed the spinning driveshaft to contact the floor pan, causing friction that ignited carpets and set the vehicle on fire. Prosecutors concluded no criminal charges were warranted.

The lawsuit names as defendants: Limo Stop Inc., Ford Motor Co., Bay Area Limousine Repair Inc., Accubuilt Inc., Accubuilt Acquisition Holdings Inc., and DaBryan Coach Builders Inc. (Accubuilt brand, according to the company’s website). Limo Stop operated the limousine, Bay Area Limousine Repair maintained and repaired it, and Accubuilt, Accubuilt Acquisition Holdings and DaBryan customized it, according to the suits.

Source: Claims Journal

MONSANTO GENETIC ENGINEERING BATTLE CONSOLIDATED IN KANSAS COURT

The U.S. Judicial Panel on Multidistrict Litigation has ruled that at least 16 lawsuits filed against Monsanto Co. over the appearance of unapproved genetically engineered wheat will be consolidated in Kansas. While the MDL currently consists of five cases pending in four district courts, it potentially will include 11 related actions also pending in various courts. All actions share factual questions arising from the seed giant’s conduct with respect to the development and field testing of Roundup Ready wheat from 1998 through 2005, and the alleged discovery of the herbicide-resis-

tant gene in wheat plants on an Oregon farm in 2013.

All the parties supported centralization of the lawsuits, but could not agree on an appropriate choice for transferee district. Ultimately, the MDL Panel selected the District of Kansas, determining that U.S. District Judge Kathryn H. Vratil would oversee the litigation. The panel’s transfer order said:

Weighing all factors, we have selected the District of Kansas. One action on the motion and two potential tag-along actions are pending in this district, and five related actions are pending in nearby districts.

The transfer order comes after Dreger Enterprises and Wahl Ranch Ltd., both Washington farms, and the Center for Food Safety, on behalf of Clarmar Farms Inc., filed separate putative class actions against Monsanto in Washington over the appearance of unapproved genetically engineered wheat in Oregon crops. It was alleged in the suits that wheat prices were depressed and international exports were chilled.

Discovery in the suits prompted some Asian nations to cancel orders of soft white wheat from the United States. This pushed the world price of wheat to a lab after discovering it was genetically altered crop. It was reported in 2013 that its responsibility for ensuring a safe berth into its Philadelphia-area port does not extend beyond the immediate entrance. In an attempt to convince the court to overturn a Third Circuit Court of Appeals’ ruling reviving the case, Citgo argued in a petition for writ of certiorari that the appeals court misinterpreted the contractual safe berth warranty the oil company provided Frescati Shipping Co. Ltd. and its M/V Athos I vessel. The appeals court found that the Athos I was within its approach when it struck an abandoned ship anchor that caused the spill because the vessel had stopped generally “navigating.” The panel said that Citgo should have exercised reasonable diligence and provided the ship with a safe path to port.

Citgo argued in its petition that it had no control over the federal waters where Athos I collided with the anchor. The oil company contended that the Third Circuit’s decision unfairly expands a port owner’s liability and conflicts with other federal appeals court decisions. The Citgo petition stated:

By not defining the ‘approach’ in terms of a finite geographical area controlled by the wharf owner, the decision below shifts responsibilities and duties from public agencies to private entities, imposes substantial new liabilities on wharf owners, and creates uncertainty and confusion for all maritime interests.

The ship struck the submerged anchor in the Delaware River in November 2004 near Citgo’s terminal, spilling 265,000 gallons of crude oil into the river. Frescati said it spent more than $180 million to clean up the spill, $88 million of which was covered by the federal government under the Oil Pollution Act. Both Frescati and the U.S. sued Citgo looking to recoup the funds, arguing that the oil giant had an obligation to remove any potential hazards in the vicinity of its port.

U.S. District Judge John Fullam dismissed the negligence claims against Citgo in 2011, ruling that holding the company liable would have placed an unreasonable amount of responsibility on Citgo regarding port operations. The Third Circuit, however, said Citgo cannot escape its duty to maintain a safe approach for ships like the Athos I that enter its port. The district court limited the approach to the areas “immediately adjacent or within immediate access” of the ship’s berth, but the appeals court said that interpretation is overly restrictive.

The appeals court perpetuated a current circuit conflict on the issue by rejecting a 1990 Fifth Circuit decision limiting the liability of port owners. Instead, the court adopted the Second Circuit’s view from 1935 that the safe berth clause is an “express assurance made without regard to the amount of diligence taken by the charterer.” The court’s order states:

The prospect that charterers with identical contract clauses can have categorically different liability in different circuits is intolerable. This is precisely the sort of inconsistency in federal law that this court grants certiorari to prevent.

This is a most interesting case and one that should get lots of attention. It will be watched closely in several quarters. It could wind up being a very important case for a number of reasons.

Source: Law360.com

PIPELINE INCIDENT RATE DOUBLED IN CANADA IN LAST DECADE

The rate of safety-related incidents on federally regulated pipelines in Canada doubled in the last decade, while the rate of reported spills and leaks increased threefold, according to an investigative report by Canada’s national broadcaster. The total number of incidents, which included everything from spills to fires, ignored from 45 in 2000 to 142 in 2011, the CBC reported last month, citing data from the National Energy Board (NEB) obtained through access-to-information requests. That translated to a doubling from one inci-
dent for every 1,000 km (620 miles) of federally regulated pipeline in 2000, to two in 2011.

The CBC investigation also found that the rate of product reported releases—spills and leaks—rose threefold, from four releases for every 10,000 km in 2000, to 13 in 2011. The NEB regulates all pipelines that cross provincial or international borders, but does not monitor smaller pipelines that are only in a single province. The safety of shipping petroleum products via pipelines has become a hot topic in recent years, with companies like Enbridge Inc. and TransCanada Corp developing major new projects to move crude from Canada's oil sands to markets in the United States and Asia.

It's well known that a pipeline leak can cause catastrophic environmental damage. For example, a 2010 incident where an Enbridge pipeline carrying crude from Alberta ruptured, spilling huge amounts of oil into the Kalamazoo River in Michigan. Pipeline companies claim their operations are safer than the alternative—moving oil and gas products by rail or truck. The safety of rail has become a central issue in Canada since the runaway train hauling crude oil derailed and exploded in the town of Lac-Mégantic, Quebec in July, killing 47 people. Another train hauling crude oil and liquefied petroleum gas derailed last month and caught fire in Alberta.

A recent report by the Fraser Institute found that pipelines are safer for workers and that the risk of spill incidents is slightly lower than with rail. The CBC investigation looked at documents on 1,047 pipeline safety incidents from Jan. 1, 2000, until late 2012. Companies regulated by the NEB must report safety issues like deaths or serious injuries, fires and explosions, spills in excess of 1,500 liters, and every gas leak. The NEB attributed the rise in incidents to heightened awareness among companies about reporting standards, according to the CBC.

Source: Claims Journal

**Hundreds Of Oil Spills Not Made Public**

It was reported last month that North Dakota, the second-largest oil producing state behind Texas, had nearly 300 oil pipeline spills in less than two years. But based on reports, none of them were reported to the public. According to records obtained by Associated Press, the pipeline spills, many of them small, are among some 750 "oil field incidents" that have occurred since January 2012 without public notification. Don Morrison, director of the Dakota Resource Council, an environmental-minded landowner group with more than 700 members in North Dakota, says he had no knowledge of these happenings.

North Dakota officials have urged pipeline industry officials to quickly—and safely—expand the network to keep pace with record production in the oil patch. The state has about 17,500 miles. For weeks, no one knew about a Tesoro Corp. pipeline that broke on Sept. 29 in a remote area near Tioga. According to officials, no water was contaminated or wildlife hurt. But the spill was one of the largest in North Dakota's history, estimated at 20,600 barrels. It was said that "oil oozed over an area the size of seven football fields." Associated Press reported:

**Records obtained by the AP show that so far this year, North Dakota has recorded 139 pipeline leaks that spilled a total of 735 barrels of oil. In 2012, there were 153 pipeline leaks that spilled 495 barrels of oil, data show. A little more than half of the spills companies reported to North Dakota occurred "on-site," where a well is connected to a pipeline, and most were fewer than 10 barrels. The remainder of the spills occurred along the state's labyrinth of pipelines. North Dakota also had 291 "incidents" this year that leaked a total of about 2,209 barrels of oil. Data show that all but 490 barrels were contained and cleaned up at the well site. In 2012, there were 168 spills reported that leaked 1,089 barrels of oil; all but 376 barrels were contained on site, data show. Only one incident—a crash involving an oil truck last year—was reported publicly.

Interestingly, Department of Mineral Resources director Lynn Helms—the state's top oil regulator—told Associated Press that regulators worry about "over-reporting" spills. The goal, he said, is to find a balance to so that "the public is aware of what's happening but not overwhelmed by little incidents." I believe that states have an obligation to report all oil spills to the public. Hopefully, that will soon be the rule, rather than the exception. But considering that the oil companies are very powerful politically, it may not happen.

Sources: Associated Press and Claims Journal

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**Consumer Reports Drops Camry Recommendation**

*Consumer Reports* magazine has dropped its coveted recommendation of the Toyota Camry family sedan. The Camry has been the best-selling passenger car in America. The car's performance in an Insurance Institute for Highway Safety (IIHS) crash test was responsible for the change. The Camry earned a rating of "Poor" in the Institute's "small overlap" crash test. Many cars have fared badly in this new test. In the test, a car traveling at 40 miles per hour strikes a crash barrier with just a small part of the front bumper on the driver's side. The test concentrates impact forces into an area that is often outside metal crash-absorbing structures built into many new cars.

The Insurance Institute announced the test results for the Camry in December. *Consumer Reports* announced its decision to drop the recommendation in a blog post on the magazine's website last month. *Consumer Reports* had waited to implement the change until enough cars had been subject to the test. Not every car tested performed poorly. For instance, the Honda Accord and Ford Fusion, both direct competitors to the Camry, performed well in the test and have maintained *Consumer Reports’*s recommendation.

The Camry wasn't the only car to lose the magazine's recommendation. The Toyota Prius v hybrid wagon, Toyota Rav4 SUV and Audi A4 also lost their recommendation. Toyota spokeswoman Cindy Knight pointed out that all of those vehicles have performed well in all other Insurance Institute and National Highway Traffic Safety Administration (NHTSA) crash tests. Audi was not immediately available for comment. *Consumer Reports* has a policy of only recommending cars that get good scores in crash tests from both the Insurance Institute and the federal government's NHTSA.

These cars could regain the recommendation, *Consumer Reports* said, if they are re-engineered to perform better on the test. In December, the Insurance Institute plans to test an update of the Camry that has been re-engineered for better performance in the small overlap test, Rader said. *Consumer Reports* is widely regarded as...
being the most influential magazine among car shoppers. Consumer Reports, published by nonprofit Consumer’s Union, purchases all the cars it tests and does not accept paid advertisements.

Source: CNN.com

**CPSC Approves Cradle Safety Standard**

The U.S. Consumer Product Safety Commission (CPSC) approved a mandatory safety standard last month for infant cradles and bassinets. There was opposition by one commissioner who said it unnecessarily altered a voluntary standard developed by industry and consumer groups. Four of the agency’s five commissioners voted to approve the final rule. The ruling was in response to a Consumer Product Safety Improvement Act of 2008 directive to create safety standards for durable infant and toddler products. Commissioner Nancy Nord, a Republican, voted against the rule. It should be noted that the CPSC reports that more than 130 infants have died in incidents involving cradles and bassinets since November 2007.

The CPSC made several changes to the voluntary standard for the products established by the standards development organization ASTM International. The CPSC rule alters the pass-fail criterion for a mattress flatness test and exempts from the mattress flatness requirement bassinets that are less than 15 inches across. In a statement, Commissioner Nord took issue with the change to the mattress flatness test criterion. She contended that the two standards are materially identical, saying: they use the same test, which involves putting a weight on a mattress seam. She also pointed out that passage of the test is based on whether the angle between the weight and mattress is 10 degrees or less. The voluntary standard allows products whose first test angle is above 10 degrees, but below 14 degrees to perform the test twice more and take the average of the three angles. By contrast, the CPSC standard allows for only one make-or-break test angle.

As part of the rule, the CPSC also added a stability requirement for removable bassinet beds. The agency has allowed manufacturers an additional year to comply with that requirement. The general standard will be effective six months after the final rule is published in the Federal Register. The bassinet and cradle standard was preceded by final rules for infant swings, issued in November, and children’s play yards, issued in August 2012, among others.

Source: Greg Ryan and Law360.com

**CertainTeed Pays $104 Million To Settle MDL Litigation Over Defects**

A federal judge has approved a $104 million settlement between CertainTeed Corp. and a class of consumers who alleged that various home sidings made by the company were prone to premature degradation and failure. In 2010, numerous class actions were filed across the country against CertainTeed alleging product defects. In 2011, the U.S. Judicial Panel on Multidistrict Litigation transferred all of the actions filed in federal district court complaining about CertainTeed’s siding to the Eastern District of Pennsylvania.

Under the settlement agreement a gross, nonreversionary settlement fund of $103.9 million is created for the benefit of the settlement class. A six-year claims period was established. Owners of properties on which failed siding was installed will be able to obtain cash payments based on the size of the affected wall and the extent of any failure. The compensation to be provided to class members under the settlement will be based on criteria including the size, age and condition of the damaged siding. Class members whose repair costs are greater due to the size or complexity of the siding on their walls will receive proportionately more than those with lesser amounts of siding on their walls. Similarly situated class members will receive similar benefits under the proposed settlement. The parties went to mediation as the litigation progressed and the settlement was reached during the mediation.

CertainTeed manufactured and marketed its fly ash-based siding products as durable, long-lasting and appropriate for use on homes. The Plaintiffs alleged that they began noticing large gaps between the siding boards on their houses, years after purchasing homes built with the siding. The products involved in the litigation are the Weatherboards Fiber Cement Siding, Lap Siding, Vertical Siding, Shapes, Soffit, Porch Ceiling, and 7/16” Trim.

It was contended by the Plaintiffs that since at least 2002, CertainTeed made and sold defective siding to thousands of customers across the country and that the company failed to adequately design and test its products before placing them on the market. The Plaintiffs alleged that CertainTeed reasonably should have known that the siding was defective, and that in addition to shrinking, cracking and warping, the siding also tends to freeze during winter and displays poor paint adhesion and significant moisture absorption.

The class Plaintiffs are represented by H. Laddie Montague Jr., Lawrence Deutsch and Sharon J. Carson of the Philadelphia firm of Berger & Montague, and by Michael McShane of Audet & Partners located in San Francisco. The case is In re: CertainTeed Fiber Cement Siding Litigation in the U.S. District Court for the Eastern District of Pennsylvania.

Sources: Juan Carlos Rodriguez and Law360

**Nearly 300 People In 18 States Infected With Salmonella From Raw Chicken**

Nearly 300 people in 18 states have been sickened with what public health authorities believe is salmonella from raw chicken products made at three Foster Farms plants in California. This is according to the U.S. Department of Agriculture’s (USDA) Food Safety and Inspection Service. The illnesses were caused by Salmonella Heidelberg, an infection that causes nausea and vomiting, but can be more problematic for infants, the elderly, and people with compromised immune systems. Salmonella Heidelberg has shown signs of resistance to antibiotics, which may explain the higher than expected numbers of hospitalizations.

Earlier this year, 134 people in 13 states became sick from raw Foster Farms chicken. That outbreak, which was declared over in July, sent 33 people to the hospital, according to the Centers for Disease Control and Prevention (CDC). The illnesses in both outbreaks were traced back to Foster Farms chicken products related to this most recent issue.

The company says it’s working with federal officials to eradicate the bacteria from its plants. Meanwhile, consumers should use care when handling raw poultry. It must be cooked to at least 165 degrees in order to kill any bacteria that may be on it. Foster Farms is the 10th largest poultry producer in the country. The company released a statement saying it is putting all of its resources into improving the safety of its fresh chicken. Foster Farms
has processing plants in California, Oregon, Washington and Alabama.

According to reports, the company was able to show the USDA satisfactory plans to improve conditions. For that reason the plants will remain operational for now. It appears that the USDA’s Food Safety and Inspection Service didn’t believe a recall of chicken from those factories was required. In any event, a recall was not mandated.


**JENSEN FARM OWNERS CHARGED OVER DEADLY CANTALOUPE**

Federal prosecutors have filed charges against the two brothers who owned and operated Jensen Farms for allegedly introducing adulterated cantaloupe bearing a poisonous bacterium into interstate commerce and causing the deadly 2011 listeria outbreak. Eric Jensen and Ryan Jensen were taken into custody on the federal charges brought by the U.S. Attorney’s Office with the U.S. Food and Drug Administration (FDA).

It was alleged that the Jensens changed their Colorado-based farm’s cantaloupe cleaning system in May 2011, and that the cantaloupes weren’t treated with a chlorine spray that kills bacteria. It was alleged further that cantaloupe contaminated with Listeria monocytogenes bacterium were then sold to consumers. U.S. Attorney John Walsh said the case serves as a tragic reminder that food processors play a critical role in ensuring that food is safe. In that regard, Walsh stated:

*They bear a special responsibility to ensure that the food they produce and sell is not dangerous to the public. Where they fail to live up to that responsibility, and as these charges demonstrate, this office and the Food and Drug Administration have a responsibility to act forcefully to enforce the law.*

The listeria outbreak was believed to be the deadliest food-borne bacterial outbreak in more than 25 years. It was reported by the Centers for Disease Control (CDC) that 147 people across 28 states were made sick and 35 died. The cause was traced back to cantaloupes grown by the now-bankrupt Jensen Farms. A number of personal injury and wrongful death claims were filed against the grower, its food safety auditor The Primus Group Inc., and distributor Frontera Produce Ltd., as well as several retailers and other related companies.

The Jensen brothers had set up and maintained a processing center where cantaloupes were taken from the field and transferred to a conveyor system for cleaning, cooling and packaging. The equipment should have worked in such a way that the cantaloupe would be washed with sufficient anti-bacterial solutions so that the fruit was cleaned of bacteria in the process, according to the U.S. Attorney’s Office. But, in May 2011, the brothers installed a new cleaning system that was built to clean potatoes. The new system was to include a catch pan to which a chlorine spray could be included to remove bacteria from the fruit. But it appears that the spray was never used. The government lawyers say that the defendants were aware that their cantaloupes could be contaminated with harmful bacteria if not sufficiently washed.

The FDA and CDC determined that the defendants failed to adequately clean their cantaloupe and that their actions resulted in at least six shipments of cantaloupe contaminated with Listeria monocytogenes being sent to 28 different states. The CDC tracked the outbreak-associated illness and determined that people living in 28 states consumed contaminated cantaloupe, resulting in 33 deaths and 147 hospitalizations. Patrick J. Holland, Special Agent in Charge of the FDA Office of Criminal Investigations, Kansas City Field Office, said in a statement:

*U.S. consumers should demand the highest standards of food safety and integrity. The filing of criminal charges in this deadly outbreak sends the message that absolute care must be taken to ensure that deadly pathogens do not enter our food supply chain.*

Both defendants were charged with six counts of adulteration of a food and aiding and abetting. If convicted, each faces up to one year in federal prison and a fine per charge of up to $250,000.

Source: Law360.com

**WORKOUT POWDER AND DIET PILL FOUND TO CONTAIN METH-LIKE DRUG**

Two supplements—one a popular pre-workout powder and the other a weight-loss pill—have been found to contain an undeclared ingredient similar to the street drug meth. Federal officials say that this poses possible health hazards.

The sports supplement, sold under the brand name Craze and made by Driven Sports, is marketed as a natural supplement that provides “unrelenting energy and focus” during workouts. It’s being sold at retailers such as Wal-Mart and GNC. The supplement was named “New Supplement of the Year” in a 2012 Bodybuilding.com survey.

The diet pill, called Detonate, is distributed by Gaspari Nutrition and sold at a variety of online stores. It has been touted in supplement reviews as the “Most Anticipated Fat Burner of 2012.” Researchers in both the United States and South Korea tested the products and found that they contain an ingredient similar to methamphetamine, which is based on a designer drug that is used for recreation. Pieter Cohen, an assistant professor at Harvard Medical School who also co-authored the study on the Craze samples, stated:

*These are basically brand-new drugs that are being designed in clandestine laboratories where there’s absolutely no guarantee of quality control. It has never been studied in the human body. Yes, it might make you feel better or have you more pumped up in your workout, but the risks you might be putting your body under of heart attack and stroke are completely unknown.*

Walmart.com has stopped selling Craze, but at press time both products were still found online and at other retail establishments, such as GNC. Hopefully, there will be an in-depth investigation of this matter to make sure the public is protected.

Sources: Washington Post, RightingInjustice.com (Jennifer Walker-Journey)

**FDA WARNS PET OWNERS ABOUT JERKY TREATS THAT HAVE KILLED 600 PETS**

The Food and Drug Administration (FDA) has warned pet owners not to feed their animals jerky treats manufactured in China. According to the FDA, jerky treats have sickened 3,600 dogs and 10 cats since 2007. The FDA said in a release that more than 580 of those pets have died. The release says its Center for Veterinary Medicine has run more than 1,200 tests and visited pet treat manufacturing plants in China. The agency hasn’t determined the cause of the illness, and has not recalled any specific products.
The release says the majority of complaints involve chicken jerky (treats, tenders, and strips), but others-treated to have caused illness include duck, sweet potato and treats where chicken or duck jerky is wrapped around dried fruits, sweet potatoes, or yams. The FDA says pets can suffer from a decreased appetite, decreased activity, vomiting and diarrhea among other symptoms.

Source: Associated Press

**Bank of America Targeted Over Auto-Dialed Calls**

The Telephone Consumer Protection Act was passed in 1991 to protect consumers from harassing phone calls. Auto-dialed calls to consumers’ cell phones were made illegal by this law. Additionally, this law set up the Federal Communications Commission’s “do-not-call” registry for consumers to block unwarranted calls. Because technology makes it cheap for companies to make thousands of calls per minute with automatically dialed calls, many U.S. companies have been under attack in lawsuits about these calls, known as “robocalls.” The Federal Trade Commission’s website has concluded that the volume of these calls has reached record level. Companies such as Dell Inc, Coca-Cola Co, and Sallie Mae have been sued for sending unsolicited robocalls or text messages in the past.

Bank of America is the latest company targeted for automatic calls. The Bank has agreed to pay $32 million to settle charges of harassing debt collection calls to consumers’ cell phones. This is believed to be the largest payout under the Telephone Consumer Protection Act. While Bank of America denies the allegations, the settlement agreement does resolve multiple class actions filed against Bank of America on behalf of 7.7 million of the bank’s credit card and mortgage loan customers.

Banks and other companies have legal remedies to collect on debts, and that’s as it should be. But debt collection calls can be harassing and very traumatic. The Plaintiffs have filed a motion in the U.S. District Court in northern California, requesting preliminary approval of the agreement. The agreement calls for Bank of America to stop calling cell phones unless a consumer has expressly given permission. The fundamental remedy in this settlement is for companies to change their practices. Class members have said that they just want the calls to stop.

Bank of America is accused of making multiple calls to cell phones at all hours of the day. Because many of the calls were pre-recorded, there is no way for consumers to request that the calls stop or voice complaints to a real person. In one of the actions, *Sandra Ramierz, et al. v. Bank of America*, Ramierz was told that it was impossible for her number to be removed from the computer system after she requested that the debt collection agents stop calling her. She was called 54 times on her cell phone, mostly from an artificial or pre-recorded voice.

Under the Telephone Consumer Protection Act, companies face up to $1,500 per illegal call or $1,500 for willfully violating the law. Bank of America is still facing a proposed class action in Florida for making robocalls to mortgage borrowers who had asked not to be called. Bank of America continues to deny violating the Telephone Consumer Protection Act or any other law. Jeff Selbin, a lawyer with the East Bay Community Law Center, represents the Plaintiffs in this lawsuit. He is also a clinical professor of law at the University of California, Berkeley. He did a very good job in this case.

Source: MSN.com

**Never Let Your Guard Down When Dealing With Electricity**

The Alabama Power Company last month sent out a few “must-know” tips that need to be observed relating to electricity. These tips can help keep you and your family safe. I suspect you may have heard a few of these before, but it can’t hurt to hear them again.

- Stay away from downed power lines. Don’t drive over them. And remember, it’s not just the power line that may be electrified, but the ground surrounding the line, as well.
- If a power line is touching your car, stay inside the vehicle and call 911.
- Before you dig, call 811 to have underground utility lines marked.
- Install ground-fault circuit interrupters in your kitchen and bathrooms.
- If something that’s plugged in falls into water, DON’T reach in to get it. Don’t even unplug it until after you’ve cut the power off at the circuit breaker.

- Watch where you’re placing that ladder. Do not let it touch any electrical wires.
- Don’t overload outlets. We’ve got more gadgets to plug in these days than ever before. That doesn’t mean an outlet can handle them all. Overloaded circuits cause an estimated 5,300 fires a year.
- Don’t touch a damaged electrical cord or one showing bare wire.
- Don’t run an electrical cord under a rug. Don’t staple or nail electrical cords.
- If you have young children, put plastic safety covers on your unused electrical outlets.

These are all sound recommendations that should always be followed. Much of this is plain old common sense. But I have found over the years that many folks don’t full appreciate the dangers and hazards associated with electricity. Paying attention to these tips could save your life.

Source: Alabama Power Company Newsletter

**Recalls Update**

There have once again been a very large number of safety-related recalls. We have included some of the more significant recalls that were issued in October. 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.

**803,000 Toyota Vehicles Recalled**

Toyota Motor Co., which claims to be the world’s best-selling automaker, has recalled 803,000 newer model vehicles. A potential short circuit may cause airbags and power-steering to be disabled. The affected vehicles are the Camry and Camry hybrid, Avalon and Avalon hybrid and Venza of the 2012 and 2013 model year. According to Toyota, the short circuit is caused by a possible water leak from the air conditioning condenser onto the air bag control module. This issue may also be responsible for additional problems, such as disabling the power-steering system or causing the airbags to deploy involuntarily.
Toyota claims the recall has been responsible for only two known "minor" injuries, but no accidents.

Toyota will notify both owners and dealers in order to make repairs on affected automobiles free of charge. The maintenance will require the application of sealant and a new cover to prevent water from leaking onto the airbag control module. There have been more than 1.5 million vehicles recalled by Toyota in the past few weeks caused by a mix of random problems.

**Nissan Recalls More Than 188,000 SUVs To Fix Brakes**

Nissan Motor Co. has recalled more than 188,000 Nissan and Infiniti SUVs worldwide to fix faulty brake control software that could increase the risk of a crash. The recall covers some Nissan Pathfinders from the 2013 and 2014 model years, as well as the 2013 Infiniti JX35 and its successor model, the 2014 QX60. Nissan says that during light braking on rough roads, the antilock brake software could cause longer-than-expected stopping distances. The company said no crashes or injuries have been reported.

Of the 188,302 Nissan SUVs affected worldwide, 151,695 of them were sold in the United States. That includes Nissan Pathfinders from the 2013 and 2014 model-years, as well as Infiniti’s 3-row crossover the 2013 JX35, which was renamed the QX60 in 2014. The remaining vehicles were sold in Canada, China, Russia, Mexico, India and other parts of the world. As is typical with safety recalls, the second-largest of the Japanese auto makers plans to notify owners in the coming weeks and then make repairs at no charge. The repair is expected to involve minimal downtime as it will simply require the reprogramming of the affected vehicles’ current ABS controllers.

Autumakers, in general, have been increasing the number of vehicles covered by recalls in the last several years. Safety advocates contend the National Highway Traffic Safety Administration (NHTSA) has been responding to criticism that it had grown too cozy with automakers and may have let some potential problems slip by. Nissan, in particular, has faced a number of safety-related service actions involving a wide range of products, from the little Juke crossover to the big Titan pickup. Problems have included faulty transmissions as well as brakes, airbags and even inaccurate labeling.

Nissan will notify owners within 60 days, and dealers will reprogram the antilock brakes free of charge. The recall includes nearly 152,000 SUVs in the U.S. and roughly 36,000 in China, Canada, Mexico and other countries, the company said. The Pathfinders were built between April 18, 2012 and Sept. 20 of this year. The JX35s were built from Sept. 15, 2011, to Jan. 16 of this year, while the QX60s were built from Jan. 17 to Sept. 20 of this year. Owners with questions can contact Nissan at 800-647-7261.

**BMW Cars Recalled**

BMW has recalled 76,200 vehicles sold in the United States from the model years 2012 to 2014 for a problem with the power brake system. The German carmaker says in rare cases an interruption in the oil supply to a part can mean the loss of power braking assist. The brakes will still work, but the driver would have to press harder. Affected BMW models have 4-cylinder, 2-liter gasoline engines and include 125i compacts; 320i and 328i sedans; 520i and 528i sedans; X1 28i, 20i and 16i SUVs; X3 20i and 28i SUVs; and Z4 28i, 20i and 18i sports cars. BMW says affected owners will be notified by mail. BMW says if the brake-assist power is lost, drivers should pull over and call roadside assistance.

**Chrysler Recalls Pickup Trucks And SUVs**

Chrysler has recalled more than 142,000 pickup trucks and SUVs worldwide because of software glitches that could affect instrument cluster lighting and braking systems. Around 132,000 Jeep Grand Cherokee SUVs and 10,800 Ram pickup trucks from the 2014 model year are affected. Chrysler said the Jeep’s warning lights may randomly illuminate and its instrument cluster may black out. Since the same electronic module controls anti-lock braking and electronic stability control, those systems may also be affected. The company said it hasn’t had any reports of accidents or injuries due to the problem. In the pickup trucks, Chrysler quality-control personnel noticed that the back-lighting on the instrument panel may work only intermittently. Dealers will reprogram the software at no cost.

**Mazda Recalls 161,400 Mazda6 Cars Because Of Door Problem**

Mazda Motor Corp has recalled 161,400 Mazda6 sedans in the United States because loose screws could cause the side doors to come open while the car is being driven. The Japanese automaker is recalling the cars from model years 2009 through 2013 because the door latch mounting screws could become loose, according to documents filed with National Highway Traffic Safety Administration (NHTSA). If all three mounting screws got too loose, the door latch wouldn’t engage and the door could open, according to NHTSA. If the door ajar warning light is not noticed and the vehicle is driven, the door could open while the car is in motion, increasing the risk of accident or injury.

NHTSA opened a probe called a preliminary evaluation in May after receiving four consumer complaints on the issue, according to NHTSA. Mazda will apply a thread-locking adhesive to the screws and re-tighten them free of charge, according to NHTSA. The cars were built at a plant in Flat Rock, Mich., that Mazda and Ford Motor Co operated jointly until 2012.

**GM Recalls 1,658 Small Sonic Cars For Fuel Tank Issue**

General Motors Co has recalled 1,658 Chevrolet Sonic cars, as potentially faulty strap welds could cause the fuel tank to separate from the car. The recall of 2013 and 2014 model-year cars affects 1,558 cars in the United States and 100 in Canada, most of which are still on dealer lots, GM said. The No. 1 U.S. automaker said it knows of no accidents, fires or injuries related to the issue. If the strap bracket separated, the fuel tank would rest on the exhaust pipe or plastic fuel tank shield, possibly leading to a rat-
Saw due to laceration hazard

Punctured and there were a source of one report of property damage. GM has received no reports of injuries and to 05/13 and serial numbers 40033594 include date codes ranging from 02/13 and melt, posing a fire hazard. This surge protectors can overheat, smoke and short out. Conair Corp. says it has received about 19 consumer reports of hot coils exiting the hair dryer, including minor property damage (one fire reported) and three minor burn injuries to consumers who sought medical attention.

The Infiniti Pro hair dryers involved in the recall are of the 259 and 279 Series and have one screw hole on the back of the hair dryer handle. Those with two screw holes are not included in the recall. The hair dryers were sold at mass retailers, drug stores, department stores, beauty and specialty stores and online from about August 2010 to August 2013 for approximately $24.99 to $39.99. Consumers should immediately stop using the product and contact Conair to receive a free replacement hair dryer. Conair can be reached at 877-359-2544 between 7:00 a.m. and 11:00 p.m. ET Monday through Friday, and 9:00 a.m. and 5:30 p.m. each Saturday or Sunday.

Crate and Barrel recalls Finley hanging pendant lamps

Euromarket Designs, Inc. doing business as Crate and Barrel, of Northbrook, Ill., has recalled its hanging pendant lamps. The lamp’s wires can be connected incorrectly because the
wires' polarity labels can fall off or be mislabeled, posing fire and shock hazards to consumers. This recall includes Crate and Barrel Finley Collection pendant lamps with a white or wheat (off-white) linen large, small drum or rectangular lamp shades.

They have a 9-inch-long silver electrical wire with tandem metal support cables and chrome-plated steel ceiling plate. The large lamp with SKU number 684-069 or 684-077 measures 12 inches high and 28 inches in diameter; the small lamp with SKU number 676-384 or 440-755 measures 12 inches high and 20 inches in diameter; and the rectangular lamp with SKU number 322-067 or 322-423 measures 14 inches high, 12.25 inches wide and 30 inches long. The lamps are illuminated by two 60-watt bulbs. The SKU number can be found on a white label inside the ceiling plate. Crate and Barrel has received four reports of lamps shorting out, including minor property damage and a minor burn.

The lamps were sold exclusively at Crate and Barrel stores nationwide, in Crate and Barrel's catalog and on Crateandbarrel.com from January 2009 through July 2013 for between $149 and $249. Consumers should immediately stop using the recalled lamp and contact Crate and Barrel for a replacement lamp of equal value or a full refund, including shipping and $100 reimbursement for charges incurred in removing and replacing recalled lamps by using a licensed electrician. Crate and Barrel can be contacted at 800-451-8217 from 7 a.m. to 9 p.m. CT every day or online at www.crateandbarrel.com and click on Safety Recall at the bottom of the page for more information. Photos available at http://www.cpsc.gov/en/Recalls/2014/Crate-and-Barrel-Recalls-Finley-Hanging-Pendant-Lamps/.

**EMERSON AIR COMFORT PRODUCTS RECALLS TOMMY BAHAMA OUTDOOR CEILING FANS DUE TO RISK OF INJURY**

Air Comfort Products, a division of Emerson Electric Co., of St. Louis, Mo., has recalled its Tommy Bahama® Outdoor Ceiling Fans. The brackets holding the fan blades can break and cause the blades to fall, posing a risk of injury to bystanders. This recall involves Tommy Bahama brand 52-inch outdoor ceiling fans sold with “The Copa Breeze” style name. The fan has model number TB311DBZ and a distressed bronze color. Each of the five oval-shaped paddles/blades has a metal accent in the shape of an oval with a figure-8 inside the oval. The lower part of the motor housing has “Tommy Bahama” embossed on it. A date code is represented by three letters printed on the lower right corner of a label on the top of the motor housing. Fans with one of the following three-letter combinations are included in the recall:

AJL, BAA, BAB, BAC, BAD, BAE, BAF,BAG, BAH, BAI, BAJ, BAK, BAL, BBA, BB, BBC, BBD, BBE, BBF, BBG, BBH, BBI, BBJ, BBK, BBL, BCA, BCB, BCC and BCD

Emerson Air Comfort says it has received three reports of fan blades detaching, including one report of a laceration to a consumer who was hit in the back of the head by a falling blade. The fans were sold at fan and lighting stores nationwide and online at www.EmersonFans.com and Amazon.com from April 2010 through July 2012 for about $350.

Consumers should immediately stop using the recalled fans and contact Emerson Air Comfort Products to schedule a free in-home repair or to order a free do-it-yourself repair kit. Consumers can contact Emerson Air Comfort Products toll-free at 866-450-4493 from 8 a.m. to 10 p.m. ET Monday through Friday, or online at www.emersonfans.com, then click on Recall Information for more information. Photos available at http://www.cpsc.gov/en/Recalls/2014/Emerson-Air-Comfort-Products-Recalls-Tommy-Bahama-Outdoor-Ceiling-Fans/.

**SOUTHERN TELECOM RECALLS A/C ADAPTERS FOR POLAROID INTERNET TABLETS**

About 21,000 A/C Adaptor (charger) included with Polaroid PMID709 Internet Tablets have been recalled by Southern Telecom, Inc., of Brooklyn, N.Y. The adaptors can overheat, posing a fire hazard. The recalled adaptor, also commonly referred to as a charger, was included with the Polaroid PMID709 seven inch Internet tablet (also known as the PMID709KB). The adaptor has two prongs for plugging into an outlet on one end and a wire leading to a single plug for the tablet. A label on the bottom of the casing near the plug prongs has “Polaroid Power Adaptor” printed on it with the model number SX-50017-D. The company has received approximately 10 reports of the adaptor overheating. No injuries or property damage have been reported.

Customers should immediately stop using the adaptor and contact Southern Telecom for a replacement adaptor at no cost. Customers will receive an envelope for returning the recalled product with their replacement adaptor. Call Southern Telecom toll-free at 866-450-4493 from 8 a.m. to 10 p.m. ET Monday through Friday or contact them online at www.southern telecom.com and go to Product Support and click on “PMID709 A/C Adaptor Exchange Program” for more information. Photos available at http://www.cpsc.gov/en/Recalls/2014/Southern-Telecom-Recalls-AC-Adaptors-for-Polaroid-Internet-Tablets/.

**HEATHCO RECALLS MOTION-ACTIVATED OUTDOOR LIGHTS DUE TO ELECTRICAL SHOCK HAZARD**

Motion-Activated Outdoor Lights were recalled by HeathCo, LLC, of Bowling Green, Ky. The internal fixture wiring can energize the entire surface and fittings of the fixture, posing an electrical shock hazard. This recall includes multiple Heath®/Zenith Motion Activated Outdoor Lights used for porch lighting. The product comes in 21 designs with a variety of finishes and is designed to turn on at night when motion is detected. The product replaces a standard outdoor wall-mounted light fixture. The brand name and model number can be found on a label located on the back of the motion sensor for wall-mounted models, or underneath the motion sensor cover for ceiling-mounted models. The following brand names with their model numbers are recalled: http://www.cpsc.gov/en/Recalls/2014/HeathCo-Recalls-Motion-Activated-Outdoor-Lights/

The lights were sold at large home improvement retailers, lighting, electrical and other retail stores nation-
Atossa Genetics Recalls Breast Cancer Detection Device for Producing False Results

A medical device used to collect breast fluid and a test that uses the collected fluid to detect breast cancer has been recalled because they may produce false results. The recall comes seven months after the U.S. Food and Drug Administration (FDA) said the device needed additional clearance because changes were made after the device was approved.

The recall affects Atossa Genetics MAST (Mammary Aspiration Specimen Cytology Test) collection system and the ForeCYTE Breast Health Test. The MAST system allows collection of nipple aspirate fluid in physician’s offices for cytological testing. The ForeCYTE Breast Health Test is an early breast cancer warning system that uses the specimen collected by the MAST system to detect and differentiate among normal, abnormal, and cancerous breast cells.

Atossa chief executive Steven Quay said that the company will submit a new premarket application to the FDA by the end of the month that covers the collection, preparation and processing of breast fluid specimens. The company said that the devices will be pulled from the market until the FDA’s concerns are addressed. According to Atossa, to date, no adverse events or injuries have been reported as a result of using the devices or the test.

Toys R Us Recalls 12,650 Children’s Travel Trunks

Toys R Us and the Consumer Product Safety Commission (CPSC) are recalling approximately 12,650 Journey Girl Travel Trunks. This recall is due to the trunk’s “sharp” blue metal handle, posing a laceration hazard to the user. The recalled purple trunks with the hazardous blue handle stand 21 inches tall, are decorated with a blue pattern and are intended to carry 18-inch-tall toy dolls. Sold with three clothes hangers and two pull-out drawers for storage, the travel trunks included in the recall have UPC #48970277965070 and model number 5F5F79E printed on the bottom. Toys R Us initiated the recall after receiving six reports of incidents involving the handle, as well as a report of a consumer who received stitches as a result of a laceration. From October 2012 through February 2013, the trunks were sold nationwide at Toys R Us stores and online at www.toysrus.com for about $50.

Toys R Us and CPSC urge consumers to immediately stop using the travel trunk and put it out of reach of children until the trunks can be returned to a Toys R Us store for a full refund or store credit. For more information about this recall, please contact Toys R Us at 800-869-7787 from 9 a.m. to 11 p.m. ET Monday through Saturday and 10 a.m. to 7 p.m. ET on Sunday or online at www.toysrus.com, then click on About Us, then select “Safety” at the top of the page, and then “Click here” under Product Recalls.

Infinitoy Recalls Softimals Toy Sets Due To Choking And Aspiration Hazard

About 7,134 Building Toy Playsets have been recalled by Infinitoy, Inc., of San Mateo, Calif. The plastic hats found on playset figures pose a choking/aspiration hazard for children. Infinitoy Inc. is recalling the Super Safari Set model #30025 and the Deluxe Circus Train Set model #30040. The model number can be found on the back of the box in the lower right corner. The sets come in a white box with “Softimals. Build, Play, Repeat” and “Ages 1 1/2 to 5” printed in a colorful font on the front and back of the package. The sets have numerous plastic pieces that can be connected and fit together to build a vehicle pulling cars with a hippo, giraffe, zebra and other animals. The drivers of the lead vehicles, Safari Sam and Mighty Mike, have removable blue or yellow plastic hats. The Consumer Products Safety Commission (CPSC) is aware of one incident in which an 18-month-old child placed a hat in his/her mouth and started to gag/choke but the toy was removed. No injuries have been reported.

The toys were sold at specialty toy stores nationwide and online at Amazon.com and Mindware.com from September 2012 to September 2013 for about $25 and $40. Consumers should immediately remove the plastic hat from Safari Sam and Mighty Mike and contact Infinitoy Inc., to exchange the hat for a free replacement figure. Contact Infinitoy, Inc. toll-free at 888-558-0933 from 9 a.m. to 5 p.m. PT Monday through Friday, or online at www.infinitoy.com, then click on Safety/Recall at the bottom of the page for more information. Photos available at http://www.cpsc.gov/en/Recalls/2014/Infinitoy-Recalls-Softimals-Toy-Sets/

Trail Crest Recalls Children’s Hooded Sweatshirts Due To Strangulation Hazard

About 350 Trail Crest boys and girls hooded sweatshirts and jackets have been recalled by Trail Crest of Brooklyn, N.Y. The hoodies and jackets have drawstrings through the hood or neck which pose a strangulation hazard to young children. In February 1996, the Consumer Product Safety Commission (CPSC) issued guidelines about drawstrings in children’s upper outerwear. In 1997, those guidelines were incorporated into a voluntary standard. Then, in July 2011, based on the guidelines and voluntary standard, CPSC issued a federal regulation. CPSC’s actions demonstrate a commitment to help prevent children from strangling or getting entangled on neck and waist drawstrings in upper outerwear, such as jackets and sweatshirts. This recall involves Trail Crest brand boys and girls hooded sweatshirts sold in sizes xs:small, small and medium. They have a camouflage pattern on shoulders and arms, with drawstrings in the hood and zippers at the neck. They come in birch and camouflage, pink and camouflage, and purple and cam-
outlage. There is a tag sewn on the outside of the jacket left sleeve with style number 29121. There is an additional Trail Crest tag in the neckline.

The sweatshirts and jackets were sold at Zulily.com and other stores nationwide from November 2012 to February 2013 for about $15. Consumers should immediately take the garments away from children. Consumers can remove the drawstrings to eliminate the hazard or return the garments to Trail Crest for a full refund. Contact Trail Crest for a return address label and instructions for returning the garment. Contact Trail Crest at 800-965-6550 between 9 a.m. and 5 p.m. ET Monday through Friday. Consumers can also email the company at sales@trailcrest.net. Photos available at http://www.cpsc.gov/en/Recalls/2014/Trail-Crest-Recalls-Childrens-Hooded-Sweatshirts/

**TARGET RECALLS CHILDREN’S SITTING STOOLS DUE TO FALL HAZARD**

About 69,000 Circo-brand Chloe and Conner Sitting Stools have been recalled by Target Corporation, of Minneapolis, Minn. The stabilizing bar can crack and cause the stool to collapse, posing a fall hazard to the user. This recall involves the children’s sitting stool sold as part of the Circo-brand Chloe & Conner Collection. Assembled stools measure 11 inches tall by 11 inches wide by 11 inches deep. The painted wood stools were sold in red, white, navy and pink. Item numbers 249200218 (red), 249200207 (white), 249200217 (navy), 249200208 (pink) are printed on a sticker on the underside of the stools. Target has received seven reports of the stools breaking or collapsing and causing a child to fall. In five of the reported incidents, bumps, bruises and cuts were reported.

The stools were sold exclusively at Target stores nationwide from April 2012 through June 2013 for about $15. Consumers should immediately stop using the stool and return it to a Target store for a full refund. Contact Target Guest Relations at 800-440-0680 anytime or email guest.relations@target.com. For additional information, consumers can visit www.target.com and click on Product Recalls at the bottom of the page and then select “Children’s & Baby Products.” To see photos of the recalled product, go to http://www.cpsc.gov/en/Recalls/2014/Target-Recalls-Childrens-Sitting-Stools/

**BREATHEABLEBABY RECALLS WEARABLE BLANKET DUE TO CHOKING HAZARD**

About 15,000 BreathableSack wearable blankets for infants have been recalled by BreathableBaby LLC, of Minnetonka, Minn. The zipper pull tabs and sliders can detach, posing a choking hazard to infants. The BreathableBaby BreathableSacks are sleeveless, wearable blankets. They come in two sizes: small (10-18 pounds) and medium (16-24 pounds) and come in three colors: kiwi Whoo, pink Hip, and blue Splash. There is one animal stitched on the left chest of each blanket of an owl, hippo or elephant. Only BreathableSacks from Lot No. 124 with a manufacture date of 04/17/2012 are included in the recall. A tag sewn inside the recalled units where the infant’s right foot would be located states the “Date of Manufacture: 04/17/2012, Lot No. 124,” along with the washing instructions on the back of the tag.

Consumers should immediately stop using the BreathableSacks from Lot No. 124 and contact BreathableBaby to request a replacement garment. Contact BreathableBaby toll-free at 877-827-4442 from 9 a.m. to 4 p.m. CT Monday through Thursday or online at www.breathablebaby.com and click on Recall Information. Photos available at http://www.cpsc.gov/en/Recalls/2014/BreathableBaby-Recalls-Wearable-Blanket/

Once again there have been a large number of recalls since the October 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.

**XXI. FIRM ACTIVITIES**

**BEASLEY ALLEN SUPPORT STAFF ARE CRITICAL TO THE FIRM’S SUCCESSES AT TRIAL**

While lawyers often take the spotlight in trying cases, we know our success depends a great deal on the hard-working employees who support our efforts. Legal assistants, paralegals, investigators, nurses, graphic artists—a team of talented folks—work hard in case preparation and during trials to help us to best represent our clients. At Beasley Allen, our people truly make the difference. In fact, they are our most important resource.

We have a diverse staff of more than 80 lawyers licensed to practice law in 19 states. We also have developed relationships with lawyers who work with us in every other state. This allows us to handle cases anywhere in the country. In addition, we have more than 250 support staff in a variety of positions that greatly enhance our ability to practice law. Our support staff includes a team of investigators, full-time nurses, expert computer specialists, paralegals and experienced legal secretaries and assistants.

In our firm, we operate a comprehensive in-house trial presentation department that includes capabilities for 3D graphic renderings. Our in-house graphic artists work with our lawyers and support staff to create medical illustrations, accident diagrams and various other visual aids to use during trials. They perform video editing and prepare deposition testimony to be played during trial. They prepare digital copies of the trial exhibits and use the latest trial presentation software to present those to the jury. Being a full-service technology team, members of our support staff travel to our trial locations and fully wire courtrooms and war rooms with the very latest in audio visual equipment. Working closely with our lawyers, witnesses and experts, they bring the evidence to life in the courtroom.

An investigator is the primary member of our law firm whose job is to gather the initial facts of a case. They are instrumental in helping us understand what actually happened by physically visiting the site of the accident and examining the vehicles or other machinery that was involved in our client’s injury. They also collect and preserve evidence we may need to use during the course of a trial. A properly conducted
accident investigation provides important, detailed information about the scene and other aspects relating to the accident. It allows us to form our own views of what might have caused the accident or come up with another explanation of how the accident happened.

We are blessed to have registered nurses employed by the firm. Our Mass Tort Section handles cases involving dangerous drugs and defective medical devices. Nurses provide critical insight into the information our clients give us about how these drugs and devices have impacted their health and their lives. Our nurses are 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. This gives us invaluable information that is key to developing our case.

Our paralegals and support staff work hard to help us manage the volumes of information we need in preparing our cases and getting them ready for trial. Oftentimes, this work will span years of work. Prior to trial, these dedicated folks help make sure all deadlines in the applicable Scheduling Order are met. They prepare witness and exhibit lists, collect exhibits, print and organize exhibits and make sure they are all properly labeled. They also help prepare witness subpoenas and jury instructions, and make sure our clients and key witnesses have copies of their depositions to read and review. They also obtain the jury list and research and collect information about potential jurors.

As we get closer to trial, the support staff members assigned to the case are also responsible for things like preparing witness-specific binders and boxes with deposition clips and exhibits so lawyers can easily access the information they need. Additionally, they make sure the court reporter can provide daily transcripts of the trial, if needed. They also reserve equipment that we will need to use at trial such as laptops and printers.

During a trial, these folks keep things running smoothly, making sure witnesses have travel arrangements and where and when they need to be for preparation and at the Courthouse. They organize our exhibits for use each day, and assist the lawyers in preparing witnesses for the next day. The support staff handles a huge amount of information and they help us achieve good outcomes in our clients’ cases.

The lawyers stand out front and center, before a judge and jury, and sometimes on television or in the papers. But we couldn’t do what we do without so many dedicated folks who support us every step of the way. A lot of our employees have been with us for a very long time. I can say without hesitation that they share our enthusiasm for our work, and they believe in our cause. They help us to accomplish our larger goal, which is to secure justice for those who are wronged. We appreciate all that our support staff do and felt that it might be good to let our readers know.

**Employee Spotlights**

**TINA BENZ**

Tina Benz, who has been with the firm for more than seven years, is currently working as a Case Open Clerk for Toxic Torts. Due to the heavy volume of new cases, Tina handles many case-opens daily in Prolaw. Currently most of the cases are for BP claims. She also deals with multiple spreadsheets of data, helps to manage court-filings in six different courts on a daily basis, and keeps track and send reminders for certain deadlines for the lawyers in the Section. Tina is also in charge of most all changes in Prolaw for the Toxic Torts Section.

Tina and her husband Joe have been married for seven years and they have four children. Tina says she has always had an interest in law. She majored in criminal justice for a short time at Faulkner University. Tina had worked for two law firms before coming to Beasley Allen. Tina enjoys playing games and spending time with her family, watching football, fishing, cooking and reading. She does a very good job in a challenging position with the firm. We are fortunate to have Tina with us.

**ANGIE TAYLOR**

Angie Taylor, who has been with the firm for almost 10 years, currently works as a Legal Secretary to Navan Ward, Jr. In this position, Angie helps keep clients and referring lawyers up-to-date on their cases and helps to maintain each of the client files. Angie says she really enjoys the challenge of the ever changing legal field and all the different challenges that come with it. Through the years, Angie says God has changed her focus in life to one of serving others. In doing so, she says God has grown her and has totally changed her perspective on life.

Angie’s father Ronald Taylor retired from the Montgomery City Water Works after serving 30 years. Her mother Libby Taylor sold her beauty salon and retired after working for 40 years. Angie has one brother, Richard Taylor, who retired this year after serving 30 years in the Air National Guard. Angie has one sister-in-law, Jolie Taylor, who is a radiologist technician. Angie says that God gave her a wonderful son Brandon Thurmond, who was born with special needs. Brandon graduated this year from high school, earning his diploma.

Angie graduated from Jefferson Davis High School and obtained an associates and legal certification from Prince Institute of Professional Services. After graduating Angie spent five years working with the Department of Health and Human Services, Maternal & Child Health Bureau, in Rockville, Maryland. In that job, she reviewed State and Federal Block grants.

Angie enjoys church, fellowship, camping, horseback riding, 4-wheeling, gardening, reading, hiking, kayaking, swimming and fishing. She is a very good employee who says that she enjoys her work. We are fortunate to have Angie with us.

**XXII. SPECIAL RECOGNITIONS**

**BOBBY SEGALL ROASTED BY HIS PEERS**

My good friend Bobby Segall, a well respected lawyer with the Copeland Franco Law Firm, was recently honored at the Montgomery County Bar Association’s (MCBA) annual charity fundraiser. A packed house turned out for the roast of Bobby. Highlights from the night included an impersonation of Bobby by Virgil Ford—Judge Truman Hobbs’ not-so-subtle jabs at his former partner—and Joe Espy’s gifts from various witnesses who had the misfortune of being cross-examined in a courtroom by Bobby.

Bobby, a native of Montgomery, graduated from Sidney Lanier High School. He attended college at Vanderbilt University, and law school at the University of Alabama, where he finished first in his graduating class. Growing up, one of Bobby’s great heroes was Judge Frank M.
Johnson, Jr., who was noted for his courageous civil rights decisions during turbulent times in Alabama. Bobby says one of the foremost highlights in his career was serving as a law clerk for Judge Johnson.

Following his clerkship, Bobby attended Harvard Law School, where he received an LLM degree in 1973. Then he met his wife, Sandy. At the end of that year, Bobby joined Copeland Franco (then called Hobbs Copeland), where he has been ever since. Bobby’s practice is comprised almost entirely of litigation. Although Bobby prefers to represent Plaintiffs in both personal injury and business litigation, including complex litigation, he has handled a wide array of civil and criminal cases.

Those in attendance at the Roast had a lot of fun at Bobby’s expense. But more importantly, in the process, lots of money was collected for the MCBA Volunteer Lawyers Program (VLP). The MCBA Volunteer Lawyers Program provides vital civil legal services for people who otherwise would not be able to afford a lawyer. Pro Bono service is of critical importance to lots of folks in Alabama, and a real opportunity for lawyers to help them.

**REACHING OUT TO THOSE IN NEED**

Montgomery-based Medical Outreach Ministries provides free quality health care to the uninsured and medically underserved in Montgomery, Autauga and Elmore counties. Medical Outreach Ministries serves patients in the age category of 19 to 64 who have no insurance, Medicare, Medicaid or V.A. benefits. Patients—by virtue of this ministry—have a medical home where they receive medications at no cost and quality medical care provided mainly by local physicians, some active and some retired, who volunteer their time and services.

Without this clinic, many of their patients would turn to emergency rooms for primary care or, worse, they would go without the care they need because of financial hardship. The clinic receives no federal funding, but instead operates solely from the generosity of local churches, foundations, community organizations, and individual donors and volunteers who partner with them.

**XXIII. FAVORITE BIBLE VERSES**

Tom Methvin, the Managing Shareholder of our firm, gave us a verse for this issue. While Tom does a tremendous job in running our firm, which is no easy task, the best thing to be said about him is that he is a devoted husband, father and, more importantly, a man who loves and follows Jesus Christ in his daily walk.

for I was hungry and you gave Me food; I was thirsty and you gave Me drink; I was a stranger and you took Me in;

Matthew 25:35

My very good friend, Dr. Terry Stallings, a noted urologist from Mobile, sent in one of his favorite verses for this issue. Currently, Terry is associated with the University of South Alabama in a teaching and supervising role.

Listen to counsel and receive instruction, That you may be wise in your latter days. There are many plans in a man’s heart, Nevertheless the Lord’s counsel—that will stand.

Proverbs 19:20-21

Jim Rush, another good friend, also sent in a verse for this issue. Jim, who retired several years ago after working for many years with a local Architectural firm, is a member of St. James UMC. Jim says that many times throughout his life, he has done things that caused him to look weak, afraid and even discouraged. Jim says that when he finally realized that God would help him through difficult situations. He started to follow His commands. Jim says his life was immediately changed for the better.

Have I not commanded you? Be strong and courageous. Do not be afraid; do not be discouraged, for the Lord your God will be with you wherever you go.

Joshua 1:9

Jennifer Aughtman, who is Director of Children’s Ministry at St. James UMC, also sent in a verse for this issue. Jennifer does an outstanding job at the church working with the youth.

Whoever welcomes a little child like this in my name welcomes me.

Matthew 18:5

Dr. Thomas H. Williams furnished a verse for this issue. Tim, a local dentist, says that in today’s busy culture and society, many people have a “want it my way” and “want it right now” attitude. He says that to allow our Creator to work His will in our lives can be very hard for us if we are not in close fellowship with God and have not surrendered our lives and future to Jesus Christ.

And we know that in all things God works for the good of those who love him, who have been called according to his purpose.

Romans 8:28

Jenna Day, a lawyer in our firm, says that the following verse regularly renews her mind and spirit.

Whom have I in heaven but You? And there is none on earth that I desire besides You. My heart and my flesh fail; But God is the strength of my heart and my portion forever . . . . it is good for me to draw near to God . . . .

Psalm 73:25-26, 28

Reid Strickland, another lawyer in our firm, supplied one of his favorite verses for this issue.

Not that I have already obtained all this or have already been made perfect, but I press on to take hold of that for which Christ Jesus took hold of me. Brothers, I do not consider myself yet to have taken hold of it. But one thing I do: Forgetting what is behind and straining toward what is ahead, I press on toward the goal to win the prize for which God has called me heavenward in Christ Jesus.

Philippians 3:12-14

Arise Citizens’ Policy Project Sets Priorities for 2014 Agenda

Kimble Forrister, who is the Executive Director of Alabama Arise, was asked to write an article for this issue on the work of his organization. Alabama Arise is an organization that works extremely hard to help low-income Alabama citizens. Kimble explains the work of Alabama Arise below.

Arise Citizens’ Policy Project is a coalition of 150 congregations and organizations that promote fairer public policies toward low-income Alabamians. Last month its members chose seven issue priorities for 2014:

Adequate state budgets—Fairer state policies toward low-income Alabamians depend on adequate funding of human services. Cuts to education, child care, health care and other human services can have a lopsided impact on the ability of “the least of these” to climb the economic ladder.

Arise will promote consumer-friendly health coverage expansion under the Affordable Care Act.

Arise will make the case against harmful cuts to essential public services and build the case for new General Fund revenue.

Tax reform—Alabama continues to tax low-income people deeper into poverty. We’re one of only four states with no tax break for groceries. And some state income tax deductions favor the highest earners disproportionately.

Arise will work to untax groceries and make our income tax more balanced.

Utility rate issues—Many low-income Alabamians use a sizable share of their incomes to cover energy costs. Average annual residential electricity costs in Alabama were the nation’s second highest as a share of state median income in 2011.

Arise will seek lower bills for low-income customers and a transparent rate-setting process.

Debt collection exemptions—Alabama’s homestead and personal property exemptions from debt collection are far lower than those in nearby states. The state’s current exemption levels make it hard for a family to save their home or vehicle and to hold onto enough resources to make a fresh start after a judgment. Alabama last updated its exemptions more than 30 years ago.

Arise will work to raise Alabama’s debt collection exemptions to provide greater protection for low-income people.

Death penalty reform—Studies have shown that income and race can be significant factors in the application of the death penalty in Alabama. Some state laws on capital punishment also do not fully conform with recent U.S. Supreme Court rulings.

Arise will push for a moratorium on the death penalty in Alabama and support efforts to reform the state’s capital punishment system.

Payday lending reform and title lending reform—Payday and auto title lending can deepen poverty for some Alabamians caught in the gap between low wages and the real cost of living. With maximum annual interest rates of up to 456 percent for payday loans and up to 300 percent for title loans, even a short-term payoff for these loans can take a sizable chunk from a borrower’s paycheck.

Arise will work for tighter regulations on payday and title lending in Alabama.

Lifting lifetime SNAP ban for people with drug convictions—Alabama is one of the only states to forbid people with a prior felony drug conviction from ever receiving benefits under the Supplemental Nutrition Assistance Program (SNAP), formerly known as food stamps. Most states have either opted out of the ban or modified it.

Arise will urge Alabama to end its lifetime SNAP eligibility ban for people with a prior drug conviction.

We really appreciate Kimble taking the time to write this article. If any of our readers would like to keep up with the issues set out in the article, I recommend signing up for the Arise Daily News Digest. You can also support the work of Arise with a tax-deductible donation. For more information, go to www.arisecitizens.org. You can also call Alabama Arise at 800-832-9060.

A Monthly Reminder

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

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

The dictionary is the only place that success comes before work. Hard work is the price we must pay for success. I think you can accomplish anything if you’re willing to pay the price.

Vincent Lombardi

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Contrary to Senator Ross’ example of true leadership, it appears that many of our elected officials recently chose to put their political careers ahead of our nation’s best interest. This led to the shutdown of our government and brought our nation to the brink of default. Should we expect more? What qualities should we look for in leaders? What should we expect from those who assume roles of leadership? The Bible provides answers and some very good examples.

Nebemiah, as an exile in Babylon, had risen to a prominent position. He was the cupbearer to the Persian king. When Nebemiah received a report of the desperate condition of the city of Jerusalem and the despair of his countrymen residing there, his heart was broken. After four months of prayer and fasting, Nebemiah risked it all to petition the king for permission to go to Jerusalem to rebuild the city’s wall; a wall that was necessary to provide the Israelites security from surrounding enemies. Because of the sensitive nature of his position, simply making the request could have easily cost Nebemiah his life. Nebemiah nonetheless courageously presented a carefully crafted plan and received the king’s blessing. Then, Nebemiah followed through with the plan despite tremendous opposition and challenges. He rallied the people of Jerusalem and successfully completed the wall in just 52 days!

In both Nebemiah and Senator Ross we find examples of leaders who, first, put the interest of others ahead of their personal interest. Secondly, both men had a clear sense of purpose. Thirdly, they demonstrated the courage to follow through in the face of stiff opposition. The ultimate example of true leadership, however, is Jesus. In selfless obedience Jesus bumbled Himself and endured a brutal execution to pay the penalty for our sin so that we may be reconciled to the one true, holy God (Philippians 2:3-11; 2 Corinthians 5:21). He had a definite understanding of purpose; Jesus knew that His purpose was to take away the sin of the world (John 1:29). He would not be distracted from fulfilling this purpose despite great temptations (Matthew 4), nor would He be deterred by opposition (John 18:11). Selfless concern for others, commitment to a clear purpose, and the courage to follow through are qualities we should look for in leaders.

More importantly, these are qualities we should cultivate in our own lives. We are all leaders in some capacity. Whether it is in our relationships with our children, co-workers, neighbors or family, we all have somebody looking to our example. We should have the mind of Christ and follow His example of compassionate and caring servant leadership. We should act with courage when facing opposition or obstacles. We should maintain a steadfast commitment to the purpose to which we are called.

But what if we don’t yet have a clear sense of God’s calling or purpose in a specific way like Nebemiah did in building a wall or Jesus did in going to the cross? Then we should make ourselves available for such service by daily surrendering our lives to the Lord and earnestly seeking His will. His desire is for us to seek His will with our whole heart—not with a heart divided between our selfish desires and His plan (Jeremiah 29:11-13). Regardless of our circumstances though, we all have Jesus’ clear command that we are to love God and love others wholeheartedly. That’s a calling for all people at all times. It’s a calling that requires selflessness and courage. And, it is a calling worthy of our unwavering commitment!

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