I. CAPITOL OBSERVATIONS

MOST AMERICANS NOW SAY THEY ARE POLITICAL INDEPENDENTS

It appears, based on recent poll results, that both major political parties are losing ground with potential voters. A record number of Americans now consider themselves political independents, according to a new Gallup poll. Perhaps this will serve as a wake-up call for the leaders in both parties. Forty-two percent of Americans said they did not exclusively identify with either the Republican or Democratic Party. That’s the highest amount since Gallup began asking the question 25 years ago. Gallup officials made this observation:

Americans are increasingly declaring independence from the political parties. The rise in political independence is likely an outgrowth of Americans’ record or near-record negative views of the two major U.S. parties, of Congress, and their low level of trust in government more generally.

Twenty-five percent of those surveyed said they consider themselves Republican, also the lowest amount in 25 years. Thirty-one percent said they considered themselves Democrats. While that’s a percent that is unchanged from the last four years, it’s down from 36 percent in 2008. Republican identification reached its highest levels at 34 percent in 2004 when George W. Bush won his second term in office. Interestingly, the percentage has fallen since then with most of the decline coming during Bush’s second term. When he left office, the number of people describing themselves as Republicans fell to 28 percent.

The number of people considering themselves Democrats has also declined in recent years, dropping five points from a high of 36 percent in 2008 when President Obama was elected. It appears from the poll results that the American people are sick and tired of the partisan approach to running the affairs of government. Hopefully, our political leaders on both sides of the aisle are listening. The poll comes from more than 18,000 interviews Gallup conducted throughout the year.

Source: AL.com

EARLY QUALIFYING DEADLINE IN ALABAMA

Those who were considering a run for state office in Alabama this year have had to make up their minds lots earlier than expected. Secretary of State Jim Bennett has set Feb. 7 as the close of qualifying for major party candidates, which is about two months earlier than usual. According to reports, the earlier date is part of an agreement with the U.S. Department of Justice to make sure military and overseas voters have time to receive and return absentee ballots. The Department of Justice had sued Alabama over the issue of absentee voting access by people living overseas. Jim had this to say about the change:

We are doing everything in our power to make sure that our soldiers have their ballots in hand and can mail them back in time for their vote to be counted. This will allow ballots enough time to be sent to military and overseas voters well before the federal deadline, which is 45 days before the date of the election.

I hear that this earlier date has caused some scrambling by political party staff and also by potential candidates. Both the Democratic and Republican parties opened qualifying on Jan. 13. This means that candidates will have to file their paperwork in less than a month’s time.

Alabama Democratic Party Chairwoman Nancy Worley says she would have preferred a later end date for qualifying, but that Democrats “can live with this date.” Alabama Republican Party Chairman Bill Armistead observed that procrastinators will have less time to delay a decision. It doesn’t appear that there is a great deal of interest in elections at this juncture. Things on the political front have been very quiet. Hopefully, that will change now that the qualifying will have started. The dates set by the two parties for qualifying does not affect independent candidates.

Source: AL.com
II. A REPORT ON THE GULF COAST DISASTER

FIFTH CIRCUIT COURT OF APPEALS AFFIRMS MULTI-BILLION OIL SPILL ECONOMIC SETTLEMENT

The Fifth Circuit Court of Appeals, in a 2-1 decision, issued a much-anticipated decision on class certification, and upheld the multi-billion dollar economic and property damages settlement agreement reached between BP and the Plaintiffs' Steering Committee (PSC) in 2012. As we have written in previous articles, BP has mounted a ferocious multi-million dollar smear campaign in an attempt to gain public support and undo a settlement the company crafted and agreed to just a few years ago. The company has argued that the settlement agreement is impermissibly compensating claimants that did not suffer actual losses from the oil spill and, as a result, the Agreement should fail. Time and time again, however, the appeals panel has disagreed. Judge Eugene Davis, writing for the majority, stated that while BP made numerous arguments, they all centered on BP's assertion that claimants were receiving compensation even though they allegedly could not trace their economic damages to the oil spill. Judge Davis noted that the settlement agreement included rules requiring those wishing to be paid to “meet the descriptions of one or more” damage categories listed in the Settlement. Indeed, “both the named plaintiffs and the absent class members contemplated by the class definition include only persons and entities who can allege causation and injury in accordance with Article III,” Judge Davis said.

BP argued that a class settlement could not go forward without a thorough review of the merits of each claim. Considering that argument, in the order Judge Davis stated:

BP has cited no authority—and we are aware of none—that would permit an evidentiary inquiry into the Article III standing of absent class members during class certification and settlement approval under Rule 23. It would make no practical sense for a court to require evidence of a party's claims when the parties themselves seek settlement under Rule 23(e). Logically, requiring absent class members to prove their claims prior to settlement under Rule 23(e) would eliminate class settlement because there would be no need to settle a claim that was already proven.

The Davis majority also rejected a common tactic utilized by BP after the oil giant learned that it has undervalued the Settlement Agreement—to manufacture new evidence and ignore the factual path to the settlement. This was in the form of post-settlement expert declarations to support its contentions. The panel's decision on that issue reads:

Although BP made no objection to the district court’s order certifying the class and approving the settlement agreement, BP asks this court to find an intraclass conflict of interest because the claimants allegedly include persons and entities that have suffered no injury. In support of this allegation, BP presents us with a series of economists' declarations that had not been provided to the district court when the class was certified.

The Fifth Circuit's decision was a major victory for businesses and individuals throughout the Gulf Coast. Perhaps more important, however, is the fact that the decision holds BP accountable for its promises it clearly made to the Gulf Coast. The company may very well appeal, but deep down in its corporate heart, BP has to know the right and only decision was reached by the Fifth Circuit.

BUSINESS ECONOMIC LOSS PANEL DETERMINATION ON CAUSATION REMAINS

With BP Oil Spill litigation class certification resolved, all eyes now turn to the Business Economic Loss (BEL) panel, which is considering the causation parameters of the economic settlement as set forth in Exhibit 4B. BP is arguing that the settlement agreement's causation parameters require the Claims Administrator to factually trace a claim's damages to the oil spill. The Fifth Circuit correctly determined that the manner in which claimants should be compensated is a question of contract interpretation—not an issue of class certification. Thus, the ultimate decision on causation will reside with the BEL panel. Even so, Judge Davis in the court's opinion correctly noted that Exhibit 4B determines causation for a claim in the settlement. Indeed, nowhere in the settlement agreement is there a requirement that a claimant must meet a causation standard beyond the formulas in Exhibit 4B.

When faced with questions about the intent behind the formulaic parameters of Exhibit 4B, Judge Davis stated that BP never objected to Exhibit 4B's application, nor did the company appeal or object to the interpretation that the frameworks would compensate claimants pursuant to the terms of the settlement “without regard to whether such losses resulted or may have resulted from a cause other than … oil spill” when questioned by the Claims Administrator.

Based on BP's representations during settlement negotiations, as well as the mountain of evidence and BP's own admissions to the Court and Administrator Pat Juneau, no plausible explanation exists other than that the Exhibit 4B formulas (along with the excluded businesses that BP ironically refused to compensate because the company claimed the businesses were not damaged by the oil spill) are the sole causation determinant. So what gives? Put simply, BP has manufactured a post-settlement causation argument, and the company is waging war in the media in hopes that public opinion sways its way. The company has attempted to bolster its argument with self-serving post-settlement declarations that completely contradict the company's previous position and statements to Judge Barbier, and multi-million dollar smear ads in major news outlets.

The Fifth Circuit has gathered a significant amount of information on the settlement and has wisely sought clarification from Judge Barbier, who, along with Magistrate Judge Shushan, could not have been more hands on and closer to the parties' negotiations as the settlement was negotiated and papered. While I suppose anything could happen, we are very confident that the Fifth Circuit will strike down BP's arguments and put this settlement back on track to compensating claimants.

BP IS NOW TRYING TO RENEG ON ITS PROMISE TO COMMERCIAL FISHERMEN

In a move that should not surprise any of our readers, BP has now declared war on the seafood settlement. Originally, the Program was lauded as a $2.3 billion fund set aside solely for seafood harvesters who, by all accounts, represent the most sensitive economic victims of BP's bad acts. The fund constituted a guaranteed payment by BP to the seafood harvesting industry. There was a provision in the agreement that covered any money that remained in the fund after a first round of payments. In that event, a court-appointed neutral would exhaust the remainder of the fund through a second round of payments to claimants.

BP claims that former Plaintiffs' Steering Committee (PSC) member Mikal Watts defrauded the company when Watts allegedly
claimed to represent 40,000 Vietnamese deckhands, whom Watts believed would ultimately seek compensation in the seafood program. Resolution of these deckhand claims and “reasonable” reliance on Watt’s representations, BP claims, was a cornerstone to the company reaching a seafood harvesting settlement with the PSC.

Predictably, like other attempts BP has made to renege on its promises, the company’s latest attempt to subvert the settlement agreement is simply not supported by the facts. First of all, BP’s efforts completely contradict its suggestions to the Court and to the public. BP stated that the seafood fund was based on average pounds and value of seafood caught in the Gulf of Mexico for a period of the benchmark years. Nowhere did the company ever reference an expectation of whether a block of seafood harvesters would choose to remain in the settlement as a basis for calculating the fund.

BP certainly wasn’t caught off guard about the issues with Mr. Watts’ client base as the company seems to suggest. In fact, BP sent a letter to the PSC expressing concern about the very issues the company complains of before a settlement was ever reached. Moreover, a discussion of Watts’ clients was not relegated to pre-settlement talks. A major national news publication was openly writing articles that expressed concerns about the Watts’ clients well before the seafood settlement was brokered, and BP had all of the available information about Watts’ client base by way of the Short Form Joinders Watts filed with the Court. Even assuming the worst, BP’s “reliance” on Watts’ deckhand client base information to formulate a global seafood settlement makes no sense. Deckhand claims are on average the smallest claims in the entire Seafood Compensation Program. For BP to claim that 2 percent of the seafood fund (assuming the worst) was the basis for settling seafood claims is beyond illogical.

It’s quite obvious that BP’s latest ploy is really part of its continuing two-pronged effort we have all come to know and expect. On one hand, the company is simply attacking another part of the settlement to continue its overall smear campaign in hopes that the public and the court system will allow it to evade responsibility. On the other is the fact that seafood harvesters who chose to settle with BP, based on the company’s representation of a guaranteed second distribution if seafood funds were not exhausted, are locked into the settlement.

BP, as it has done from the beginning, makes grand promises in order to get releases of liability. But as soon as the company acquires the release (which occurs on the front end before the second distribution occurs), it quickly moves to renege on the deal based on some manufactured argument. I am confident that BP’s efforts to change the settlement agreement and shortchange the seafood industry will fail. At some point, I suspect the courts at every level will say “enough is enough” to BP and put an end to the company’s playing fast and loose with the judicial system.

III. LEGISLATIVE HAPPENINGS

ALABAMA LEGISLATURE STARTS ELECTION YEAR SESSION

The Alabama Legislature went into session last month and thus far, from all accounts, it appears this will be another typical election-year session. Hopefully, some of the state’s real problems, including such issues as settling priorities and providing adequate funding for public education, will be addressed. Most observers believe there is one area of concern that will have to be addressed—election year notwithstanding—and that concerns the state’s horrendously bad prison system. If the state doesn’t act soon, the federal courts will order a takeover of the system. That’s not a good thing for Alabama citizens. Needless to say, this is another problem that won’t go away.

There will be lots of political posturing and perhaps some grandstanding in the next few weeks in both houses of the legislature. While that’s to be expected, much of what’s being proposed doesn’t amount to a “hill of beans.” On a positive note, I hope that the legislators will find a way to give needed pay raises to state employees and public school teachers. It’s the right thing to do and certainly something that is long overdue. Investing in both sectors, in my opinion, will pay long-term benefits for our state. In any event, it will be most interesting to see how this session winds up.

IV. COURT WATCH

U.S. SUPREME COURT UPHOLDS MISSISSIPPI ATTORNEY GENERAL

In a case involving Mississippi Attorney General Jim Hood, who had sued liquid-crystal display (LCD) makers on behalf of citizens of his state, the U.S. Supreme Court has unanimously ruled states’ claims against corporate defendants on behalf of their citizens may be pursued in their state courts. The opinion, written by Justice Sonia Sotomayor, said that while the Class Action Fairness Act of 2005, which was designed to limit class action suits, lets defendants remove “mass actions” from state to federal court, the law requires that a “mass action” must involve monetary claims brought by 100 or more persons who propose to try those claims jointly as named Plaintiffs. Because the State of Mississippi is the only named Plaintiff in case brought by Attorney General Hood, the high court said the case must be remanded to state court.

The suit was filed by Attorney General Hood seeking restitution for citizens. Named as defendants were units of Sharp Corp. and AU Optronics Corp. The companies sought to move the suit into federal court, where they expected they would fare better than in state court. It was alleged in the suit that the LCD makers fixed prices and overcharged for their products in violation of the Mississippi Consumer Protection Act. LCD screens are used in computers and televisions.

More than a dozen states have sued LCD makers over an alleged conspiracy among the companies to fix prices. Defense lawyers have complained that there’s a growing trend of Plaintiff attorneys teaming up with states’ attorneys general to bring cases on behalf of citizens as a way of circumventing the 2005 law. Clearly, the Class Action Fairness Act was never intended to apply to such cases. The Fifth Circuit Court of Appeals ruled that the case belonged in federal court but now the Supreme Court has sent it back to the state courts. This was a very good result for state attorneys general and for the citizens they represent.

Source: Insurance Journal

CHIEF JUSTICE JOHN ROBERTS ISSUES THE ANNUAL REPORT ON THE JUDICIARY

Summoning Ebenezer Scrooge and the ghosts of the past and future, Chief Justice John Roberts devoted his annual report to the not-so-good fate of the federal judiciary if funding is not improved. “Let’s look,” Chief Justice Roberts writes in the report released at year’s end about “what has made our federal court system work in the past,” what they are doing in the present to preserve they system. Clearly, we are in an era of fiscal constraint. The Chief Justice wants the public to understand what the future holds if the judiciary does not receive the funding it needs.”
As part of his duties as chief justice of the United States, Roberts heads the Judicial Conference. This is the principal policy-making body concerned with the administration of the federal courts. Each year an annual Year-End Report on the Federal Judiciary is filed. This comes at year’s end and it’s a reflection on the state of the judiciary. In recent years, the subject of the report has been the issue of funding. This year Chief Justice Roberts calls the federal court system “the model for justice throughout the world.” He says the courts “owe their pre-eminence” to statesmen “who have looked past the politics of the moment and have supported a strong, independent and impartial judiciary.”

Chief Justice Roberts, in an attempt to put things in perspective, introduced some interesting characters in his annual report. He summoned Charles Dickens’ Ghost of Christmas Past and the guardian angel from Frank Capra’s “It’s a Wonderful Life” to help explain things to our political leaders in the nation’s capital and also to the American people.

The Chief Justice writes that even at a time of fiscal constraint, the independent judicial branch consumes only the “tiniest sliver” (two-tenths of 1 percent) of the federal government’s total outlays. He refers to the impact of the sequester, which led in part to fewer court clerks to process new civil cases, fewer probation and pretrial services officers, fewer public defenders and less funding for security guards at federal courthouses. And he outlines how the judiciary continues to look for ways to conserve funds, especially in space allocation. Chief Justice Roberts made this observation:

*The year’s end brings predictable constants, including the revival of favorite phantoms—Scrooge’s ghosts and George Bailey’s guardian angel—who step out from the shadows for their annual appearance and then fade away. This year, however, let’s take a page from Dickens and Capra. Let’s look at what has made our federal court system work in the past, what we are doing in the present to preserve it in an era of fiscal constraint, and what the future holds if the judiciary does not receive the funding it needs.*

In December, the Judicial Conference appealed to Congress to approve an appropriation of $7.04 billion for fiscal year 2014. Chief Justice Roberts says that the consequences of forgoing the funding in favor of a hard freeze at the sequester level would be “bleak.” It would lead to more cuts in court staff, greater delays in resolving civil and criminal cases and a potential threat to public safety. The Chief Justice made this interesting observation:

*It takes no imagination to see that failing to meet the judiciary’s essential requirements undermines the public’s confidence in all three branches of government. Both “A Christmas Carol” and “It’s a Wonderful Life” have happy endings. We are encouraged that the story of funding for the federal judiciary—though perhaps not as gripping a tale—will too.*

Hopefully, the Obama Administration and the leadership in both the House and Senate will understand what the Chief Justice is telling them and respond in the right way. It would be a most serious mistake to ignore his plea.

Source: *ABC News*

**President Obama Renominates 54 Judges**

President Obama has renominated 54 candidates for open federal district and appellate court positions after their nominations expired at the end of 2013. But most observers believe this sets up another fight with the Senate Republicans who refused to allow votes on several of the nominees to go forward in December. The judicial nominations had expired with the end of the congressional session after Senate Republicans refused to allow them to be held over.

The nominations were reissued by the President on the Senate’s first day back for the year. Also included are candidates for senior federal agency and diplomatic positions and the District of Columbia’s courts. Members of the Senate should put aside the partisan bickering and get down to the business of dealing with the judicial confirmations. I believe that if the American people understand that judges are needed the vast majority would want the Senators to act on the confirmations.

**A Look At The Top 2013 Jury Awards**

U.S. juries awarded three verdicts of $1 billion or more for the third straight year in 2013, with the highest being a $1.2 billion award against Dow Chemical Co. This verdict was the largest ever in a price-fixing case. Second was $1.1 billion awarded by a Florida jury in July against Trans Healthcare Inc. This verdict was to the estate of a woman who died following multiple falls. It was the largest-ever against a nursing home. The third highest was a $1 billion verdict in a suit against Lennar Corp. in which a California developer and his company were accused of defaming the homebuilder as part of an extortion scheme.

The nine verdicts of $1 billion or more in the past three years contrasts with the total of three such awards in the prior five years, according to data compiled by Bloomberg. The rise of billion-dollar verdicts mirrors the increase in the cost of settlements for allegations of corporate misconduct related to the financial crisis, according to Carl Tobias, a law professor at the University of Richmond. He observed:

*There is some sort of a punitive aspect. Juries are more and more willing to require defendants to pay more if they’re bad actors, or there’s a perception that they’re bad actors.*

Four of the top 50 jury verdicts of 2013 were in patent-infringement cases, down from 11 in 2012, according to data compiled by Bloomberg. Overall, awards of $100 million and up by U.S. juries fell one-third, to 20 in 2013 from an unusually high 31 in 2012. Juries in the past 15 years returned an average of 20 verdicts of $100 million or greater.

Antitrust awards provided three of 2013’s large verdicts, led by the $1.2 billion assessment against Dow Chemical, accused of conspiring with four other companies to fix prices on chemicals used to make urethanes. The Kansas City, Kan., jury awarded $400 million. The amount was tripled to $1.2 billion under U.S. antitrust law. The Plaintiffs, a class of industrial purchasers of the chemicals used to make such products as cushions, auto seats, and insulation, settled with the other Defendants for a total of $139 million before trial. The final judgment was reduced to reflect the settlements. Dow appealed the verdict.

In the other two antitrust cases, a jury in Texas awarded $113.5 million in September in a claim that Becton Dickinson & Co. tried to monopolize the safety-syringe market. The verdict is subject to trebling to $340.5 million. Becton Dickinson said it would appeal. A $162.3 million verdict was returned against two Chinese vitamin C makers in March. This was in a price-fixing claim brought by a class of U.S. customers. The award, since cut to $158 million to reflect prior settlements and lawyers’ fees, has been appealed. All three were small in comparison to the $5.7 billion Visa Inc.-MasterCard Inc. settlement with merchants over credit-card swipe fees. That settlement was reached in 2012 and approved in 2013.

Source: *Insurance Journal*
U.S. Supreme Court Shows Interest In Class Action Lawsuits

The United States Supreme Court has shown a great deal of interest recently in considering whether class actions are really a valuable and needed part of this nation’s legal system. While most observers believe that class actions are a vital part of the system, not all courts agree on how important they should be. The Supreme Court’s decisions last term, along with some current cases, demonstrate a split within the Court on this question. The justices are divided about several issues, including:

• the significance of proof at the class certification stage,
• the consequences of enforcing class action waivers in arbitration clauses, and
• the interpretation of the Class Action Fairness Act.

As a result of the Court’s divide on class action issues, it has become more difficult in some circuits to certify a class. But although the Supreme Court has become more hostile to class actions in the past few years, there are still several circuit courts that are open to class action Plaintiffs.

If you are a potential Plaintiff, or represent a potential Plaintiff, it’s crucial to have the experienced eyes of a class action lawyer review your claim to determine its merit. Lawyers in the Consumer Fraud Section at Beasley Allen continue to investigate class action cases and they are currently litigating class action nationwide. If you would like to speak with a lawyer at Beasley Allen who is familiar with class action litigation, contact either Andrew Brashier or Archie Grubb, lawyers in our firm’s Consumer Fraud Section, at 800-898-2034 or by email at Andrew.Brashier@beasleyallen.com or Archie.Grubb@beasleyallen.com. Andrew has compiled a number of cases decided in the federal system that are instructive on the class action situation at present.

Source: Law360

V.
THE NATIONAL SCENE

There Are Good Reasons To Support Public Citizen

I strongly believe that Public Citizen does more to protect the American people than do many of the government agencies that are supposed to be doing that very job. As we have reported, Public Citizen has done lots of good work for consumers during 2013. There will be many more consumer-related and public interest issues that Public Citizen will be working on this year. The following are good reasons to support the work that Public Citizen will be doing in 2014:

• Preserving The Right To Trial By Jury
  • In the past several years, Public Citizen has fought hard to preserve the public’s access to the courts. Lawyers on behalf of Public Citizen have advocated for consumers in cases that directly affect preserving class action fairness, eliminating forced arbitration, fighting corporate preemption theories, and ultimately protecting a consumer’s right to access the courts.
  • When Congress passed the Federal Arbitration Act, it intended to provide certain contractual parties with the option to choose an alternative forum for dispute resolution. In the very beginning the act was confined to maritime disputes. Many in Corporate America, however, have abused that law by forcing arbitration clauses into virtually every type of contract imaginable—from cell phones to medical care—on a “take it or leave it” basis. Average consumers have little meaningful choice when it comes to accepting or rejecting arbitration provisions, and often do not even realize they are signing away one of their most fundamental rights—the right to trial by jury.
  • Federal preemption has become a real problem for citizens who have been harmed by defective drugs, defective products, and in other areas where federal standards and regulation are involved.
  • In 2014, Public Citizen will be focusing on the Consumer Financial Protection Bureau, which—thanks in significant part to their advocacy work—has authority under the Dodd-Frank Wall Street reform bill to ban lots of anti-consumer activity including forced arbitration.

• Citizens United and McCutcheon
  • One of the worst Supreme Court rulings of our time remains one of the gravest threats to our democracy. The midterm elections in 2014 will see record-setting spending by billionaires like Sheldon Adelson and the Koch Brothers, corporate giants like Exxon Mobil and Bank of America, and dark money conduits like Karl Rove’s Crossroads GPS and the U.S. Chamber of Commerce. Nobody has done or will be doing more than Public Citizen to counteract the judicial abomination known as Citizens United.
  • So far, 16 states have joined Public Citizen in calling for a constitutional amendment to overturn the ruling. They are actively organizing in seven other states and soon will have more than half the number needed to ultimately ratify an amendment. The Supreme Court will decide another case this year—McCutcheon v. Federal Election Commission—that may turn out to be a sequel of sorts to Citizens United. A bad ruling could allow anyone who so chooses to directly contribute as much as $3.6 million per election cycle to a single party and its candidates. Of course, not many people can afford that choice. So much for the concept of “one person, one vote.”

• Wall Street Greed
  • After causing a global financial meltdown from which Main Street still has not recovered, Wall Street is—alarmingly—up to many of its former tricks. The Big Banks have demonstrated, repeatedly and unequivocally, that they cannot avoid succumbing to their own greed and shortsightedness. Yet they have fought tooth and nail every piece of legislation, every commonsense regulation, designed to prevent them from ever again driving our economy off a cliff.
  • The Big Banks have spent hundreds of millions trying to roll back, water down and get out of the landmark Dodd-Frank Wall Street Reform and Consumer Protection Act necessitated by their hubris. And their efforts have perpetuated their supposed status as “too big to fail” and even “too big to jail.” As the collapse in 2008 recedes in time, Wall Street seems to be countering on some sort of societal amnesia about what it did. The Big Banks as well as the government agencies and officials are charged with safeguarding our nation’s economy.
  • 45,000 Preventable Deaths
• Every year, 45,000 of our fellow Americans die preventable deaths solely for lack of health insurance. That’s one man, woman or child lost every 12 minutes. Even if it overcomes the radical right’s partisan stonewalling, the Affordable Care Act is not designed to end the for-profit health insurance industry’s commodification of what should be a basic human right. Public Citizen says it will never stop fighting for a single-payer, Medicare-for-All system until the day when nobody is denied care for the sake of corporate profits.

• **Keystone XL Pipeline**

  • Building a pipeline from Canada to the Gulf of Mexico, directly through America’s heartland has become extremely controversial. The concepts behind the Keystone XL pipeline proposed by Canadian oil company TransCanada, according to Public Citizen, have many flaws. At a time when scientists universally acknowledge the danger of continued reliance on fossil fuels, Public Citizen asks “why are we extracting one of the most toxic forms of crude from the Canadian tundra, piping it across a continent, and shipping it to other countries—where its consumption will only hasten climate change?”

  • Public Citizen says that Keystone XL will not reduce our nation’s dependence on foreign oil and will drive up prices at the pump. Public Citizen revealed that a portion of the pipeline about to become operational in Oklahoma and Texas had 125 dents, bad welds and other flaws. That’s lots of potential leaks in a pipeline that could carry nearly 35 million gallons of corrosive sludge a day. Public Citizen is working to stop approval of the Keystone XL pipeline and other Big Oil schemes that will accelerate catastrophic climate change.

• **Trans-Pacific Partnership**

  • Behind closed doors, the U.S. and 11 other countries are negotiating a trade pact called the Trans-Pacific Partnership (TPP), hoping to finalize the deal this year. CEO of a huge corporation should like NAFTA, which has been a travesty. Corporate America offshores more jobs, imports unsafe food and products, and weakens consumer, workplace and environmental safeguards. We should never relinquish our national sovereignty to secret corporate tribunals. The TPP under negotiation is a very bad idea.

  • Public Citizen has led the charge against a NAFTA-style TPP since negotiations began several years ago. The only way the Obama administration can get this TPP deal done is with “Fast Track”—an anti-democratic Nixon-era maneuver that transfers Congress’ constitutional trade authority to the president. After hundreds of grassroots and D.C. meetings, rallies and more, 190 members of the U.S. House of Representatives have said “no” to Fast Track. This year, Public Citizen will make every effort to make sure a majority refuse to speed passage of the TPP. Public Citizen will keep fighting attempts by multinational corporations to do an end run around laws and policies that protect the American people all from their insatiable greed.

• **Public Health Threats**

  • During 2013, Public Citizen brought national attention to two major public health risks and made substantial progress toward remedying both problems. In April, they uncovered severe ethical lapses in federally funded clinical experiments—conducted by prominent universities like Yale, Stanford and Duke—that subjected premature babies to increased risk of blindness, brain damage and death without the parents and even some of the doctors being properly informed of the methodology and hazards.

  • Public Citizen is spearheading a campaign to force government regulators and medical researchers to drastically strengthen their commitment to the principle of informed consent in studies involving human patients. In November, the FDA at last proposed a rule, in response to a petition Public Citizen filed with the agency back in 2011, that could save countless lives. A 2010 Supreme Court decision held that manufacturers of generic drugs could not, on their own, change their labeling when new dangers are discovered with their products. That left them with no incentive to investigate and report safety problems—even where they dominate the market, and even for the hundreds of prescription drugs that exist only in generic form.

  • The FDA’s proposed rule will give manufacturers of generics authority—and motivation—to revise their labeling as dangers are discovered, fixing the problem created by the Supreme Court decision. It’s essential to keep making progress on critical health and safety protections.

Public Citizen’s record of hard work and success is unrivaled, and the challenges the organization is uniquely qualified to help overcome are innumerable. The peril confronting the American people, our democracy and our planet are great. But the opportunities to make real, far-reaching change should inspire all of us to do our part to make things better. While you may not agree with all of the things that I have listed above, I hope you will support Public Citizen by making a monetary donation. You can get more information on this organization by going to www.Citizen.org. You can also contact Public Citizen by writing them at 215 Pennsylvania Ave. SE, Washington, D.C. 20003 or by calling 1-202-588-1100.

Source: Public Citizen

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**VI. THE CORPORATE WORLD**

**2013 WAS A BANNER YEAR FOR WHISTLEBLOWER CASES**

The Justice Department announced in December that it recovered $5.8 billion in settlements and judgments from civil cases involving fraud against the government during the 2013 fiscal year. This dollar amount is the second largest annual recovery under the False Claims Act, surpassed only by last year’s nearly $5 billion in recoveries. This is second highest amount in the history of the False Claims Act, and brings total recoveries under the Act to $17 billion since January 2009. As in previous years, the largest recoveries are related to health care fraud, which reached $2.6 billion. Procurement fraud, related primarily to defense contracts, accounted for another $890 million.

The False Claims Act is the government’s primary civil remedy to address false claims for government funds and property under government contracts, including national security and defense contracts, as well as under government programs as varied as Medicare, veterans benefits, federally insured loans and mortgages, transportations and

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research grants, agricultural supports, school lunches, and disaster assistance.

In 1986, Congress strengthened the Act by amending it to increase incentives for whistleblowers to file lawsuits on behalf of the government, which has led to more investigations and greater recoveries. Most false claims cases are filed under the Act’s whistleblower, or qui tam, provisions, which allow private citizens to file lawsuits alleging false claims on behalf of the government. If the government prevails in the action, the whistleblower receives up to 30 percent of the recovery. Recoveries in qui tam cases during FY 2013 totaled $2.9 billion, with individual whistleblowers recovering $455 million.

In the area of health care fraud, $1.8 billion of the $2.6 billion recovered were from false claims for drugs and medical devices under federally insured health programs such as Medicare, Medicaid, TRICARE and FEHBP. The Justice Department recovered an additional $443 million for state Medicaid programs. Interestingly, Alabama was not eligible to participate in this recovery because, unlike the majority of states including our neighbors Florida, Georgia and Tennessee, we do not have a state False Claims Act. The majority of health care fraud recoveries involved allegations that pharmaceutical manufacturers improperly promoted their drugs for uses not approved by the Food and Drug Administration (FDA)—a practice known as “off-label” marketing. Lawyers in the Consumer Fraud Section at Beasley Allen are currently litigating several off-label marketing cases under the False Claims Act.

In the area of Procurement Fraud, the Justice Department recently announced it will join a False Claims Act suit filed by Beasley Allen lawyers on behalf of Blake Percival, alleging that U.S. Investigations Services (USIS) routinely failed to complete background investigations on applicants for sensitive federal jobs. Percival, former director of fieldwork services at USIS, alleges that the company defrauded the government by forwarding files to the Office of Personnel Management (OPM) that, in many cases, had not been investigated at all. The practice, known as “dumping,” was aimed at maximizing revenue because USIS is paid about $1,900 for every investigative report submitted to OPM before the next-to-last day of the month, and just 75 percent of the amount thereafter. Percival was fired when he refused to order his employees to continue the “dumping” practice.

USIS, which has worked for OPM since 1996, has come under scrutiny because it did the background checks both for Edward Snowden, the former National Security Agency contractor who leaked details of classified programs to the media, and Aaron Alexis, a former Navy reservist who gunned down a dozen people at the Washington Navy Yard last fall before being killed by police.

Lawyers in the Consumer Fraud Section at Beasley Allen continue to investigate, file, and litigate whistleblower cases under the False Claims Act. They are also taking cases under state law in states that have whistleblower statutes. For further information, call 800-898-2034 and ask for either Larry Golston (Larry.Golston@beasleyallen.com), Lance Gould (Lance.Gould@beasleyallen.com), Archie Grubb (Archie.Grubb@beasleyallen.com), or Andrew Brashier (Andrew.Brashier@beasleyallen.com). Each of these lawyers is actively involved in the whistleblower litigation.

Source: www.justice.gov.

**Insurance Companies Sue Radiology Companies for Alleged False Billing**

Farmers Insurance Exchange, 21st Century Insurance Company, Coast National Insurance Company, Mid-Century Insurance Company and Truck Insurance Exchange have filed a lawsuit in the Superior Court of California against two radiological corporations and their owners. It's claimed in the suit that the defendants prepared and submitted false and misleading documentation to receive payment for services never provided.

The complaint seeks restitution and additional remedies for alleged violations of California's Unfair Business Practices and the Insurance Frauds Prevention Act. The Plaintiffs also requested an order directing Defendants to cease and desist from engaging in alleged improper billing practices. The lawsuit alleges that the radiological corporations and their owners billed Farmers for 3D Rendering of MRI and CT scans which were never performed. This involved more than two hundred bodily injury and workers' compensation claims under policies of insurance issued to Farmers policyholders.

The complaint also alleges that one of the defendant radiological corporations was improperly owned and structured. That's because a lay person, and not a licensed physician, was the majority owner. This, if true, is a violation of California law, which requires that corporations must practice medicine under the control of licensed medical doctors. Sean Zavala, director of Special Investigations, stated:

*Farmers continues to take aggressive action to protect its policyholders and stop fraud. Our Special Investigative Unit is trained to detect this type of alleged fraud and prepared to protect the public by filing cases to stop it from continuing.*

It’s essential that fraud and other wrongdoing in our health care system be eliminated to the extent possible. This is especially true when it comes to defending the government in federal programs. The regulatory system certainly needs to be more aggressive in this area of concern. The judicial system does it part and as a result remains under constant attack by powerful special interests.

Source: Claims Journal

**BioScrip Agrees to Pay $15 Million In FCA Kickback Suit**

BioScrip Inc., a specialty pharmacy, in its role as a pharmacy benefit manager, has agreed to pay $15 million to settle a False Claims Act (FCA) whistleblower suit. It was alleged that the company received kickbacks from Novartis Pharmaceuticals Corp. to push patients to continue using Novartis’ iron reduction drug Exjade. BioScrip agreed to pay the federal government $11.7 million to settle claims that its distribution of Exjade through its legacy specialty pharmacy operations violated the FCA and the Anti-Kickback Statute. The filing of the settlement with the New York Federal Court coincided with a court order unsealing qui tam relator David Kester’s amended complaint, which he filed in April 2013.

BioScrip also has an agreement in principle with the offices of various state attorneys general to settle civil claims that the individual states may bring in connection with the alleged Exjade kickback scheme, the company said in a press release. Under the agreement in principle, BioScrip would pay a total of $3.3 million to the states, plus interest, according to the company. As usual, Elmsford, N.Y.-based BioScrip did not admit any wrongdoing under the terms of the settlement.

Novartis disputes the allegations and says the company will defend itself in the litigation. The company claims it “worked with BioScrip to ensure it had the information needed to reach out to patients.” But according to the government, BioScrip and Novartis engaged in a “kickback scheme relating to the distribution of Exjade from February 2007 to May 2012, resulting in tens of millions of dollars in payments of Exjade claims by Medicare and Medicaid that should not have been reimbursed by those programs.”

BioScrip was one of three specialty pharmacies permitted to dispense Exjade through a contract with Novartis as part of the so-called Exjade Patient Assistance and Support Services (EPASS) Network, the government
alleged. The complaint alleged that half of the Exjade prescriptions received by EPASS were not designated for a particular pharmacy by insurers or physicians, and were instead distributed among the three specialty pharmacies by Novartis. As a side note, if you don’t know what a “pharmacy benefit manager” (PBM) really is, and how they operate, you should find out. Also, you should then explore the cozy relationship the PBMs have with Big Pharma.

Source: Law360.com

PHARMA-ACTIVIST SUES PHARMA GIANT Pfizer

Health Support Awareness Inc. has filed a whistleblower suit against Pfizer Inc. accusing the pharmaceutical giant of misbranding and promoting its statin, Lipitor, in deceptive ways that led customers to defraud Medicare, Medicaid and others. The lawsuit was unsealed in a Massachusetts federal court on Jan. 10. It’s alleged in the suit that Pfizer’s campaign to keep the drug in demand and its price high cheated the government out of billions of dollars. The complaint says that between 2007 and 2010 alone, 45 percent of Medicare patients were on some form of statin, which cost the government-run health program $6.7 billion in 2010 alone. It’s alleged in the complaint: The damage caused by Pfizer’s misleading marketing campaign and its manipulation of patient information for Lipitor has cost government-sponsored health care programs and consumers billions of dollars over the last decade. Pfizer’s aggressive attitude to increase sales and market share resulted in unprecedented profits at the expense of the entire health care system.

It’s alleged in the suit that Pfizer pushed behind the scenes for doctor-recommended cholesterol levels to be lowered, which in turn increased demand for the drug. As Lipitor’s patent approached its sunset, Pfizer negotiated a “pay to delay” deal with Ranbaxy, which had planned to market a generic version of the drug. Then Pfizer entered an exclusive deal with Watson Pharmaceuticals that would allow the two companies to release a generic at the same time as Ranbaxy. It’s alleged that about 70 percent of generic-Lipitor profits went to Pfizer as a result.

Meanwhile, Pfizer developed a “Lipitor for You” program in which patients could pay a $4 copay for the drug while Pfizer offered to pay $50 of the difference between that copayment and patients’ normal, brand-name copayment. It’s alleged that Pfizer subsequently increased its subsidy to $75 per prescription—up to $1,000 per patient per year. It also continued increasing the drug’s price while keeping its ads in front of current and potential consumers. Pfizer’s Lipitor marketing prompted several warning letters from the FDA’s Division of Drug Marketing, Advertising and Communication between 1998 and 2011. That Division ordered Pfizer to discontinue one ad during a conference call in 1998, according to the complaint, because it overstated the drug’s effects and didn’t use consumer-friendly language.

Health Support Awareness, in the complaint, is seeking treble damages and civil penalties on behalf of the United States of America, “in connection with the systematic misbranding and illegal marketing by Pfizer.” But the government has declined to intervene, which prompted U.S. District Court Judge Nathaniel M. Gorton to unseal the case.

Source: Law360.com

PHILIPS 66 SETTLES “DOUBLE-DIPPING” CLAIM FOR $2 MILLION

In a classic example of “double-dipping,” oil refiner Phillips 66 has paid $2 million to settle allegations it helped itself to a state fund for cleaning up damage from leaking fuel storage tanks even though it had insurance to cover the cleanups. Phillips 66 is among three major oil companies accused of the practice of double-dipping by Utah. Chevron Corp. has paid the state $1.8 million, and a similar lawsuit is pending against BP Amoco.

Phillips claims that it didn’t actually double-dip on insurance claims and said that it inherited the dispute from predecessor company ConocoPhillips. The company “denies that it took an insurance payment for a clean-up” financed by Utah’s Petroleum Storage Tank Fund. Even though the company settled the claim, Janet D. Grothe, senior adviser for health, safety and environment for Houston-based Phillips 66, made this claim of innocence. The fact oil companies had insurance coverage for underground tank spills, according to a state official, means they never should have turned to the state fund. Phillips was said to have relied on the fund for cleanups at 82 service stations. Therron Blatter, a branch manager for underground storage tanks at the Utah Division of Environmental Response and Remediation, stated:

Consistently, these guys were saying, “no, we don’t have any insurance.” Clearly, they did have the insurance.

Many oil companies reached settlements with insurance companies more than a decade ago that provided coverage for leaking storage tanks. This, according to Blatter, triggered a series of lawsuits by regulators across the country who said the companies had helped themselves to benefits from state funds. He says that Utah law provides no fund coverage for cleanups that are independently insured, even though the oil companies are paying into the state fund. Blatter says that the companies pay Utah’s Petroleum Storage Tank Fund $50 to $150 per tank depending on the tank’s size, plus 1/2 cent for every gallon of gas sold from it.

Source: Insurance Journal

SETTLEMENT TAX BREAKS CONTINUE DESPITE JPMORGAN SETTLEMENT

We have written in previous issues about how corporate wrongdoers take advantage of taxpayers by writing off settlement payments. But the $2.6 billion settlement reached by the U.S. Department of Justice with JPMorgan Chase & Co. contained provisions to prevent the bank from taking a tax deduction on the payments. This was a victory for both Congress and U.S. taxpayers. In most settlements of this sort the corporate wrongdoer writes off as a tax deduction the amounts paid under the settlement. But it was reported that other agencies, based on past cases, are unlikely to insist on the tax issue during future settlement negotiations. That flies in the face of the efforts by some lawmakers who are trying to make the process more transparent. When JPMorgan agreed to pay for its wrongdoing relating to Bernard L. Madoff’s $65 billion Ponzi scheme, the Justice Department negotiated into the deal a rare clause that prohibited the corporation from deducing those costs from its taxable income. In many cases regulators inflate the size of settlements by failing to tell the public about tax deductions corporations can take to offset costs. They also are prone to include credits for conducting routine activities as part of the total settlement amount. U.S. Senator Elizabeth Warren said in a statement:

Federal agencies are charged with holding companies and individuals accountable when they break the law, and their investigations regularly end in settlement agreements rather than public trials. All too often, the critical

In 2005, the Government Accountability Office (GAO)—the investigative arm of Congress—issued a report that said the Environmental Protection Agency, the Securities Exchange Commission, the Justice Department and the Department of Health and Human Services largely ignore the tax treatment of their settlements. The report stated:

Officials in the four agencies we surveyed said that they do not negotiate with settling companies about whether settlement amounts are tax-deductible. They said it was IRS’s role to determine deductibility.

In the JPMorgan settlement, the Justice Department avoided promising action by the IRS. Instead, they dictated in the settlement exactly how JPMorgan must act. The settlement specifically bans JPMorgan from claiming deductions on any of the money it pays to its victims. It’s really up to Congress to change the tax code so that corporate wrongdoers can’t continue to share their “pain” with U.S. taxpayers when settling cases. But the lawyers for the Justice Department should be commended for what was done in the JPMorgan case. Now it’s up to members of the U.S. House and Senate to step up to the plate and do their job on this issue.

Source: Law360.com

VII. CONGRESSIONAL UPDATE

DATA SECURITY ACT WOULD ROB CONSUMERS OF ACCESS TO JUSTICE

Legislation introduced in the U.S. Senate last month after the Target debacle appears to provide consumer protections in the event of security breaches like the recent Target data theft. But the bill actually undermines the right of victims to justice through the court system. The Data Security Act of 2014 was introduced Jan. 15 by Sens. Tom Carper and Roy Blount.

The stated purpose of the bill is to require companies that accept credit or debit card payments to have policies and procedures in place to protect their data from hackers, to respond to any security breaches should they occur, and to alert consumers of the breach. While that sounds reasonable, the bill actually protects the retailers. If a huge retailer complies with the Act it would be immune from liability for any wrongdoing. It also appears that banks, card companies and other financial institutions are not covered by the Act. Additionally, all state causes of action are preempted by the Act, and the Act expressly bans any private cause of action. In other words, no victim could file a lawsuit under state law or in a state court regardless of how bad the conduct was. Also, the Act would ban class action lawsuits.

I am concerned that this legislation is designed to hurt consumers. I am convinced that the real aim of this legislation is to prohibit an individual from filing a lawsuit and to ban class actions. Essentially this means that a victim cannot file a lawsuit under state law to seek justice for their losses and to hold accountable those who allowed the sensitive information to be compromised. The 110 million Target victims should let their senators know that this is not a consumer-friendly bill.

Lawyers in the Consumer Fraud Section at Beasley Allen have filed two lawsuits related to the major security breach at Target stores that began on or around Nov. 27, just before “Black Friday,” and continued through at least Dec. 15, which allowed hackers access to customers’ credit and debit card information. The first was a class action lawsuit filed on Dec. 20 on behalf of consumers whose information was compromised. A second class action lawsuit was filed on Dec. 30 on behalf of Alabama State Employees Credit Union for financial losses resulting from defrauded deposits of financial institution members and customers, as well as costs associated with closing accounts, reissuing new checks, debit cards and credit cards as a result of Target’s data breach.

I fear we in America have only seen “the tip of the iceberg” when it comes to breaches of their personal information. Shortly after Target admitted customer credit and debit card information was stolen from the point of sale systems in its stores, the company also had to admit that additional personal information had been stolen from even more customer accounts, including names, addresses and email addresses. Another retailer, Neiman Marcus, also recently admitted its computer network was hacked as far back as July, and only in mid-January of this year was the hack discovered and contained. Hacking has been happening, but not to this scale. Unfortunately, I don’t believe that it will stop. The Federal Trade Commission and Congress have a direct responsibility to change our system, and until they do so, it’s open season on consumers.

SENATE BILL SEeks more disclosure of government settlements with firms

We mentioned the JPMorgan settlement and the unusual “tax treatment” imposed on the bank in this issue. That settlement illustrated the need for more information to the public on settlements involving the federal government. Two U.S. Senators have introduced a new bill that would force enforcement agencies to provide more details about settlements to resolve corporate misconduct by U.S. companies. Senators Elizabeth Warren, a Democrat, who is a fierce consumer advocate, and Tom Coburn, a Republican, introduced legislation to force regulators to better explain the true value of legal settlements like that reached with JPMorgan. Each of the Senators is a member of the Senate Banking Committee. Sen. Coburn also serves as ranking member of the Homeland Security and Governmental Affairs Committee.

Quite often public officials tout huge dollar figures when they settle accusations of wrongdoing by financial firms and other companies. But, as we have learned, many times the officials don’t provide key details of the actual charges involved in the case and occasionally inflate the real monetary value of the settlement. Settlements allow the companies to avoid trials, which allows the companies to avoid telling what the wrongdoing consisted of. A full airing of the facts during a trial is needed so that the public can be better protected in the future. For example, when the Justice Department announced the $13 billion settlement with JPMorgan Chase & Co. in November that included a $2 billion penalty to resolve a civil fraud investigation into flawed mortgage bonds, very little critical information was disclosed. In that instance, the Department of Justice failed to spell out the specific charges. Nor did they explain how the penalty was calculated. The development did release a “statement of facts” that described some of the bank’s harmful conduct. Sen. Warren had this to say:

When government agencies reach settlements with companies that break the law, they should disclose the terms of those deals to the public. Increased transparency will shut down backroom deal-making and ensure that Congress, citizens and watchdog groups can hold regulatory agencies accountable.

The Warren-Coburn bill would require federal agencies to explain whether any portion of a settlement is tax deductible and to publish other details of the agreements, including the claims settled and how payments were classified. The bill applies to any
settlements larger than $1 million. Various enforcement agencies, including the U.S. Securities and Exchange Commission and the Federal Reserve, have different rules for what details of deals they release and what that keeps confidential. The bill directs agencies with more stringent disclosure standards to explain why they must keep a settlement secret.

The legislation also asks the Government Accountability Office to examine how agencies determine that settlements should be confidential and to provide ways to make the process more transparent. Sen. Warren, the architect of the new U.S. consumer watchdog agency, has been critical of regulatory settlement practices and has urged enforcers to take more cases to trial. I agree with her assessment of the situation. All too often, settlements by the federal government with corporate wrongdoers are much more favorable to the wrongdoers than can be justified. Many don’t fully compensate either the government or the individuals who are harmed by the wrongful conduct. Hopefully, this legislation will pass both houses and be signed into law.

Source: Insurance Journal

VIII. PRODUCT LIABILITY UPDATE

SHOULD BUYERS BEWARE WHEN BUYING A CAR WITH SIDE CURTAIN AIRBAGS?

Airbags, when properly designed and manufactured, offer remarkable protection in vehicle collisions. More importantly, unlike seatbelts, these airbags work without the need for the driver to do anything at all. Many vehicles on the road today have both front and side airbags. When the airbags function properly, safety for passengers is enhanced in the event of a collision. As manufacturers continue to design their vehicles with these devices, the number of catastrophic injuries should continue to decline. I will focus on side curtain airbags in this issue and discuss a most serious safety issue.

Side curtain airbags deploy in side-impact collisions to protect the head and neck in the event of a side impact collision. Side curtain airbags can also prevent people from being ejected from a vehicle during a rollover. When purchasing a vehicle, consumers should pay particular attention to whether these safety devices are “standard” or “optional.” Clearly, it’s better to have as many safety devices as possible.

Lawyers in our firm represent a brother and a sister who lost their mother who was involved in a side-impact collision. Their mother sustained a head/neck injury, causing her to be paralyzed from the neck down. When life support was removed, her body was unable to sustain life. We are convinced that a side curtain airbag would have prevented the injuries she sustained. This case is tragic because the vehicle their mother was driving, a 2008 Chevrolet Impala, was advertised as having side curtain airbags. The side curtain airbag did not deploy in this incident because it had been removed by General Motors, the vehicle manufacturer, at the behest of a rental car company that purchased the vehicle to rent to its customers.

As we have learned in litigation, these fleet vehicles are commonly sold to the public by car rental companies. These cars are sold to consumers without any notice or warning that a critical safety device has been removed from the vehicle. As you can likely guess, the airbags are removed to save the rental car companies money when they purchase vehicles for their rental fleet. The savings amount to less than $200 per vehicle. This is yet another blatant example of corporations putting profits over safety, resulting in unnecessary suffering by innocent consumers.

Consumers purchasing “pre-owned” vehicles should ascertain whether the vehicle was ever part of a rental fleet. They should have the vehicle inspected to verify that advertised safety devices have not been removed from the vehicle. This is truly a life or death inquiry. Lawyers in our firm are in the final stages of investigating the claim mentioned above. Once we file suit and obtain more information regarding this practice, we will update this article. Kendall Dunson, a lawyer in our firm’s Personal Injury/Product Liability Section, is the lead lawyer representing the client in this case. If you need more information on the side airbag problem, contact Kendall at 800-898-2304 or by email at Kendall.Dunson@beasley-allen.com.

TRACTOR MANUFACTURERS MUST INSTALL NEEDED SAFETY DEVICES

It’s widely reported that tractor accidents account for an estimated 130 deaths each year. So it shouldn’t come as a big surprise to learn that agricultural workplaces have the highest rate of death due to work-related injuries. What may be surprising, however, is that these deaths are in many cases preventable. Most deaths occur when the tractor operator falls or is thrown from a tractor after the tractor tips up or completely overturns. Injury and death caused by tractor falls could be minimized or eliminated if all tractors are equipped with needed safety devices such as seatbelts, rollbars, deadman switches and rotary mower guards. Yet, even after decades of research and lots of litigation pointing to the need for these safety devices, many tractor manufacturers remain reluctant to incorporate and promote the use of these devices into their tractor designs.

Seatbelts were not installed on tractors as standard equipment until 1985. In 1986, the National Safety Council found that less than one-third of tractors in use were equipped with seatbelts. Even today—almost 30 years after seatbelts became standard—tractor manufacturers are not actively promoting the use of seatbelts. Many tractor advertisements feature operators who are not using their seatbelts. Despite warnings on tractors suggesting the use of seatbelts, many operators forego the use of seatbelts in favor of less restriction.

Rollbars are definitely needed on all tractors as a part of the ROPs protection system. Greg Allen and I tried a case that got a great deal of attention back in the early 1980s against Kubota Tractor Company. We were able to prove a very strong case against the company and showed the need for rollbars on tractors to save lives. After that case, Kubota charged its safety policy and added rollbars to its tractors.

Due to minimal seatbelt usage, it’s imperative that tractor manufacturers incorporate other safety devices, such as rollbars, deadman switches and rotary mower guards to prevent injury or death in case of a fall. If an operator is not using a seatbelt, a deadman switch will cut off all power to the tractor once it senses that the operator has left the tractor seat. Of course, rollbars will also protect the operator in the event of a rollover. In addition, a rotary mower guard will minimize injuries from a tractor fall by protecting the occupant from being run over by the trailing mower.

Seatbelts alone are not sufficient in protecting tractor occupants from injury and death just as seatbelts alone are not sufficient in protecting car occupants from injury and death. The automobile industry recognizes that passive safety devices, such as airbags, are necessary to protect car occupants from foreseeable accidents because an active safety device, such as a seatbelt, is dependent on the occupant’s choice to utilize it.

Tractor manufacturers must, in addition to employing seat belts, recognize the need for passive safety devices, such as rollbars, deadman switches and rotary mower guards. These will protect the tractor operators even if they choose not to protect themselves by wearing a seatbelt. If you need more informa-
suits in Texas were part of a wave of litigation settlement. The hold-out Plaintiffs—whose law - after several Plaintiffs agreed to withdraw will be able to complete the settlement of the Plaintiffs was the family of Leiya Jones, a right to a jury trial, where they could poten- tions could have been prevented by a metal defectively designed or manufactured, the Plaintiff. In addition to claiming the gas cans were prone to catching fire or exploding—signed on to an agreement backing Blitz's bankruptcy plan based on the settlement, which is being covered by Wal-Mart and Blitz's insurers.

The so-called ‘plan support agreement,’ filed in Delaware bankruptcy court, indicated that Wal-Mart and the insurers have agreed to pay up to an additional $650,000 to bring the dissenting Plaintiffs on board. This would bring the total settlement amount to $162 million. There have been at least 36 wrongful death and personal injury lawsuits filed around the country alleging Blitz’s gas cans were defective. Blitz USA filed for Chapter 11 bankruptcy in March 2010. In June 2011, the FDA issued a warning for Actos, while at the same time, drug regulators in France and Germany suspended use of the drug. We are currently investigating claims involving usage of Actos, Actoplus Met, Actoplus Met XR, Duetact and bladder cancer. More will be written on Actos in this issue.

Lawyer: Roger Smith
Primary Staff Contact: April Worley

• Actos

IX. MASS TORTS UPDATE

The U.S. Food and Drug Administration (FDA) has approved updated warning labels for Actos, a prescription medication used to treat Type 2 diabetes. The updated label states that Actos usage for more than one year may cause bladder cancer. Actos, manufactured by Takeda, has been under FDA review since September 2010. In June 2011, the FDA issued a warning for Actos, while at the same time, drug regulators in France and Germany suspended use of the drug. We are currently investigating claims involving usage of Actos, Actoplus Met, Actoplus Met XR, Duetact and bladder cancer. More will be written on Actos in this issue.

Lawyer: Roger Smith
Primary Staff Contact: April Worley

• Transvaginal Mesh

The FDA has issued an updated safety communication warning doctors, health care professionals and patients that the placement of surgical mesh through the vagina to treat pelvic organ prolapse and stress urinary incontinence may present greater risk for the patient than other non-mesh procedures. This is also called transvaginal mesh. According to the FDA, reported complications from the transvaginal placement of the mesh include erosion of the mesh into the vaginal tissue, organ perforation, pain, infection, painful intercourse and urinary and fecal incontinence. Often women require surgery to remove the mesh. In some cases, this can require multiple procedures without successful removal of all the mesh. Currently, we are investigating cases involving mesh manufactured by American Medical
Lawyers: Chad Cook and Leigh O’Dell  
Primary Staff Contacts: Tabitha Dean, Melisa Bruner and Kim Owen

**Antidepressants**

Selective serotonin reuptake inhibitor (SSRI) antidepressants such as Celexa, Lexapro, Luvox, Paxil, Prozac and Zoloft are prescribed to treat depression. Studies during the last several years have shown an increased risk of heart birth defects in children born to mothers who took SSRI-antidepressants in the first trimester. Most of the cardiac defects observed in these studies were atrial or ventricular septal defects, conditions in which the wall between the right and left sides of the heart does not completely develop. We are currently investigating claims of birth defects involving children whose mother was taking an SSRI, Wellbutrin or Effexor during pregnancy.

Lawyer: Roger Smith  
Primary Staff Contact: Linda Reynolds

**Byetta® and Januvia®**

These drugs, known as incretin mimetics, are used to treat Type 2 diabetes, and have been prescribed to millions of people in the United States. However, studies have linked these drugs to pancreatic cancer and thyroid cancer. In fact, the FDA has issued several warnings about these drugs and their extremely dangerous potential side effects. Despite this, none of these products contain an appropriate warning to physicians and consumers. So many pancreatic cancer lawsuits have been filed across the country that a federal multidistrict litigation (MDL) court has been established in San Diego, Calif. Thyroid cancer cases are expected to be added to this MDL court very soon. We have several pancreatic cancer cases being litigated in the MDL court, and we continue to file more. We are currently investigating claims of pancreatitis, pancreatic cancer and thyroid cancer following the use of these drugs.

Lawyer: David Dearing  
Primary Staff Contacts: Nancy LeGear and Cindy Weber

**GranuFlo®**

GranuFlo® and NaturaLyte® are products used in the dialysis process. In June 27, 2012, the FDA issued a Class 1 recall of GranuFlo® and NaturaLyte®. A Class 1 recall is the most serious FDA recall, reserved for situations in which the FDA deems “there is a reasonable probability that the use of or exposure to a violative product will cause serious adverse health consequences or death.” Use of these dialysis products has been linked to an increase in the risk of cardiopulmonary arrest and sudden cardiac death. The manufacturer, Fresenius Medical Care, was aware of the dangers and injuries associated with these products but failed to warn patients and doctors until 2012. We are currently investigating death claims as well as claims of heart attack, cardiopulmonary arrest or any other serious injury.

Lawyer: Melissa Prickett  
Primary Staff Contact: Penny Davies

**Lipitor®**

Lipitor, a statin drug to treat high cholesterol, was approved by the FDA in 1996 and is one the best-selling prescription medications in the world. Recent studies have found a possible link between Lipitor and the risk of developing Type 2 diabetes. A University of Massachusetts study found a potential link in post-menopausal women, particularly those who had a Body Mass Index (BMI) less than 25. Of the 153,840 women evaluated, more than 10,000 had developed Type 2 diabetes by the end of the study.

Criteria: Injured is female; took Lipitor consistently for at least two months; Injured was diagnosed with diabetes while taking Lipitor, or within six months of last dosage of Lipitor; Body Mass Index (BMI) of 30 or less at time of diabetes diagnosis; Injured has no or limited family history of diabetes.

Lawyer: Frank Woodson  
Primary Staff Contact: Cathy Perry

**Metal-on-Metal Hip Replacements**

Metal-on-metal hip replacements have been under heavy scrutiny during the past few years regarding the dangers of their metal on metal hip devices. The main hip devices under scrutiny are:

- Johnson & Johnson/DePuy: ASR Total Hip Replacement and ASR Resurfacing System hip (Recalled on August 24, 2010);
- Johnson & Johnson / DePuy: Pinnacle metal-on-metal hip;
- Zimmer: Durom Cup hip;
- Stryker: Rejuvenate and ABG II Stems (Recalled on July 4, 2012);
- Biomet: M2a and 38 Diameter hips,
- Wright: (a) Conserve, (b) Dynasty, (c) Lineage and (d) Profemor (Femor Fracture) hips; and
- Smith and Nephew: R3 Liner hips (Recalled on June 1, 2012).

Metal-on-metal hip patients from the above manufacturers have similarly reported problems after their initial implant surgery resulting in revision surgery. All have reported a variety of symptoms, including pain, swelling and problems walking. These symptoms are normal for patients following a hip replacement, but can be a sign that something is wrong if they continue or come back frequently. Additionally, metal debris spreading in the hip area has been reported due to the metal-on-metal friction involved from the metal components moving together.

Our lawyers would like to review any cases involving individuals who have had any of the above metal-on-metal hip devices implanted and all individuals unsure of the type of hip device implanted if the person has had revision surgery, or the person is experiencing hip pain, hip swelling or difficulty walking.

Lawyers: Navan Ward and Melissa Prickett  
Primary Staff Contacts: Janet Pair and Donna Puckett

**Mirena® IUD**

Mirena® is an intrauterine device (IUD) that was originally approved by the FDA as an intrauterine contraceptive. It was later approved as a treatment for heavy menstrual bleeding. It works by slowly releasing a low dose of levonorgestrel (a synthetic progestin hormone) directly into the uterus. Serious adverse side effects and potentially life-threatening complications have been reported following the implantation of the device. These complications include organ perforation, migration of the IUD to outside the uterus, expulsion of the IUD, and embedment in the uterus, among others. More will be written on Mirena in this issue.

Lawyer: Roger Smith  
Primary Staff Contact: Linda Reynolds

**Risperdal®**

Risperdal® is an atypical antipsychotic drug used to treat schizophrenia and certain problems caused by bipolar dis-
order. It has been linked to the development of gynecomastia in boys and young men. Gynecomastia is a condition that causes boys to grow breasts. Risperdal is prescribed to young people for a number of conditions, including autism, bipolar disorders, irritability, aggression, and other neurological problems. In most cases, the only treatment available for gynecomastia is surgical removal of the breasts. In addition to the physical injuries these young males have sustained, they have also suffered psychological injuries. Many of the young men report humiliation, embarrassment, teasing and bullying as a result of the breast growth.

Lawyer: James Lampkin
Primary Staff Contact: Penny Davies

- **Stevens-Johnson Syndrome**

Stevens-Johnson syndrome (SJS) is an immune complex hypersensitivity reaction that can be caused from an infection or immune response to drugs. It is a severe expression of a simple rash known as erythema multiforme. SJS is also known as erythema multiforme major. It affects all ages and genders including pediatric populations. The most severe form of SJS is toxic epidermal necrolysis (TENS). SJS occurs twice as often in men as in women. Most cases of SJS appear in children and young adults younger than age 30. Females with SJS are twice as likely as males to develop TENS, and have an even higher chance if taking a category of drugs known as NSAIDs, non-steroidal anti-inflammatory drugs.

Lawyer: Frank Woodson
Primary Staff Contact: Cathy Perry

- **Talcum Powder**

Johnson and Johnson has known for decades that its talcum products, such as Shower to Shower baby powder, can cause ovarian cancer. But J & J has failed to warn women of the risk of using these products in the genital area. A Harvard medical doctor says that he has studied the link between talc and cancer for 30 years and believes talc is the likely cause for as many as 10,000 cases of ovarian cancer each year.

Lawyer: Ted Meadows
Primary Staff Contact: Katie Tucker

- **Testosterone Replacement Therapy**

Testosterone Replacement Therapy products for men have been linked to an increased risk of death, heart attack and stroke. Researchers found men who used testosterone therapy were 30 percent more likely to have a heart attack, stroke, or die after three years of use. Furthermore, men who started the study with clear, unobstructed coronary arteries were just as likely to have a heart attack, stroke or die as men who entered the study with established coronary artery disease. Testosterone therapy, such as the prescription topical treatments Androgel, Testim and Axiron, are used to help boost testosterone levels in men who have a deficiency of the male hormone. Symptoms of low testosterone include decreased libido and low energy. Our lawyers are currently investigating claims of heart attack, stroke and prostate cancer.

Lawyer: Matt Teague and Melissa Prickett
Primary Staff Contact: Penny Davies

- **Yaz, Yasmin, Ocella or Beyaz**

Yaz is a combination birth control pill containing drospirenone and ethinyl estradiol. It is marketed not only as a contraceptive pill, but as a proven treatment for premenstrual dysphoric disorder (PMDD), a condition with severe emotional and physical premenstrual symptoms. Yaz is also marketed as an effective treatment for moderate acne. However, studies indicate that Yaz poses a particular health hazard because one of its two primary ingredients, drospirenone, is a diuretic, which can cause an increase in potassium levels in the blood and lead to hyperkalemia, which causes heart rhythm disturbances that can cause blood clots leading to sudden cardiac death or pulmonary embolism or strokes. Diuretics can also cause significant problems with the gallbladder, leading to gallbladder removal. **Criteria:** Documented use of Yaz with a diagnosis of heart attack, stroke, pulmonary embolism, DVT, or gallbladder removal.

Lawyer: Roger Smith
Primary Staff Contacts: Linda Reynolds and April Worley

- **Zimmer NexGen Knee Replacements**

Since 2003, more than 150,000 Zimmer NexGen Flex-Knee implants have been sold. Several different components used as part of the Zimmer NexGen Flex-Knee replacement system have been associated with increased risk of complications, including pain, swelling, loosening of component parts, and the need for follow-up/revision surgery. Several prominent surgeons want a Zimmer NexGen knee replacement recall to be issued. At a March 2010 conference of the American Academy of Orthopedic Surgeons, two knee surgeons presented data suggesting that the Zimmer NexGen Flex-Knee failure rate could be as high as 9 percent, and that the actual number of complications that require revision surgery could be even higher. The lead author of the study, Dr. Richard Berger, described the failure rate of the Zimmer NexGen CR-Flex Porous Femoral Component as “unacceptably high.”

Our lawyers would like to review any cases involving individuals who have had a Zimmer NexGen knee device implanted, or individuals who are unsure of the type of knee device implanted, if that individual has had revision surgery.

Lawyers: Navan Ward and Melissa Prickett
Primary Staff Contacts: Janet Pair and Donna Puckett

**The Actos Litigation Update**

As mentioned above, Beasley Allen lawyers continue to pursue Actos claims on behalf of individuals who have been diagnosed with bladder cancer after using Actos to treat their type 2 diabetes. Andy Birchfield and Roger Smith, lawyers in our Mass Torts Section, have been actively involved in pretrial activities, preparing for the bellwether trials. A jury was selected and the trial in the first Bell-weather case was to start with opening statements on Feb. 3. The second is set in July 2014. Each of the cases is in the United States District Court for the Western District of Louisiana.

In June 2011, the U.S. Food and Drug Administration warned that the use of Actos for more than one year had been linked to a doubling of the risk of developing bladder cancer. Since then, more than 6,000 lawsuits involving bladder cancer allegations have been filed in federal and state courts. To date, three lawsuits involving Actos bladder cancer claims have gone to trial.

The first Actos trial, which concluded in April 2013 in Los Angeles Superior Court, resulted in the jury awarding the Plaintiff $6.5 million after finding that the drug manufacturer, Takeda, failed to warn of potentially severe side effects. Takeda requested the verdict to be set aside based on the Plaintiff’s witness testimony, however, and the judge overturned the damage award. The Plaintiff has appealed that decision.
In September 2013, the second Actos trial concluded in Maryland State Court with $17 million being awarded to the family of a man who died of bladder cancer after taking Actos. But the trial court in that case also set aside the verdict. That was in accordance with Maryland law because the jury determined that the decedent’s smoking habit also contributed to the development of bladder cancer.

In December 2013, the third Actos trial concluded in Las Vegas, Nevada, with a Defense verdict. This case involved prescription Actos that was purchased through a non-FDA approved non-U.S. pharmacy. This marked the first time that a jury decided in Takeda’s favor.

As many as 17 Actos cases are scheduled to go to trial in 2014, including the first two bellwether cases mentioned above that are in the Actos MDL. If you have any questions regarding any aspect of this litigation, or if you would like for our lawyers to review a potential claim, contact either Andy or Roger at 800-898-2034 or by email at Andy.Birchfield@beasleyallen.com or Roger.Smith@beasleyallen.com.

**Bellwether Trial Dates Set in Cases Against American Medical Systems and Johnson & Johnson**

Judge Joseph R. Goodwin has designated the case of Joann Serrano v. American Medical Systems, Inc. as the first bellwether case in the AMS MDL to be set for trial. The trial is scheduled to begin on April 7, 2014. Mrs. Serrano’s case was one of four bellwether cases previously selected in the multi-district litigation against American Medical Systems Inc. Mrs. Serrano was implanted with American Medical Systems’ Monarc Sub-fascial Hammock Sling, a polypropylene mesh product. After implantation, Mrs. Serrano began to experience pelvic pain, lower abdominal pain, and dyspareunia (painful sexual intercourse) and was informed she would need to undergo a surgical procedure to have the Monarc Sling removed. During the procedure to remove the sling, the physician discovered that Mrs. Serrano’s pelvic tissue had grown completely into the sling and was forced to remove the sling piece by piece. Pathology conducted on the removed pieces of the mesh sling revealed that the mesh was infected which resulted in inflammation to Mrs. Serrano’s surrounding tissue.

Judge Goodwin has also scheduled the first bellwether trial in the Johnson & Johnson (Ethicon) MDL. The case, Lewis v. Johnson & Johnson, is scheduled to begin on February 10, 2014. Ms. Lewis was implanted with Ethicon’s TVT Sling, a polypropylene mesh product. After implantation, Ms. Lewis experienced pelvic pain and dyspareunia and was forced to undergo multiple procedures to remove portions of the TVT Sling. Upon removing a portion of the TVT sling, Ms. Lewis’ physician discovered scarring to Ms. Lewis’ vaginal wall caused by the sling which caused her to experience pelvic pain and dyspareunia.

If you need additional information relating to either of these two MDLs, you can contact Leigh O’Dell or Chad Cook, lawyers in our firms Mass Torts Section, at 800-898-2034 or by email at Leigh.Odell@beasleyallen.com or Chad.Cook@beasleyallen.com.

**BARD FAILS TO GET INTERNAL DOCUMENTS EXCLUDED FROM VAGINAL MESH TRIAL**

The attempt by C.R. Bard Inc. to exclude an employee’s proposed changes to vaginal mesh products as evidence in a bellwether trial over injuries allegedly caused by mesh has failed. U.S. District Judge Joseph Goodwin found that the documents were relevant on the Plaintiff’s design defect claim. The ruling came in a suit brought by Carolyn Jones in the multidistrict litigation (MDL) over Bard’s Avaulta pelvic support devices. The case, filed in a West Virginia federal court, was scheduled to go to trial Jan. 10.

Judge Goodwin denied Bard’s motion in limine to exclude intracompany memoranda from Bobby Orr, a Bard employee. He was head of the company’s advanced surgical concepts division when he wrote the documents in 2008 and 2009. In the first memorandum, Orr wrote that mesh products are linked to adverse events and proposed ways to improve their design. Bard argued that the documents were not relevant to the Plaintiff’s design defect claim, since under Mississippi law, Plaintiffs bringing the claim must show a defect existed at the time the product left a company’s control. Bard said Orr had written the memorandums after Ms. Jones’ mesh was manufactured and implanted.

Judge Goodwin ruled, that by Bard’s own admission, a design defect claim touches on whether a company knew or should have known of a risk and whether the product had a feasible alternative design. He said that all of the scientific literature referenced by Orr was published before Bard began selling the mesh implanted in Ms. Jones. Judge Goodwin wrote in his order:

The pre-launch, peer-reviewed body of literature referenced by Mr. Orr, and his comments respecting it, may thus relate to what Bard should have known prior to launch and the feasibility of a then-safer alternative.

Under Judge Goodwin’s ruling, parts of the documents may be admitted into evidence, depending on “the foundation laid at trial and the specific portions of the Orr memoranda sought to be introduced.” The judge also rejected Bard’s attempts to exclude the memoranda on two other grounds, including a prohibition on evidence of measures that, had they occurred before an injury, would have made the injury less likely. Judge Goodwin said on that issue:

The Orr memoranda are not, in their entirety, devoted to subsequent remedial measures. They include an analysis of Bard’s existing products. That portion of the memoranda, at least, is not within the contemplation of the remedial-measure prohibition.

Bard also contended that the evidential value of the memorandums was outweighed by the prejudice they would cause the company if admitted. But Judge Goodwin said that Bard had not shown how the documents would prejudice it to an unfair degree. The Jones case is the fourth-scheduled bellwether in the federal litigation. The first bellwether resulted in a $2 million damages award against Bard in August. The medical device maker settled the second bellwether on the first day of trial.

The Plaintiffs in the third-scheduled bellwether dismissed their suit in September, weeks before a trial was supposed to begin. Ms. Jones is represented in her case by Henry Garrard, Gary Blasingame, James Matthews, Andrew Hill and Josh Wages, who are with Blasingame Burch Garrard Ashley, a firm located in Athens, Ga. This important case will be closely monitored.

Source: Law360.com

**$2.2 MILLION JAW INJURY VERDICT AGAINST NOVARTIS IS UPHOLD**

A California federal judge has upheld a $2.2 million verdict against Novartis Pharmaceutical Corp. This ruling came in a woman’s lawsuit over a jaw injury allegedly caused by the bone drugs Aredia and Zometa. U.S. District Judge S. James Otero ruled that the drugmaker had a duty to warn of the risk of injury. Judge Otero denied Novartis’ motion for judgment as a matter of law as well as the motion for a new trial. Plaintiff Adriann Georges, according to Judge Otero, sufficiently showed that Novartis had a duty to warn her of the jaw injury risk and that her injury was caused...
both by her use of the drugs and the drugmaker’s failure to warn.

A number of lawsuits have been filed across the country against Novartis over Aredia and Zometa. The suits were once part of multidistrict litigation in Tennessee before being sent to their home courts. In November, a Florida federal judge refused to put aside a $1.3 million judgment. And in 2012, the company was hit in New York with a $10.5 million verdict. The judge in that case subsequently reduced the award.

Ms. Georges is represented in her case by John Girardi, Thomas Girardi and Molly Girardi, who are with the Girardi Keese firm located in Los Angeles, and by John Vecchi-one, a lawyer in Fairfax, Va. The case is in the U.S. District Court for the Central District of California. 

Source: Law360.com

Pennsylvania Court Reverses the $28 Million Verdict Against Zimmer

Medical device manufacturer Zimmer Inc. and marketing firm Public Communications Inc. will get a second chance to defend themselves against claims stemming from a knee replacement procedure. An en banc panel of the Pennsylvania Superior Court struck down a $28 million verdict in the case last month. The panel agreed that instructions given to the jury had improperly shifted the burden of proof by suggesting that it was up to the Defendants to provide medical evidence that something other than Plaintiff Margo Polett’s participation in a marketing video for Zimmer’s so-called Gender Solutions artificial knee had caused her injuries. The court on this issue said:

A defendant may choose simply to argue that the plaintiff has not met its burden or proof, without presenting any evidence. In such a situation, the jury may find for the defendant. Moreover, Pennsylvania case law does not require a defendant to present independent medical testimony specifically linking the alleged injuries to another cause.

The defendants had asked that they be granted judgment notwithstanding the verdict. The en banc panel found there was sufficient evidence for a jury to make a causal link between Polett’s riding the exercise bike as part of her participation in the video and her subsequent injuries. The panel’s opinion stated:

Viewing the evidence in the light most favorable to Mrs. Polett, the record contains sufficient proof of a causal connection between Mrs. Polett riding the exercise bike and her subsequent injuries.

Ms. Polett is represented by Shanin Specter, Chip Becker and Carl Jones, lawyers with the Philadelphia firm Kline & Specter. The case is in the Pennsylvania Superior Court. I believe the Plaintiff will have an excellent chance of prevailing when the case is retried. Her lawyers should be able to meet the burden of proof in this case.

Source: Law360.com

Appeals Court Rules Against Ortho-McNeil-Jansen in Levaquin Case

The Eighth Circuit Court of Appeals has ruled that Ortho-McNeil-Jansen Pharmaceuticals Inc., (OMJP) Johnson & Johnson’s pharmaceutical unit, must pay $650,000 to a patient who claimed the company deliberately failed to properly warn consumers of the risks linked to Levaquin, its antibiotic. The court said there was no misconduct that could justify overturning the award. On the appeal, OMJP had argued that the Plaintiff’s expert biostatistician admitted after the trial was over that he had not provided all the information the company requested during discovery regarding his relative-risk calculations and supporting data. The appeals court found that the verdict was supported by the record and the company’s liability adequately proved.

Source: Law360.com

Lexapro Lawsuit Filed Against Forest Laboratories

A lawsuit, filed against Forest Laboratories Inc. in a New Jersey federal court, alleges that the company’s antidepressant Lexapro caused fatal birth defects in a child whose mother took the drug during pregnancy. The complaint, filed by Chandra Shuck, a Michigan resident, names Forest Laboratories and Lexapro inventor H. Lundbeck A/S as defendants. The pharmaceutical companies are accused of confusing studies indicating the drug increased the likelihood of birth defects. It’s alleged that—with that knowledge—Lexapro was marketed as safe for pregnant women.

Ms. Shuck took the drug during pregnancy and her daughter was born with multiple congenital heart defects and she died two weeks later. Ms. Shuck alleges that Forest Laboratories violated New Jersey’s Products Liability Act, Wrongful Death Act and Survivor’s Act by aggressively marketing Lexapro for use by women of child-bearing years, including pregnant women, despite studies indicating it increased the likelihood of birth defects. It alleged further that the drug never received U.S. Food and Drug Administration approval for use in pregnant women.

It’s alleged that the defendants encouraged their sales force to promote Lexapro to women of child-bearing years despite having knowledge of the risk and promoted Lexapro as being a “safe alternative for pregnant women.” It’s alleged further that Forest Laboratories and Lundbeck should have issued warnings about the drug’s potential danger to pregnant women, which would have prevented Ms. Shuck’s doctor from prescribing her the drug during her pregnancy. During her pregnancy, Ms. Shuck says she took Lexapro, a selective serotonin reuptake inhibitor, or SSRI, generically known as escitalopram, to treat her depression. Her daughter was born on April 7, 2005, and died two weeks later after four open heart surgeries.

Ms. Shuck is represented by Chris Seeger, who is with Seeger Weiss, a firm based in Philadelphia, and by Kimberly Lambert Adams of the Pensacola, Fla. firm of Levin Papantonio Thomas Mitchell Rafferty & Proctor. The case is in the U.S. District Court for the District of New Jersey.

Source: Law360.com

Business Litigation

Jury Awards $393 Million in Medtronic Valve Patent Case

A Delaware federal jury awarded $393 million to Edwards Lifesciences Corp. last month in a patent infringement case. The jury found that Medtronic Inc.’s CoreValve system had willfully infringed Edwards’ Cribier transcatheter heart valve patent. Edwards indicated that it would file a motion to seek a permanent injunction blocking the sale of the infringing products. That issue was not addressed in the jury’s verdict. But the attempts by Medtronic to invalidate the Edwards patents were rejected by the jury.

Edwards was awarded $388.8 million for lost profits with an additional $4.8 million in royalties. This can be trebled due to the jury’s willfulness finding.

Edwards and Medtronic have been battling for a long time. This verdict is the latest development in the litigation involving the heart valve patent issue between the two compa-
ies. In 2010, a federal jury awarded $74 million to Edwards after Medtronic’s CoreV-valve unit was found to have infringed a separate heart valve patent known as the Andersen patent. Medtronic appealed to the Federal Circuit and lost, eventually paying more than $84 million to Edwards last year after interest had increased the original damages total.

A decision by Edwards on its request to enjoin Medtronic’s entrance into the U.S. market and additional damages is still pending. The company said that because some of the sales have been found to infringe both the Andersen and Cribier patents, a portion of the damages awarded in the Cribier case could be reduced.

Source: Law360.com

XI.
AN UPDATE ON SECURITIES LITIGATION

SEC ANNOUNCES ENFORCEMENT RESULTS

The Securities and Exchange Commission (SEC) announced in December that its 686 enforcement actions in fiscal year 2013 resulted in a record $3.4 billion in monetary sanctions against wrongdoers. This is 10 percent higher than FY 2012 and 22 percent higher than FY 2011. Mary Jo White, Chair of the SEC, stated in a press release:

A strong enforcement action program helps produce financial markets that operate with integrity and transparency, and reassures investors that they can invest with confidence. Our results show that we are prepared to tackle the breadth and complexity of today’s securities markets.

George S. Canellos, co-director of the SEC’s Division of Enforcement, agreed with that assessment, saying:

We are focused on addressing wrongdoing in all corners of the financial industry. Going forward, we will continue to be aggressive but fair in our pursuit of those who violate the securities laws.

The SEC has been very busy in the past year. According to the agency, enforcement activities in FY 2013 included the following areas:

- Market Structure and Exchanges—The SEC brought several actions against stock exchanges and other market participants on issues relating to market structure and fair market access. The SEC obtained a notable penalty against an exchange when NASDAQ agreed to pay $10 million for its poor systems and decision-making during the Facebook IPO.

- Gatekeepers—The SEC remained focused on accountants, attorneys and others who have special duties to ensure that investors’ interests are protected. Among actions against auditors, the SEC charged the Chinese affiliates of major accounting firms for refusing to produce documents related to China-based companies being investigated. And the SEC charged various trustees and directors for failing to uphold their responsibilities under the securities laws.

- Financial Crisis Enforcement Actions—The SEC brought several more cases against individuals and entities whose actions contributed to the financial crisis; the SEC has now filed financial crisis related enforcement actions against 169 individuals and entities resulting in more than $3 billion in disgorgement, penalties, and other relief. The individuals charged include 70 CEOs, CFOs, or other senior executives.

- New Admissions Policy—The SEC changed its longstanding settlement policy and now requires admissions of misconduct in a discrete category of cases where heightened accountability and acceptance of responsibility by a defendant are appropriate and in the public interest. The first settlements under the new policy came in actions against J.P. Morgan Chase & Co., and Philip A. Falcone and his firm, Harbinger Capital Partners.

- Whistleblower Tips—The SEC’s Office of the Whistleblower paid more than $14 million to whistleblowers whose information substantially advanced enforcement actions. Lawyers at Beasley Allen in our Consumer Fraud Section handle SEC Whistleblower claims. For more information, on whistleblower litigation, contact Archie Grubb at 800-898-2034 or Archie.Grubb@beasleyallen.com, or Andrew Brashier at 800-898-2034 or Andrew.Brashier@beasleyallen.com.

Hopefully, the SEC will keep up its critically important work. This is an area that on occasion has had rather lax enforcement. The magnitude of problems in Corporate America requires adequate regulation, as well as strong enforcement. Shareholders of publicly traded companies in many instances have to be protected from those who run these corporations.

Source: www.sec.gov

XII.
PREMISES LIABILITY UPDATE

TOUGHER CHEMICAL RULES NEEDED

A great deal has been written in the past few weeks about the chemical spill that left 300,000 people in West Virginia unable to drink their water. This spill has revived calls for more stringent regulation of thousands of chemical storage sites in the U.S., especially those near water supplies. The Freedom Industries Inc. complex in Charleston, W. Va., the facility that leaked the chemical, was subject to a patchwork of federal and state regulations. This allowed hazardous materials to be stored less than two miles upstream from a treatment facility for drinking water. I was shocked to learn that the tanks at this site hadn’t been inspected since 1991.

Residents in nine West Virginia counties were ordered not to drink, cook or bathe with municipal water after about 7,500 gallons of a chemical used in coal processing leaked on Jan. 9 from a tank near the Elk River, upstream of a treatment plant for the West Virginia division of American Water Works Co. The ban was lifted on Jan. 14 in zones starting with Charleston, the state capital, after testing found levels of the chemical 1-methylcyclohexane methanol (MCHM) falling below one part per million. It was believed this chemical was the only one involved at that time.

But in a shocking development, the company admitted on Jan. 21 that there was actually another chemical—PPH—involved in the spill. That contaminant is a proprietary slow-evaporating hydrophobic glycol either manufactured by Dow Chemical. It’s used as an MCHM “extender” agent. The water supplies had not been tested for PPH, only for MCHM.

There are potentially tens of thousands of storage tanks in communities around the U.S. filled with chlorine, natural gas and other materials. States are primarily responsible for their safety, according to Sheldon Krimsky,
an environmental policy professor at Tufts University in Medford, Mass. Dr. Krimsky made the interesting observation:

**Federal laws should require more rigorous testing of hazardous chemicals to ensure they don’t pose health risks. They are riding blind by saying, “OK, if we can get it down to one part per million that should be safe enough.” But they don’t really know.**

The regulatory gaps that the West Virginia incident has exposed in the nation’s toxic chemical control laws must be dealt with. Congress must act immediately to correct a situation that has needed attention for years. Most folks would be shocked to learn that existing law has allowed the chemical, known as MCHM, which was involved in the West Virginia spill to go untested for almost 40 years. Members of Congress should not have to wait for a major contamination event to learn the most basic information about a toxic chemical in commerce.

Better coordination, which has been virtually non-existent in this area of concern, is needed between the federal government and the states. Federal authorities, including the U.S. Chemical Safety Board and the Justice Department, have opened probes into the spill. Booth Goodwin, the U.S. attorney for the Southern District of West Virginia, said in a statement:

*If our investigation reveals that federal criminal laws were violated, we will move rapidly to hold the wrongdoers accountable. Our drinking water is not something you can take chances with, and this mess can never be allowed to happen again.*

While federal laws like the Safe Water Drinking Act require utilities to assess potential upstream pollution threats, it gives them little authority to force fixes to minimize the risk, according to Erik Olson, a lawyer who specializes in water and health issues at the Natural Resources Defense Council. Olson said the split in regulatory responsibilities can leave loopholes that accidents like the spill in West Virginia expose and that “there is virtually no accountability here.”

Andy Igrejas, director of Safer Chemicals, Healthy Families, a Washington coalition of health and safety groups pushing for tighter rules, says that more information is needed about the risks of chemicals on the market and regulators need more authority to take action, such as ordering storage tanks be placed away from water sources. He made this observation:

*This kind of disaster really does show you what all these things really mean. We don’t know enough, and we don’t know it quickly enough, about a chemical that could cause the drinking water for 300,000 people to be taken offline.*

West Virginia doesn’t require inspection of storage tanks with chemicals such as the ones that leaked. That is indefensible and it must be corrected. There should have been two lessons learned by government officials, both federal and state, from the West Virginia spill. The first lesson is that government must be more vigilant about ensuring the structural integrity of tanks holding hazardous chemicals near bodies of water. The second is that more resources must be focused on detection and monitoring. Dr. James Salzman, a professor of law and environmental policy at Duke University, pointed out that the spill exposes a weakness in the nation’s system for guarding against contaminated water. While it’s impossible to pre-treat for every harmful chemical, Dr. Salzman says there must be more emphasis on detecting unexpected contaminants. He added:

*When you get a large spill of chemicals that aren’t supposed to be there, that is a soft underbelly. It’s a real challenge. In a world where public budgets are tight, you’ve got to make choices.*

Freedom Industries, based in Charleston, has now filed for bankruptcy protection. The company, formed in 1986, supplies chemicals to the steel, cement and coal-mining industries, including agents that deep freeze, treat water or control dust, according to its website. Interestingly, Freedom Industries completed a four-way merger nine days before the leak was discovered. It combined with Etowah River Terminal LLC and Poca Blending LLC, state records show. Freedom also merged with Delaware-based Crete Technologies LLC. West Virginia Gov. Earl Ray Tomblin has ordered that all of the tanks be removed from the site by Freedom.

In the aftermath of this chemical spill, it will be most interesting to see what is done both in Congress and in other states. On January 28th the West Virginia Senate passed a bill that would impose stronger regulations on above-ground storage tanks. We haven’t had a chance to read the bill, but trust it’s a good one. Clearly, a coordinated effort between the federal government and the states is needed and hopefully that will happen. In the meanwhile, lots of folks were adversely affected by the spill and many were damaged in some manner. A number of lawsuits have been filed, with more expected, as additional information about this debacle is uncovered. Those in elected office, who have the power and authority to deal with problems such as this, must come to recognize that effective regulation can prevent disasters like the one in West Virginia.

Source: Claims Journal

XIII. **WORKPLACE HAZARDS**

### LAWSUITS FILED ON BEHALF OF CONSTRUCTION WORKERS KILLED AT OUTER LOOP SITE

Lawyers at Beasley Allen, along with the firm of Penn & Seaborn, have filed a wrongful death lawsuit on behalf of the family of one of two men killed in a construction accident while working last month on the Montgomery Outer Loop Project. Our firm is representing the family of David Lee White, the Montgomery man who was killed, in the suit filed in the Circuit Court of Montgomery County, Ala. Named as defendants are R.R. Dawson Bridge Co. and Miller Formless Systems.

The tragic deaths of Mr. White and another worker, Lomax Phillips, from Birmingham, Ala., were caused by the failure of a piece of equipment attached to the bridge that plummeted both men nearly 90 feet to the ground, killing them. The fallen piece of equipment, identified as a wagon lift, was defective and caused the fatal fall, which was like falling nine stories.

The Montgomery County Sheriff’s Office, the Alabama Department of Transportation and the Occupational Safety & Health Administration are investigating the tragic incident. The prime contractor for the Montgomery Outer Loop Project, R.R. Dawson Bridge Co. of Bessemer, Alabama, was temporarily suspended from working on the project. Under the applicable laws, all employees are entitled to a safe workplace. It’s quite evident that this one was far from being safe.

### TWO COMPANIES CITED AFTER COLLAPSE OF TEXAS A&M STRUCTURE

Federal officials have fined two construction companies for safety violations related to the collapse of a barn frame that occurred at Texas A&M University’s $80 million equestrian complex. The Occupational Safety and Health Administration (OSHA) investigated when four workers were hurt in the June 22 accident, which took place about a mile from...
Accidents In The Timber Industry Cause Injuries And Deaths

Alabama has approximately 22.6 million forested acres, or more than 70 percent of the state's total landmass. Interestingly, all but 6 percent of the state's timberlands are owned by private entities. This abundance of timber has allowed Alabama to become one of the nation's largest wood product producers. The economic impact the industry has on the state is remarkable with reports ranging from $15 billion to more than $20 billion generated annually. The prevalence of timber resources within the state has driven the demand for logging, saw mills, pulp and paper mills and countless other wood fiber by-product mills and plants. The timber industry is one of the state's largest economic drivers with nearly 70,000 Alabamians directly employed by the industry and another 100,000 workers indirectly employed. Despite the positive impact the timber industry has on the state's economy, the benefits come with certain dangers and hazards that all Alabamians need to be aware of.

For all of the positive impacts logging has on the state, there are certain hazards in the industry that no level of caution can completely eliminate. To understand the most basic dangers associated with logging, all you have to know is trees are heavy, awkward to move and difficult to contain. Logging requires heavy equipment to cut down trees sizeable enough to produce polls, lumber and even pulp. It then requires a piece of heavy equipment known as a skidder to pull the fallen trees to the loading deck through what is commonly rough terrain.

The logs are then loaded by another piece of heavy equipment onto a trailer, which will ultimately be pulled by an 18-wheeler to the appropriate mill. There, it will be unloaded by yet another piece of heavy equipment and ultimately be processed by even more large industrial equipment such as saws and presses. The entire process of taking the trees from the land until a finished product is produced requires a great amount of human interaction with both heavy logs and industrial equipment. Every tract of land logged, tree cut down and truck loaded presents a unique set of challenges and obstacles where one misstep can result in catastrophic injuries and even death.

When the average person thinks about logging accidents, the most contemplated scenario usually involves loaded log trucks sharing the roads with passenger vehicles. With more than 5,000 loads of wood moved each day in Alabama, there are perhaps more accidents than one might think. Accidents involving log trucks and passenger vehicles are all too common and the results of these accidents are often catastrophic. Many of these accidents are completely preventable yet occur due to carelessness. We commonly see accidents that occur after logging crews fail to take the proper precautions to mark log truck entrances onto a public road, fail to properly secure a load or overload a trailer.

Not only do we see carelessness specific to logging practices, but we also encounter violations generic to all motor carriers. All too often, log trucks are not in compliance with Department of Transportation (DOT) safety standards that apply to log trucks just as they do all commercial carriers. Driver fatigue is also a common factor often seen in log truck accidents. When investigating a log truck accident, it's always important to look not only for negligent driving behaviors, but DOT violations, violations of common industry practices and equipment maintenance fail-
ures. More times than not, log truck accidents can be attributed to careless practices.

For the thousands of Alabamians directly involved in the logging industry, accidents can occur in any number of ways. As mentioned earlier, logging requires close interaction between people, heavy machinery and downed trees. For those in the logging industry, one misstep or oversight could be the last due to the sheer size and power of the equipment and trees being harvested. Many of the accidents that happen in the field are caused by equipment failures.

Lawyers in our firm’s Personal Injury/Product Liability Section have handled a number of products liability cases throughout the years involving unreasonably dangerous cutters, skidders and other heavy logging equipment. Many logging accidents can be directly attributed to unsafe practices in the field. All too often, logging crews will operate in a manner that places workers around moving machinery and unsecured logs. Logging crews also encounter natural hazards or obstacles that lend themselves to unsafe practices on a routine basis.

Logging is an inherently dangerous industry which makes it imperative that every possible safety precaution is taken. This goes for logging equipment manufacturers and timber companies all the way down to the men on the ground operating the machinery. A concerted effort by all involved is required to reduce the risk of logging accidents.

The final step in the timber industry, milling or transforming the raw wood into an end product, is also risky business. The same general hazards are present at this stage as well. The milling process requires human interaction with industrial equipment that is designed to break down heavy, rough pieces of wood. Any time workers are required to work near equipment capable of such tasks, there is an opportunity for injuries. Common accidents inside timber mills and plants are not dissimilar from other industrial facilities. As one might expect, crush hazards, pinch hazards and hazards caused by large saws are common for persons working at timber mills.

However, other hazards that are not as predictable must also be anticipated and dealt with. Lawyers at Beasley Allen have handled cases in the past dealing with over-pressurization and explosions at timber plants and mills. Depending on the end product, each plant or mill has unique machinery that presents unique hazards. Any time a severe injury occurs inside a timber plant or mill, a careful investigation should be done to analyze the machinery involved. Unless a lawyer is experienced in the handling of products and construction litigation, a product liability claim can easily be overlooked.

We must remember that the timber industry is vital to Alabama’s economic well-being. The industry employs thousands and will continue to be a driving force for the state’s rural counties. But as long as there is logging equipment and log trucks running in our state, the potential for devastating accidents resulting in serious injuries and deaths will remain as well. The industry has a legal and moral obligation to take all reasonable steps necessary to protect both workers and the public. 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.

XIV. TRANSPORTATION

Many Motor Vehicle Fatalities Involve Collisions With Commercial Vehicles

Recent data suggests that accidents concerning 18-wheelers and other commercial vehicles are much more common than one might suspect. Each year, more than 4,000 people die in collisions involving trucks. That’s quite significant since these trucks make up less than four percent of all passenger vehicles on U.S. roads, yet 12 percent of all motor vehicle fatalities involve commercial vehicles.

Recently, in North Carolina a tractor-trailer rear-ended a school bus, sending 13 people to hospitals. Fortunately, there were no fatalities in this accident. It was reported that the collision occurred about 7 a.m. near the highway’s intersection when the 18-wheeler’s driver struck the backend of the bus, which was slowing down to pick up a student. The school bus was on its way to a local school with 12 students on board at the time of the collision.

The U.S. Department of Transportation’s (USDOT) Federal Motor Carrier Safety Administration (FMCSA) provides regulations for the safe operation of commercial vehicles. It’s the responsibility of the commercial motor carrier to ensure that both the vehicles and the drivers it employs meet all federal regulations to safeguard. This is to protect both a carrier’s employees and the general driving public. Issues that are often involved in commercial vehicle litigation include:

- Truck driver fatigue and Hours of Service (HOS) regulations;
- Truck driver distraction due to electronic devices;
- Rapid Response Teams and the importance of prompt investigation;
- Importance of Federal Motor Carrier Safety Regulations in Commercial Trucking cases; and
- Statutory background of federal trucking safety laws.

Sadly, the trucking industry continues to fall short of safety regulations, and minimum insurance requirements for commercial trucks have a reputation of inadequately compensating those who have been seriously injured in a deadly collision. Chris Glover and Julia Beasley, lawyers in the Personal Injury/Products Liability Section at Beasley Allen, handle cases of personal injury involving heavy trucks, log trucks, 18-wheelers and other commercial vehicles. For more information about these types of claims, contact Chris or Julia at 800-898-2034 or by email at Chris.Glover@beasleyallen.com or Julia.Beasley@beasleyallen.com.

Sources: News Observer

DOT Finally Brings Rearview Camera Rule Closer To Reality

The U.S. Department of Transportation (DOT) has sent a long-delayed rule requiring automakers to put rearview cameras or similar technology in new vehicles to the White House for final review. The regulation will be reviewed by the White House’s Office of Management and Budget. The agency proposed the rule back in December 2010. This came after Congress passed the Cameron Gulbransen Kids Transportation Safety Act, a 2008 law directing the agency to improve rear visibility in new vehicles. The rule is designed to prevent drivers from backing over children and pedestrians. We are now in 2014 and the rule has not become a reality.

Under the version of the rule proposed in 2010, automakers would have to manufacture passenger cars, trucks and other vehicles so that drivers can see the area immediately behind the vehicle when it is in reverse. The agency maintained at the time that the only available technology to meet that specification was a rear-mounted camera with an in-vehicle visual display. The DOT estimated, when it proposed the rule, that it could cost up to $2.7 billion to equip a fleet of 16.6 million new vehicles with rearview cameras. While on the surface that seems like a huge amount, it’s actually only about $165 per vehicle if my math is correct.

While the Gulbransen Act required the DOT to finalize the rule by February 2011, the agency has pushed back the deadline mul-

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tiple times, most recently to January 2015, Consumers Union, Advocates for Highway and Auto Safety, and several others are petitioning the Second Circuit Court of Appeals to force the DOT to release a final rule within 90 days.

The version of the rule sent to the OMB is not public. The proposed rule would have required that all eligible vehicles comply with its requirements by September 2014, which would be 42 months after the regulation was supposed to have been finalized. According to the Consumers Union petition, nearly 300 people a year are killed, and 18,000 more are injured, by drivers backing into them with their vehicles. The petition said that most of the victims are children younger than age 5, people older than 75 and people with disabilities. Hopefully, the petition will be granted!

Source: Law360.com

**SAFETY STANDARDS FOR RAIL TANK CARS MAY BE COMING SOON**

It has been reported that the Department of Transportation will soon issue new safety standards for the kind of tank cars involved in a series of fiery derailments that have occurred in recent months. The most recent incident involved rail cars carrying crude oil out of the Bakken region of North Dakota. Federal specifications on tank cars would be a part of the standards. This is an area of concern that must be addressed. We will continue to monitor this development and will write more as things develop.

Source: Claims Journal

**COMMUTER TRAIN CRASHES PROMPT CALL FOR SAFETY IMPROVEMENTS**

Commuter rail accidents, including a New York derailment last month that killed four people, has prompted a U.S. investigative agency to name improving transit safety as its top priority for 2014. The National Transportation Safety Board (NTSB), releasing its annual list of most-wanted improvements, said mass-transit agencies should take steps to improve safety systems to reduce the human errors that have led to accidents.

I have found that most folks don’t realize that the NTSB, which investigates transportation and pipeline accidents, has no regulatory authority. Instead, the agency uses its annual Most Wanted list to highlight the issue areas most in need of improvement. In that regard, the NTSB wants transit agencies to adopt programs that have proven beneficial in airlines, such as encouraging employees to report safety issues without fear of punishment and gathering data to spot shortfalls before they become catastrophic. The safety board also renewed its call for the installation of positive-train control, a system that automatically stops trains if it senses a looming collision and won’t allow them to travel too fast.

The NTSB also added to its Most Wanted list improvements on passenger ferries and cruise lines, driving while impaired by alcohol and drugs, and helicopter operations. Each year 35,000 people die in transportation accidents, 90 percent of which occur on roads and highways, according to the NTSB.

Source: Insurance Journal

**PROPOSED TRAIN CAMERA RULE MAY ALSO BE ON THE WAY**

The Federal Railroad Administration (FRA), a federal rail safety agency, plans to propose a rule that might require the installation of video cameras aboard trains to monitor drivers and record accidents or unsafe behavior. Two U.S. senators who have pushed for the change, Sen. Charles Schumer, of New York, and Sen. Richard Blumenthal, of Connecticut, were told by way of a letter from FRA officials that the agency plans to begin the process of establishing the rule sometime this year. According to reports, the regulation would have cameras installed in train cabs to record drivers, as well as requiring outward-facing cameras that scan the tracks. Each of these is needed. The National Transportation Safety Board has been asking for these safety features for several years. Because of the importance of this needed safety feature, the matter will be watched closely by railroad safety experts.

Source: Claims Journal

**DUI-RELATED LAWSUIT FROM FATAL MOTOR VEHICLE CRASH FILED**

The perils associated with drinking and driving should be well known by all adults and especially by those who are parents. At least, I hope I am correct about the level of adult awareness. The consequences of an alcohol-related vehicle crash are always bad. The parents of a teenager who was seriously injured in June in a fatal wreck caused by a teenager who was drunk and driving have filed suit against the young driver and his parents. The family of Isaiah McLaughlin, who was a passenger in a pickup driven by Brian Jennings, a youth minister, filed suit in Tarrant County Civil Court. This is the sixth lawsuit filed against Ethan Couch and his parents, Frederick and Tanya Couch.

In December, 16-year-old Ethan Couch admitted to causing the wreck and was sentenced to 10 years probation and intensive therapy. The civil lawsuit also names the family business, Cleburne Metal Works, as a Defendant. Isaiah McLaughlin’s injuries were described in the complaint as being “serious.” Timothy and Priscilla McLaughlin, Isaiah’s parents, are seeking damages from the Defendants.

Brian Jennings had stopped to help a stranded motorist shortly after leaving his son’s graduation party on June 15. Isaiah McLaughlin was a passenger in the truck along with another youth, Lucas McConnell, whose parents have also sued Ethan Couch and his family. Seven other teenagers were riding in the pickup, two in the bed. About 11:45 p.m., Couch’s speeding pickup left the road, clipped a stranded sport utility vehicle and smashed into the SUV’s driver and three people who were trying to help her.

The impact threw the four people 50 to 60 yards, according to investigating officers. Couch’s pickup then hit the Jennings’ parked Silverado pickup with the two boys inside. The pickup went airborne, flipped and crashed into a tree. In addition to Jennings, the driver of the SUV, Breanna Mitchell, was killed, as were Hollie Boyles, and her daughter, Shelby Boyles, who had come from their house nearby to help.

Couch was sentenced to 10 years probation and intensive therapy after he admitted responsibility (the juvenile equivalent to a plea of guilty) to four counts of intoxication manslaughter and two counts of intoxication assault causing serious bodily injury. During sentencing of Couch, and during testimony, Couch was described as a spoiled teenager from a wealthy but dysfunctional family. During testimony, a psychologist described Couch as a victim of “affluenza,” a mental state of reckless or irresponsible behavior brought on by wealth. Gerry Orth, a lawyer with Orth, Walker & Orth, located in Ft. Worth, Texas, represents the McLaughlin family in this latest lawsuit.

Source: Star-Telegram.com

**DISTRACTION CAUSES INEXPERIENCED TEEN DRIVERS TO HAVE MOTOR VEHICLE ACCIDENTS**

A recent study reveals that teenage drivers are easily distracted and that results in motor vehicle crashes. Teenagers may begin their driving habits with great caution, but as months behind the wheel pass, the study
Novice drivers are more likely to engage in high-risk secondary tasks more frequently over time as they became more comfortable with driving. The increasingly high rates of secondary task engagement among newly licensed novice drivers in our study are worrisome as this appears to be an important contributing factor to crashes or near-crashes.

Traffic studies reveal that drivers from 15 years to 20 years of age represent 6.4 percent of all motorists on the road, but account for 11.4 percent of fatalities and 14 percent of police-reported crashes resulting in injuries. Interaction with cell phones and other handheld electronic devices have garnered the most public and media interest, but even the simplest distractions can put a young driver at risk.

In the New England Journal of Medicine study, titled “Distracted Driving and Risk of Crashes Among Novice and Experienced Drivers,” Dr. Klauer and her research team found that likely dangerous distractions for new drivers—versus experienced motorists—include handling of a cell phone to dial or text, reaching away from the steering wheel, looking at something alongside the road, and eating. All these acts were statistically significant as a distraction for the new drivers. Dr. Klauer said:

Any secondary task that takes the novice driver’s eyes off the road increases risk. A distracted driver is unable to recognize and respond to road hazards, such as the abrupt slowing of a lead vehicle or the sudden entrance of a vehicle, pedestrian, or object onto the forward roadway.

Dr. Klauer and her team compared the results of a one-year, 100-car study with drivers between 18 and 72 years of age with an average of 20 years’ experience and an 18-month study of 42 teens who had drivers’ licenses for less than three weeks when the study began. Participants from both studies drove vehicles outfitted with the same data acquisition systems developed at the Virginia Tech Transportation Institute, including a minimum of four cameras and a suite of sensors that collected continuous video and driving performance data for the duration of both studies. Dr. Klauer observed:

This study is first report of its kind to objectively assess the degree to which engagement in tasks other than driving contributes to novice drivers’ crashes and near-crashes, and to compare the results to the impact of such distractions on more veteran drivers. The publication of a traffic-related study in the New England Journal of Medicine is a natural fit. We are working on preventing the leading cause of death in people under 35 years old, crashes. We’re working toward the same goals as a medical research institute, but along a different pathway.

Distracted drivers—whether they are teenagers or adults—create safety hazards on our highways. We must do a better job of educating folks about this serious safety problem. A special emphasis must be put on teenagers. The study mentioned above gives a detailed analysis of the many factors that cause young drivers to create hazards and dangers on our highways. Source: Claims Journal

Mrs. Gogoleva claims that Soffer and the three other surviving members of the crash conspired to hide the fact that he was flying the aircraft. She contends that the four individuals represented to her and others that a licensed helicopter pilot, David Pearce, was in control of the helicopter at the time of the crash. She now says that Soffer was flying the aircraft. Stay tuned for further development in this litigation.

Source: Law360.com

XV. ENVIRONMENTAL CONCERNS

Top Five Environmental Fines Issued By Alabama In 2013

The Alabama Department of Environmental Management (ADEM) issued 116 fines in fiscal 2013 for a total of $1.9 million. The amount of the fines is about average, down a little from 132 fines for $2 million in 2012. Of the fines in fiscal 2013—spanning from Oct. 1, 2012, to Sept. 30, 2013—54 involved land use. The rest were split among water, air and field operation issues. While land use is the busiest category, water violations often lead to more costly fines. According to records requested and received by Al.com, these are the top five fines of fiscal 2013:

- $250,000. Baldwin County Sewer Service. Surface water violations.
- $200,000. SABIC Innovative Plastics. Air violations.
- $150,000. The BCSS sanitary sewer pipe connection to the Belforest public water supply, according to ADEM findings. Two schools in Daphne were closed, businesses were closed and residents had to boil water for about three days. ADEM listed one resulting case of E. coli poisoning. Citing the seriousness of the violation, ADEM recommended a much larger fine of $575,000, but state law limits environmental penalties to $250,000.
• A chemical manufacturer in Lowndes County, SABIC, had the second largest fine of fiscal 2013 mainly for inability to identify which components it was supposed to be monitoring for chemical leaks. More specifically, ADEM found 354 components in the resin plant that should have been identified, but were not, suggesting “that they may have never been monitored.” Inspectors found more than 3,000 components—such as connectors, pumps and valves—in the bisphenol acetic plant that weren’t identified and may not have been monitored, as mandated by federal law. Meanwhile, ADEM found about 14,000 components that were identified and monitored, but didn’t need to be. On top of that, ADEM found the plant was slow to repair chemical leaks.

• $102,400. Alabama Department of Transportation (ALDOT), over land disturbance.

• The state of Alabama actually ended up with the third largest fine in 2013 after ALDOT got into a fight with ADEM over a bypass in Anniston, Ala. A 2011 inspection of the work site led to a notice of violation. In 2012, ALDOT assured ADEM all was better, but it wasn’t. ADEM in the summer of 2012 found ALDOT was not following state guidelines in terms of soil erosion and stormwater runoff. Inspectors could see “visual contrasts” from the soil runoff in nearby Remount Creek and Cane Creek. ADEM cited serious environmental impact on the waterways and wrote that it was “unaware of any efforts by the operator to minimize or mitigate the effects of the violations upon the environment.” ADEM added on an extra $18,000 because of ALDOT’s history of violations at other sites.

• $82,950. U.S. Army & Westinghouse, involving hazardous waste.

• The massive chemical weapons disposal plant on the Army base in Anniston was fined for sending eight barrels of arsenic, lead, chromium and barium to a landfill in Emelle, Ala. The metal oxides were purchased for emission testing, and had never been used by the Anniston Chemical Demilitarization Facility. The problem was mercury wasn’t listed among the contents, and ADEM found a mercury compound in the barrels that should have been treated or roasted before reaching the hazardous waste landfill.

• ADEM also found days when certain filtration warning systems were inoperable and programming errors related to temperatures for destroying hazardous chemicals. The violations did not cause any detected leaks, but ADEM cited a history of violations including nine warnings, 11 notices and three consent orders in six years. Ultimately, ADEM wrote it had negotiated a settlement with the military and had reduced the fine by $27,650 in “the spirit of cooperation and in the desire to resolve this issue amicably without incurring the unwarranted expense of litigation.”

• $80,000. CAP Escambia Operating Company over air violations.

• The Church Oil and Gas facility in Flomaton, Ala., was fined for excessive sulfur dioxide emissions in periods lasting from December of 2010 to October of 2012. But ADEM wrote that its inspectors were not aware of any irreparable harm to the environment. ADEM also noted the plant was working on the problem. ADEM and the plant reached a negotiated settlement, which reduced the fine by $20,000.

The mission at ADEM, under Alabama law, is to protect and improve the quality of our state’s environment and the health of all its citizens. The agency has an Air Division, a Water Division and a Land Division, among others. Each has specific duties and responsibilities. ADEM must to be diligent and effective in doing its job.

Source: AL.com

XVI. THE CONSUMER CORNER

$1.1 BILLION TOYOTA SETTLEMENT MOVES AHEAD WITH OBJECTOR SETTLEMENT

Two objectors to the $1.1 billion settlement for unintended sudden accelerations in some Toyota Motor Corp. vehicles have dropped their opposition. This is one step closer to a payout in the settlement. Dropping the opposition was in exchange for $1.5 million that will go to auto safety groups. Objectors Allen Roger Snyder and Linton Stone Weeks had argued to the Ninth Circuit that at least $15 million of the $30 million cy press portion of the settlement would go to “driver education” marketing campaigns, an inappropriate expenditure that reflected Toyota’s argument that driver error was to blame for vehicle problems.

An agreement reached between the objectors and the other Plaintiffs calls for $750,000 to go to the Automotive Safety Research Institute (ASRI), with another $750,000 going to the Center for Advanced Life Cycle Engineering (CALCE) at the University of Maryland. The objectors agreed to withdraw their objections for those changes.

The ASRI and CALCE will provide research reports to Plaintiffs’ class counsel upon completion of the research program. The distribution of $500 million in cash to class members should now begin. The money used to resolve that objection is going to safety research, which is a good cause. Clarence Ditlow, executive director of the Center for Auto Safety, which supported Snyder and Weeks’ objections, says that he is glad the class counsel agreed to fund research into vehicle electronics and safety systems that could pinpoint the vehicle causes of unintended acceleration.

He said:

The $30 million Toyota-funded driver education and safety research fund contained not one dollar for research into vehicle causes of unintended acceleration, the subject of the class action. Unlike other objectors who insisted on confidentiality on what they got in exchange for withdrawing their appeals, the Snyder objectors insisted their withdrawal agreement be filed with the court for everyone to see.

Toyota agreed last year to pay an estimated $1.1 billion to settle claims that the sudden acceleration defect hurt the vehicles’ value. Toyota issued recalls of millions of its cars and trucks in 2009 and 2010 after reports that several vehicles experienced sudden unintended accelerations. The economic loss agreement, which included a proposed class of roughly 23 million customers, received final approval in July.

The settlement calls for $757 million in cash as well as $875 million in “nonmonetary benefits,” including getting brake override installation in cars that merit it. The settlement also calls for Toyota to pay $227 million in fees and costs to the Plaintiffs’ counsel and to install a brake-override system in certain recalled vehicles. As we reported in the December issue, Toyota entered into settlement negotiations with hundreds of consumers who had personal injury, wrongful death

and property damage claims related to the sudden unintended acceleration defect in the automaker’s vehicles. That process is now underway.

Source: Law360.com

**Micro Cars Do Poorly In Crash Tests**

Only one minicar out of 11 tested achieved an acceptable rating in the Insurance Institute for Highway Safety’s (IIHS) small overlap front crash test. This makes these small vehicles the worst performing group of any evaluated thus far. The Chevrolet Spark is the only minicar tested to earn an acceptable rating in the small overlap front test. The Spark’s acceptable rating in the test, along with good ratings in the Institute’s four other crashworthiness evaluations, earns the new minicar a 2014 TOP SAFETY PICK award. The Spark was among the initial award winners announced in December.

The new small overlap test results for the rest of the minicar group mean that no other models in this size category join the Spark in the winner’s circle yet. Introduced in 2012, the small overlap test replicates what happens when the front corner of a vehicle collides with another vehicle or an object such as a tree or utility pole. In the test, 25 percent of a vehicle’s front end on the driver’s side strikes a rigid barrier at 40 mph.

The test is more difficult than the head-on crashes conducted by the government or the longstanding IIHS moderate overlap test because most of the vehicle’s front-end crush zone is bypassed. That makes it hard for the vehicle to manage crash energy, and the occupant compartment can collapse as a result. Nevertheless, in many size categories, manufacturers have found ways to improve vehicle structures to meet this challenge. Joe Nolan, IIHS senior vice president for vehicle research, stated:

> Small, lightweight vehicles have an inherent safety disadvantage. That’s why it’s even more important to choose one with the best occupant protection. Unfortunately, as a group, minicars aren’t performing as well as other vehicle categories in the small overlap crash.

In contrast to the minicar group’s performance, most models in the small car category, which are a little larger, have done much better in the test. There are five good ratings and five acceptable ratings among 17 small cars that have been evaluated so far. Looking at the component ratings that make up the overall marks, every minicar, including the Spark, rates marginal or poor for structure, the most fundamental element of occupant protection. When a vehicle’s structure doesn’t hold up, injury risk is high. Collapsing structures can knock frontal airbags and seats out of position, exacerbating the problem.

All the vehicles except the Spark and the Mazda 2 also earn low ratings for restraints and kinematics. Seven of the 11 were downgraded for allowing too much occupant forward motion during the crash. In these cases, either the safety belt didn’t do a good enough job holding the dummy in place, or the dummy’s head missed or slid off the frontal airbag. The side curtain airbag, which has an important role to play in small overlap frontal crashes, provided insufficient forward coverage in eight of the minicars and didn’t deploy at all in the Toyota Yaris. In many models, the steering column moved sideways, and in three cars the seat tipped.

The two worst performers are the Honda Fit and the Fiat 500. In both cases, intruding structure seriously compromised the driver’s space, and the steering column was pushed back toward the driver. In the case of the Fit, the dummy’s head barely contacted the frontal airbag before sliding off and hitting the instrument panel. During the test of the 500, the driver door opened after the hinges tore. An open door creates a risk that the driver could be partially or completely ejected.

Injury measures on the dummy’s left legs are marginal or poor for many models. In most cases, potential injuries involved the lower leg, but the Fit, 500 and Hyundai Accent were downgraded for left thigh or hip injury. The Fit and 500 were the only vehicles to record elevated injury risk to the right leg as well.

Despite its marginal structure, the Spark achieves an acceptable overall rating because the dummy’s movement was fairly well controlled and its injury measures were low. The Spark is the only vehicle with good injury measures for all body regions, including the lower leg and foot, generally a problematic area in the small overlap test. This may be related to the fact that the structure around the lower part of the occupant compartment held up better than other minicars, despite intrusion in the upper part.

Consumers should remember that the Spark, while offering more small overlap protection than other minicars, weighs less than 2,500 pounds and doesn’t protect as well as a larger and heavier vehicle with a comparable rating. Frontal crash test results can’t be compared across weight classes. In addition, neither the Spark nor the other minicars in the test group offer front crash prevention, an increasingly common safety feature that can prevent or mitigate some kinds of frontal crashes. For 2014, vehicles must be available with front crash prevention to qualify for the highest safety award from IIHS, which is “TOP SAFETY PICK+.”

Sources: IIHS Release and ClaimsJournal.com

**NHTSA Closes Inquiry Into Jeep SUV Fires**

The National Highway Traffic Safety Administration last month formally closed its long-running investigation into fire risks in 2.7 million 1994-2004 Jeep Grand Cherokees and 2002-2007 Jeep Libertys. NHTSA accepted the company’s proposed fix—a trailer hitch intended to provide additional protection for the gas tank, which is mounted between the rear axle and the bumper—for 1.6 million of the vehicles. This brings to a close the long-running controversy over the risk of fast-spreading fires in older Jeep SUVs. But several safety advocates aren’t satisfied with this action. When you consider the magnitude of the problem and the agreed-to fix, I believe their concerns are justified.

Many believe the location of the fuel tank creates a greater risk of fire in rear-end collisions and they question whether the trailer hitch is an adequate fix. While it’s been reported that at least 270 people have died in such fires, Chrysler and NHTSA dispute that number. They jointly claim the correct number to be in the 50s. Clarence Ditlow, Executive Director of the Center for Auto Safety, a well qualified and knowledgeable safety expert, observed:

> It is tragic that NHTSA approved Chrysler’s sham trailer hitch recall for Jeeps that explode in rear impacts. NHTSA Administrator David Strickland will be remembered as the Administrator who took a job with one of Chrysler’s law firms rather than save more children like Cassidy Jarmon from burning to death in Jeeps with trailer hitches. In strong contrast former NHTSA Administrator Joan Claybrook is remembered for saving lives by standing up to Ford and demanding crash tests and an improved remedy when Ford tried to foist off an inadequate remedy for the Pinto which exploded in rear impacts just like the Jeep.

Ditlow cited a photo of the trailer hitch-equipped Jeep in which Cassidy Jarmon, age 4, died when her family’s Grand Cherokee was rear-ended. Jenelle Embrey, a Virginia woman, organized a petition campaign seeking a recall of the Jeeps after she was rear-ended by a Jeep Grand Cherokee, which in turn was rear-ended by another vehicle and burst into flames, killing two occupants.
Ms. Embrey gathered nearly 128,000 signatures and arranged a meeting with NHTSA officials to push hard for a recall, but got no commitments.

Inquiries by NHTSA began in 2009 when Ditlow filed a lengthy complaint with the agency, contending that the 1993-04 Grand Cherokee has a fatal crash fire occurrence rate that is about four times higher than SUVs made by other companies. As expected, this was denied by Chrysler. Last spring NHTSA asked Chrysler—Jeep’s parent company—to recall the SUVs. In an almost unprecedented response, Chrysler refused, saying the vehicles had a safety record roughly comparable to other SUVs.

A most “interesting” development took place at Chicago’s O’Hare International Airport just a few weeks later, following a secret meeting between then-Secretary of Transportation Ray LaHood, NHTSA Administrator David Strickland and top Chrysler executives. At that meeting, a proposed “fix” to a most serious problem was discussed. Subsequently, it was announced that Chrysler had informally agreed to the trailer-hitch fix. Just a short time later, LaHood stepped down from his position at DOT. He is currently a co-chair of a non-profit organization seeking more tax funds to support transportation infrastructure.

Critics have blasted that secret meeting and assert that decisions relating to safety should be made through study and testing and not in backroom deals. The critics say that backroom deals like this one have no place in a regulatory system and I totally agree with them. NHTSA should not have accepted Chrysler’s plan, according to the critics, without crash testing to determine whether the fix is adequate. Ditlow, in a June 2013 statement, had said:

We call on NHTSA to do crash tests of Chrysler’s proposed remedy, just as it did with Ford’s proposed remedy for the Pinto in 1978, to determine that the modified Jeeps meet the present Safety Standard just as the Pinto’s had to the meet the new Safety Standard in 1978. If the modified Jeeps do not pass, we call on NHTSA to require Chrysler to develop a more effective remedy just as NHTSA did with the Pinto when it failed the first round of tests.

Ditlow noted that the Pinto—which also had a gas tank mounted behind the rear axle—was required by NHTSA to be brought up to “current safety standards,” not the standards that were in effect at “the time the cars were built.” In the Jeep case, Chrysler argues that it should only have to meet standards that were in effect when the Jeeps were built. Back in 2011, Ralph Nader called on Chrysler to recall the Jeeps, calling them “a modern day Pinto for soccer moms with a fuel tank located dangerously behind the rear axle in the crush zone of an impact.” It appears that he was correct in making that assessment. It won’t be known whether NHTSA actually conducted any crash tests involving the jeeps until formal reports are released in the next few months. I won’t be surprised if there were no crash tests done.

Chrysler’s agreement to go ahead with the trailer hitch fix and NHTSA’s agreement to close the investigation also appear to be the result of an extracurricular conversation, according to The New York Times. The Times reported that outgoing NHTSA head Strickland talked by telephone with Chrysler CEO Sergio Marchionne on Jan. 6 and finalized the agreement. This is a rather strange way for a federal regulatory agency to “regulate” the automobile industry. It doesn’t meet the old-fashioned “smell test!”

As part of the Strickland-Marchionne deal, Chrysler reportedly agreed to install the trailer hitches only if NHTSA would agree to stop describing the vehicles as “defective.” It was reported that this is a description that puts Chrysler at a disadvantage in civil lawsuits brought by victims of rear-end-related fires and their survivors. While I totally disagree with Chrysler on that point, I can understand why the automaker wouldn’t want that descriptive term to be used against the company. They simply don’t want to deal with the truth, it appears, I am afraid that more innocent victims will be seriously injured or killed because of a very bad decision made by those in charge at NHTSA.

Source: ConsumerAffairs.com

NHTSA Expands Probe Into Chrysler Jeep Fires

On another front, the National NHTSA has widened an investigation into Chrysler Group LLC Jeeps. This comes after dozens of new reports that the lights on the vehicles’ sun visors shorted and caused fires. The agency’s Office of Defect Investigations opened a probe into an estimated 146,000 model year 2012 Jeep Grand Cherokees in August. The agency at that time had received three reports of fires from consumers. NHTSA, according to reports, has since learned there might have been 52 such incidents, including at least three injuries.

NHTSA upgraded the probe on Jan. 10 from a preliminary investigation to an engineering analysis. If the analysis indicates the vehicles have a safety defect, NHTSA can ask Chrysler to conduct a recall. The agency also expanded the probe to include an estimated 593,000 Jeep Grand Cherokee and Dodge Durango vehicles from model years 2011-13. According to NHTSA, the two types of vehicles use the same headliner assembly.

The fires have been caused by electrical shorts in a lighting wiring circuit in the vehicles’ sun visors, according to NHTSA. The agency said that the shorts may occur when screws holding the visors to the interior roof pierce the wiring. NHTSA said “There is no dedicated fuse for the affected circuit so the electrical short can continue until the short clears or the vehicle is keyed off.”

Consumers have complained about incidents from minor overheating to an open flame on the sun visor or interior roof while they were driving the vehicle, according to NHTSA. In some instances, the agency says the fire reportedly engulfed the vehicles’ front seats or door panels. In one case, NHTSA says the fire caused the sunroof to shatter.

Source: Law360.com

Toyota Reports Seat Material Issue To NHTSA That Could Result In Recall

Toyota Motor Corp has alerted NHTSA about seat material in several of its vehicles that fail to meet fire retardation standards. This could result in a recall, depending on what the safety agency decides. It was reported that the Japanese automaker has stopped selling several models in North America equipped with seat heaters made since August 2012. This came after the company was alerted by South Korean safety officials that material in the part did not meet fire retardation standards also used in the United States. The cars are built in United States and some are exported to Korea.

According to a Toyota spokesman, John Hanson, the company initially informed NHTSA about the issue. Then an official report was made on Jan. 30, outlining the non-compliance with the standard. Hanson added that Toyota does not believe that a recall is necessary. He had this to say:

We don’t believe that it is a defect issue or a safety-related issue because there has been no occurrence of any problems in the real world.

There have been no reports of accidents, fires or injuries related to the issue in the affected vehicles in the United States, Canada or Mexico, according to Toyota. NHTSA will make the final determination on whether a recall is needed. Toyota says it doesn’t know how many cars are affected by this issue. Reportedly, Toyota dealers have been told to
Right now, most child-seat manufactur-ers make claims about side-impact per-formance, but each manufacturer may measure that performance differently. As consumers, we don’t know what type of testing or features go into the manufacturers’ claims. With this new standardized test, consumers will have a clear indication of how the car seat performed in side-impact crash tests.

The new test simulates a crash in which one vehicle traveling 30 miles per hour crashes into the side of another vehicle traveling 15 mph. This is “the first of its kind in the world being proposed for regulation,” NHTSA said. The test would use a standard 1-year-old crash dummy and a new 3-year-old dummy. Members of the public have 90 days to comment on the proposed rule. The proposal comes nearly three years after the NHTSA issued new guidelines advising drivers to keep infants in backward-facing car seats until age 2 or until they reach the maximum height and weight for the seat.

Source: Law360.com

NHTSA Proposes Tougher Car Seat Safety Standards

The National Highway Traffic Safety Administration has proposed a rule that would require manufacturers to prove their children’s car seats protect users during side-impact crashes, rather than just in front-end collisions. In connection with the proposal, the agency has developed a side-impact car seat test that manufacturers would use to show their products can reduce the forces transmitted to a child’s head and chest during a side crash and prevent the child’s head from hitting a buckled side door.

The proposal would apply to all car seats sold in the U.S. for children who weigh up to 40 pounds. If it is finalized, manufacturers would have three years to meet the higher safety standard. NHTSA Acting Administrator David Friedman said in a statement:

Car seats are an essential tool for keeping young children safe in vehicles and have a proven track record of saving lives. Today we continue to build on our extensive child seat safety program by adding side-impact crash protection for the first time.

The rule would prevent an estimated five deaths and 64 injuries every year, according to NHTSA. Ami Gadzia, Consumers Union Senior Policy Counsel, praised the proposal in a statement, saying it would give families reassurance that a car seat meets a minimum safety standard for side crashes. Ms. Gadzia made this observation:

New Child Safety Seat Regulations Will Take Effect In 2014

A new amendment to an existing law stating that the LATCH (Lower Anchors and Tethers for Children) Restraint System should not be used when the combined weight of the child and car seat is more than 65 pounds went into effect this month. LATCH systems have been required in cars since 2001. While they have been effective in preventing injury to children, the strength of the anchors cannot be guaranteed when the 65-pound limit has been exceeded by the combined weight of the car seat and child.

LATCH-equipped vehicles have at least two sets of small bars, called anchors, located in the back seat where the seat cushions meet. LATCH-equipped Child Restraint Systems (CRSs) have a lower set of attachments that fasten to these vehicle lower anchors. Most forward-facing CRSs also have a top strap (upper tether) that attaches to a top or upper anchor in the vehicle. Together, they make up the LATCH system.

LATCH was designed to make child seats safer and easier to install. But usually weighing between 15 to 35 pounds, some child seats are heavy enough on their own to prevent children as light as 32 pounds from using the LATCH system. The American Academy of Pediatrics has recommended that until the age of 8, children should remain in harness (including 5 point harness or booster with seatbelt), prompting car seat manufactur-ers to begin developing child seats with higher weight limits.

The current anchor requirements have been criticized by Joseph Colella, one of the five child-safety advocates who petitioned NHTSA to complete the rule change. He and other safety advocates have found that the lower anchor weight requirements are based on older model child seats and that the recom-mendations of how long children should be in child seats are outdated. The Alliance of Automobile Manufacturers, another advocate of amending the law, sought the rule change after studies found that weight limits did not take into account how much the child seats weigh.

Unfortunately, both awareness and usage of the LATCH system is very low. A study performed by Safe Kids Worldwide, an organization that has become an authority on unintentional childhood injury prevention, discovered that most people are using the lower anchors only around 30 percent of the time. The top tether straps, designed to prevent head injuries among children, were also only used in about 30 percent of vehicles. Stephanie Tombrello, who is with the advocacy group SafetyBeltSafe, told USA Today that “disconnecting tethers when their use is needed … could lead to a tragedy.”

Parents, in order to meet current guidelines with child seat regulations, should first weigh their child, then weigh the child safety seat, then add the two weights together. If the weight of the child and child seat together exceeds 65 pounds, parents should start using a seat belt restraint instead of the LATCH system until they find an updated child seat supporting the combined weight. Transportation Department spokeswoman Lynda Tran stated:

While LATCH makes it easier to prop-erly install car seats in vehicles, it’s important for parents and caregivers to know that securing a child seat with a seat belt is equally as safe—and that they have the flexibility to use either system.

NHTSA says that the use of child safety seats, or child restraint systems (CRSs), are the most effective ways to protect infants and young children in the event of an automobile accident. Statistics show that when child safety seats are properly installed and used, they reduce the chance of serious injury or death in a vehicle crash by as much as 71 percent. But these restraints cannot work if they are not installed properly. Sadly, three out of every four child restraints are not prop-erly used. Every year, thousands of children are tragically injured or killed in automobile crashes. For children ages 3-6, and 8-14, it is...
FEDERAL REGULATORS HAVE SUED THE FOUNDER OF BUCKYBALLS

An interesting development concerning the tiny, shiny magnets known as Buckyballs has created a great deal of attention. The Buckyballs, which are a lot more powerful than they look, are now at the center of a high-stakes legal dispute. The question is whether the government can hold a business owner personally liable for a consumer recall. Craig Zucker, a New York entrepreneur, had what he believed to be the most successful venture of his young career when he developed this desk toy in 2009. For those who don’t know about Buckyballs, they consist of pellets that can be twisted and stacked into infinite shapes.

Since the small magnets came to the market, many children, believed to be more than 1,000, have swallowed various brands of these magnets and required surgery. This development prompted the Consumer Product Safety Commission (CPSC) to appeal to retailers to stop selling the products and to initiate a recall aimed at Zucker’s company and two others. But instead of recalling the magnets Zucker dissolved his business in December 2012. Subsequently, the commission took the unusual step of filing a lawsuit to hold Zucker personally responsible for a potential recall that reportedly could cost up to $57 million. That number assumes every buyer of the desk toys would claim reimbursement. Zen Magnets and Star Networks USA, which sell similar products, were also named as defendants in the lawsuit.

In addition to the lawsuit, the commission has proposed a new regulation that would prohibit the sale of small toy magnets exceeding a certain level of attractive force. The agency’s four-member board of commissioners will decide this year whether to adopt the rule. Zucker is fighting back on the Buckyballs recall issue. He filed his own suit in federal court in November contending that regulators don’t have the authority to hold an individual responsible for product-safety issues. In a media statement, Zucker called the commission’s effort an “egregious attempt at rewriting our cherished laws of limited liability.”

Zen Magnets and Star Networks also are contesting the lawsuit and continue to sell their products online. Zucker’s case is most unusual, not only because the lawsuit names him personally, but also because businesses typically cooperate with recall efforts. Before the Buckyballs lawsuit, more than a decade had passed since the commission had resorted to litigation over such a matter. The last case involved airgun maker Daisy Manufacturing, and that case ended with a settlement in 2003.

The commission denies that it named Zucker in its lawsuit because of a personal vendetta, saying it had to hold him personally responsible for the proposed recall after he closed down his company. In a statement, a commission spokesman Scott Wolfson said: “This is an issue about safety and children, not about one individual.” Companies that dissolve can be problematic for the commission, which has no money for refunds after recalling hazardous products. The agency can recommend that consumers throw away hazardous items, but that solution is not as effective as providing refunds.

According to Zucker, his former company, Maxfield and Oberton, sold about 2.5 million small-magnet sets. The product was said to have been sold at wholesale prices between $7.50 and $17.50. The commission estimates that 1,700 incidents involving children and teens occurred between 2009 and 2011. This is based on a sampling from hospitals across the country.

After Zucker shut down his company, the commission responded by naming him in its lawsuit. The commission supported that move with a legal precedent known as the “Park Doctrine,” which allows the government to criminally prosecute corporate officers for failing to prevent violations of the Food, Drug and Cosmetic Act. But critics say it is a misuse of the doctrine. The Consumer Federation of America supports the commission’s stance. Rachel Weintraub, the watchdog group’s senior counsel, stated:

“It’s incredibly important for a manufacturer to take responsibility for how their product is used in the marketplace. These magnets have play value to children. They look like candy, and kids are swallowing them and being injured.

The commission had been sharply criticized in the wake of several deaths caused by lead-tainted Chinese toys in 2007. Congress responded by strengthening the commission, increasing the agency’s budget from $70 million to $120 million, and passing legislation that, among other measures, raised its maximum civil penalty from $1.25 million to $15 million. The commission has also grown its workforce from 380 employees to 530 and made some of its voluntary standards mandatory, particularly with children’s toys and durable juvenile goods. Agency officials say the moves are working, citing a drop in recalls from 449 in 2008 to 345 in 2013. It will be most interesting to see how the Zucker lawsuit comes out. Source: Washington Post

FBI WARNS RETAILERS OF MORE CYBER ATTACKS

The U.S. Federal Bureau of Investigation (FBI) has warned retailers that there will likely be more cyber attacks this year. This comes after about 20 hacking incidents were discovered in the past year involving malware similar to that used in the massive Target holiday data breach. The FBI sent a report dated Jan. 17 to retailers describing risks posed by “memory-parsing” malware that infects point-of-sale (POS) systems. Reuters reported, citing the document “Recent Cyber Intrusion Events Directed Toward Retail Firms.” The FBI report, seen by Reuters, stated:

“We believe POS malware crime will continue to grow over the near term, despite law enforcement and security firms’ actions to mitigate it. The accessibility of the malware on underground forums, the affordability of the software and the huge potential profits to be made from retail POS systems in the United States make this type of financially motivated cyber crime attractive to a wide range of actors.

According to the FBI report, one version of the POS malware, known as Alina, included an option that allowed remote upgrades. At least one type of this malware has been offered for sale for as much as $6,000 in a “well-known underground forum,” according to the FBI report. The reality is that a very serious problem most likely will get much worse this year.

Source: Montgomery Advertiser

HOW TO PROTECT YOUR CREDIT CARD AFTER A DATA BREACH

The massive data breach at Target, which exposed the sensitive personal and financial information of its customers, has received a tremendous amount of media attention. Unfortunately, this incident is just the latest in a long line of cyber security breaches that have hit U.S. retailers in recent months. This one just received more attention. Target initially reported that the stolen information...
Scammers attempt to make phone calls and calls asking to verify their card information. Very cautious of unexpected emails or phone law enforcement. In addition, folks must be lately report any suspected fraud or unusual card issuer.

Regardless, since your bank or institution could go up to $500, or perhaps much more. But, if you wait more than two business days. Your debit card fraud has increased exponentially, costing consumers more than $11.3 billion in losses in 2013.

Many consumers are rightfully concerned and left wondering if there are any steps they can take to protect themselves from fraud and identity theft. Generally under the Truth in Lending Act, the cap for liability for fraudulent charges on a credit card is $50. In contrast, debit card users may be more at risk of being held liable for fraudulent charges.

Under the Electronic Fund Transfer Act, if your debit card or ATM card is lost or stolen or you find an unauthorized purchase on your checking or savings account, your maximum liability is only limited to $50 if you notify your bank within two business days. But, if you wait more than two business days, your debit/ATM card losses under the law could go up to $500, or perhaps much more. Regardless, since your bank or institution may further limit your losses, so it's important to check your policy with your card issuer.

The best way for a person to protect against identity theft is by closely monitoring his or her credit card bills, bank statements, and free credit reports. You should immediately report any suspected fraud or unusual activity to your bank or institution and also to law enforcement. In addition, folks must be very cautious of unexpected emails or phone calls asking to verify their card information.

Scammers attempt to make phone calls and emails look like they originate from a well-known institution in order to trick individuals into giving out account information.

Owners and insurers of a now-bankrupt Massachusetts pharmacy linked to a deadly meningitis outbreak have agreed to pay more than $100 million to compensate victims, families of victims and creditors. The preliminary settlement requires court approval. If approved, the settlement would resolve many claims arising from tainted steroid injections linked to New England Compounding Center Inc. (NECC) of Framingham, Mass.

Settlement funds are expected to come from the owners, insurers, tax refunds and proceeds from the sale of a related business. The settlement requires final documentation and does not cover claims against various clinics that sold the tainted steroid or various vendors used by NECC.

Source: Claims Journal

A family in Hawaii has filed suit against a dentist after a visit for a root canal procedure left their 3-year-old daughter brain dead. On Dec. 3, Ashely Boyle, a registered nurse, took her daughter Finley to Island Dentistry in Kailua to undergo four root canals. Before the procedure took place, to be done by Dr. Lilly Geyer, Finley was given a highly potent mixture of sedatives, including Demerol, a fast-acting opioid analgesic. Twenty-six minutes later, the young girl went into cardiac arrest. Finley's parents say that their daughter did not receive immediate CPR.

The lawsuit filed against Dr. Geyer claims that the staff at Island Dentistry was not prepared for this type of emergency. It's alleged that during the incident, staff had to ask for help from a pediatrician in the same building. It's contended that the entire mishap could have been avoided if staff had properly administered the sedatives and monitored Finley's vital signs.

Dental records from the morning of the procedure show only three notations on Finley's vital signs. According to guidelines by the American Academy of Pediatric Dentistry, vital signs should be monitored and documented at least every five minutes for patients under sedation. Finley was pronounced dead on Jan. 3. Rick Fried, a lawyer with Cronin Fried Sekiya Kekina & Fairbanks, located in Honolulu, Hawaii, represents the family in this lawsuit. He says that most of the dental work was unnecessary to begin with and that the staff didn't take necessary precautions.

Source: The Huffington Post

The U.S. Food and Drug Administration (FDA) has announced Class II recalls of two different components of the da Vinci surgical system, which uses robots to perform procedures. The agency also released new training and credentialing recommendations for hospitals and doctors using the devices. The recalls—which involve instrument arms that can become stuck and part of the robot hand that can detach—are the latest in a series of regulatory and legal woes for Intuitive Surgical Inc. (ISI), the da Vinci maker.

With more than 70 products liability cases filed against the manufacturer in federal courts and dozens of others filed in state courts, ISI is now defending itself against its insurance carrier, Illinois Union Insurance Co. That company is trying to rescind products liability coverage and contends that ISI concealed its potential risk for additional lawsuits. The increasing numbers of lawsuits and recalls highlight the da Vinci robots' safety issues.

In December, the FDA announced a Class II recall of 1,386 da Vinci systems following ISI's urgent device notification regarding complications with the instrument arms, which may suddenly stall and become stuck due to abnormal friction. Class II recalls are issued when a product "may cause temporary or medically reversible adverse health consequences or where the probability of serious adverse health consequences is remote." In one reported incident, this friction led to the robot making an imprecise cut during the transection of a urethra, and in two other cases, the doctors had to stop using the robot mid-procedure and switch to alternative surgical methods.

The FDA also issued a Class II recall following ISI's urgent device recall for certain lots (manufactured between 2007 and 2011) of da Vinci EndoWrist needle drivers—which hold and guide the surgical instruments—because the drivers' jaw inserts can detach. ISI has reported 82 incidents related to damaged or detached needle driver jaw inserts, including 27 incidents where the inserts fell off during surgery. In one case, a device fragment was not retrieved during surgery after falling into the patient, so a second operation was required to remove it.

These recalls, combined with an increase in the number of adverse event reports submitted to the FDA in 2013—3,697 reports involving death, injury, or malfunction as of early November, compared with 1,595 in 2012—prompted the agency to call for hospitals and doctors to engage in additional training before using the robots. The FDA recommends that all surgeons be appropri-
ately credentialled. There are different da Vinci models and users must be made aware of that doctors should also be trained on each one of these models.

There is some debate over the source of the reporting spike, but medical researchers say that underreporting adverse events is a problem. In September, Johns Hopkins researchers published a study in the Journal for Healthcare Quality that said robot surgery complications were underreported and that a standardized robotic device reporting system should be created. The number of reported adverse events is on the rise in part because the robots are being used for a variety of different surgeries, including hysterectomies, prostatectomies, gastric bypasses, and cardiac procedures.

Earlier this year, the FDA announced it was surveying doctors about the challenges they face when using the da Vinci system. The FDA released its final report in November. But it should be noted that only 11 surgeons were surveyed. Ten of the 11 respondents reported problems with the robot arms. It was reported that there were approximately 400,000 surgeries using the robot in 2012.

Illinois Union filed a lawsuit in October demanding rescission of the products liability coverage policy it issued to ISI in March. It alleges in the suit that ISI concealed the existence of tolling agreements that froze the statute of limitations until after the policy was issued. The insurer claims that ISI has no idea how many products liability lawsuits may be filed. Illinois Union said it would not have issued the policy if it had had an accurate risk assessment.

Source: Justice.org

**Antique Hope Chest Where Two Children Died Had Been Recalled**

A hope chest where a young Massachusetts brother and sister died after apparently becoming trapped had been recalled by the manufacturer years ago. This was indeed a tragic incident. Norfolk District Attorney Michael Morrissey, who has been investigating the case, said preliminary autopsy results indicate the deaths of the 8-year-old girl and 7-year-old boy at their Franklin home on Jan. 12 were accidental. At press time, toxicology tests were still pending. The chest, which had a lid that could only be opened from the outside, was made in 1939 by the Lane Furniture Company of Altavista, Va.

In 1996, Lane recalled 12 million cedar chests with lids that automatically latch shut after receiving reports of six children suffocating inside. In 2000, Lane—in cooperation with the U.S. Consumer Product Safety Commission (CPSC)—called for a renewed search for the chests after becoming aware of another suffocation death and two near fatalities. District Attorney Morrissey said people who own similar chests, which also were made by other companies, should check on them. He stated:

*If you close the lid and have to press or manipulate something on its exterior to get it to open, we urge you to contact the manufacturer for guidance or consider disabling the mechanism yourself.*

Lane’s current owner, St. Louis-based Heritage Home Group, said it will continue to make replacement locks available to people who own its chests. The company says that consumers should remove the latch plate until a replacement is provided or the chest’s safety is verified.

Source: Claims Journal

**A Silent, Invisible Killer Is Still Around**

With all of the extremely cold weather around the U.S., I felt a mention of the “silent” and “Invisible Killer” carbon monoxide would be timely and needed. Carbon monoxide, also referred to as CO, is a colorless, odorless, poisonous gas. More than 150 people in the Unites States die every year from accidental non-fire related CO poisoning associated with consumer products, including generators. Other products include faulty, improperly used or incorrectly vented fuel-burning appliances such as furnaces, stoves, water heaters and fireplaces.

Everybody should be aware of the dangers of CO. There are some things that we can all do to protect our families. These are some safety tips:

- Have your home heating systems (including chimneys and vents) inspected and serviced annually by a trained service technician.
- Never use portable generators inside homes or garages, even if doors and windows are open. Use generators outside only, far away from the home.
- Never bring a charcoal grill into the house for heating or cooking. Do not barbeque in the garage.
- Never use a gas range or oven for heating.
- Install battery-operated CO alarms or CO alarms with battery backup in your home outside separate sleeping areas.
- Know the symptoms of carbon monoxide poisoning: headache, dizziness, weakness, nausea, vomiting, sleepiness, and confusion. If you suspect CO poisoning, get outside to fresh air immediately, and then call 911.

Because CO is odorless, colorless, and otherwise undetectable to the human senses, folks may not know that they are being exposed. The initial symptoms of low to moderate CO poisoning are similar to the flu (but without the fever). These systems include:

- Headache
- Fatigue
- Shortness of breath
- Nausea
- Dizziness

High level CO poisoning, which is much more serious, results in progressively more severe symptoms. Those systems include:

- Mental confusion
- Vomiting
- Loss of muscular coordination
- Loss of consciousness
- Ultimately death

Symptom severity is related to both the CO level and the duration of exposure. For slowly developing residential CO problems, occupants and/or physicians can mistake mild to moderate CO poisoning symptoms for the flu, which sometimes results in tragic deaths. For rapidly developing, high level CO exposures, such as those associated with use of generators in residential spaces, victims can rapidly become mentally confused. They can lose muscle control without having first experienced milder symptoms. Those persons will likely die if not rescued in a timely manner. It’s critically important to become familiar with the hazards caused by CO and to learn how to avoid becoming a victim of this silent, invisible killer.

Source: CPSC

**XVII. Recalls Update**

We are again reporting a large number of safety-related recalls in this issue. We have
included some of the more significant recalls that were issued in late December and in January. 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.

**GENERAL MOTORS RECALLS VEHICLES**

General Motors has recalled more than 9,700 Chevrolet Silverado HD and GMC Sierra HD vehicles, model years 2012 and 2013. In the affected vehicles, the transfer pump that moves fuel from the rear tank to the front tank could malfunction and cause the fuel gauge to indicate an inaccurate reading, according to the National Highway Traffic Safety Administration (NHTSA). As a result, the engine could stall, increasing the risk of a crash.

**GENERAL MOTORS RECALLS 370,000 PICKUPS**

General Motors has recalled 370,000 Chevrolet Silverado and GMC Sierra pickups from the 2014 model year to fix software that could cause the exhaust components to overheat and start a fire. The recall includes 303,000 trucks in the U.S. and 67,000 in Canada and Mexico. All of the trucks involved have 4.3-liter or 5.3-liter engines. The overheated exhaust components may melt nearby plastic parts and may result in an engine fire.

GM said eight fires have been reported, but it said no injuries have occurred. One garage was damaged, the company said. All of the incidents occurred in cold weather. The company is asking customers not to leave their trucks idling unattended. GM dealers will reprogram the software for free. The company informed owners starting on Jan. 16.

**GENERAL MOTORS RECALLS 1.5 MILLION CARS IN CHINA**

General Motors Co. and its main Chinese partner will recall almost 1.5 million cars to replace a bracket that secures a fuel pump, according to China's product quality agency. The agency said the recall affects 1.2 million Buick Excels made from 2006 through part of 2012 and 250,000 Chevrolet Sail produced between April 2009 and October 2011 and some made last year. The bracket to be replaced might crack and in extreme cases cause a fuel leak, the Administration for Quality Supervision, Inspection and Quarantine said in a statement. The recall is GM's second this year in China. In May, the government announced a recall of 2,653 imported Cadillac SRX sport utility vehicles to adjust nuts on wheels that said might loosen due to torque.

**FORD MOTOR COMPANY RECALLS EDGE VEHICLES**

Ford Motor Company has recalled certain model year 2012-2015 Edge vehicles manufactured from September 2, 2010, through April 25, 2013, and equipped with 2.0L engines. The fuel line pulse damper metal housing may crack as a result of an improper manufacturing process. A cracked fuel line pulse damper housing may result in a combination of fuel odor, weepage, or a continuous leak while the fuel system is pressurized. A fuel leak in the presence of an ignition source may result in a fire. Ford will notify owners, and dealers will replace the fuel line with one that does not have a damper, free of charge. The safety recall is scheduled to begin on February 28, 2014. Owners may contact Ford at 1-866-436-7332. Ford's number for this recall is 13S13. IMPORTANT: This recall supersedes recall 12V-438. All vehicles that have been remedied under the previous recall need to have the current remedy applied.

**HONDA RECALLS ACURA RLXs**

American Honda Motor Company has recalled certain model year 2014 Acura RLX vehicles manufactured August 7, 2012, through November 5, 2013. The bolts that attach the rear lower control arms to the sub-frame of the vehicle may have loosened during transport to dealerships. Loose rear lower control arm bolts may reduce steering ability, increasing the risk of a crash.

Honda will notify owners, and dealers will replace the rear suspension lower control arm bolts, free of charge. The recall is expected to begin in early January 2014. Customers may contact Honda at 1-800-999-1009. Honda’s number for this recall is JD0.

**HYUNDAI RECALLS CERTAIN VEHICLES**

Hyundai has recalled certain model year 2014 Santa Fe vehicles manufactured November 5, 2013, through November 15, 2013, and equipped with P235/65R17 103T Continental Crosscontact LX tires. The tires may have a damaged sidewall. The damaged sidewall may result in a separation between the belt edges which could cause tread detachment or rapid air loss, increasing the risk of a crash.

Hyundai notified dealers to suspend sales of affected Santa Fe Sport vehicles equipped with the P235/65R17 103T tires, and replace them with alternative tires. All affected vehicles were remedied prior to retail sale. Owners may contact Hyundai Customer Care Center at 1-800-633-5151.

**NISSAN RECALLS PICKUPS**

Nissan North America, Inc. has recalled certain 2014 model year Titan King Cab and Crew Cab pick-up trucks manufactured August 27, 2013, through November 13, 2013. In the affected vehicles, the Tire and Loading Information label overstates the maximum load and passenger carrying capacity of the vehicle. Thus, these vehicles fail to comply with Federal Motor Vehicle Safety Standard (FMVSS) number 110, “Tire Selection and Rims for Passenger Cars.”

If the vehicle is loaded to the capacity stated on the incorrect label, and the tire load capacity is exceeded, the vehicle may experience structural damage to the tire. If this occurs, this may lead to tire failure which could increase the risk of a crash.

Nissan will notify owners and will provide owners with a correct label to install, free of charge. The recall is expected to begin on January 21, 2014. Owners may contact Nissan at 1-800-647-7261. Owners may also contact the National Highway Traffic Safety Administration Vehicle Safety Hotline at 1-888-327-4236 (TTY 1-800-424-9153), or go to www.safercar.gov.

**LAND ROVER RECALLS RANGE ROVERS**

Jaguar Land Rover has recalled nearly 4,000 Range Rover vehicles from the 2013 and 2014 model years. There’s a potential defect in a connector that may keep the airbags from functioning properly, according to NHTSA.

**DAIMLER TRUCKS NORTH AMERICA RECALLS SCHOOL BUSES**

Daimler Trucks North America (DTNA) has recalled certain model year 2014-
DTNA will notify owners, and dealers will inspect the ECAS wiring, correcting it as necessary, free of charge. The recall is expected to begin February 16, 2014. Owners may contact Daimler at 1-800-547-0712. DTNA’s number for this recall is FL-658.

**Daimler Trucks North America Recalls Trucks**

Daimler Trucks North America (DTNA) has recalled certain model year 2013-2014 Freightliner Cascadia trucks manufactured December 11, 2012, through November 27, 2013 and equipped with a Meritor Wabco electronically controlled air suspension (ECAS) system. In the affected vehicles, the wiring harnesses for the ECAS may have been reversed. If the wiring harnesses are connected in reverse, it may adjust the suspension axle height incorrectly, reducing driving traction and parking brake effectiveness. Either result increases the risk of a crash.

DTNA will notify the owners, and dealers will inspect the ECAS wiring, correcting it as necessary, free of charge. The recall is expected to begin February 16, 2014. Owners may contact Daimler at 1-800-547-0712. DTNA’s number for this recall is FL-656.

**Tesla Motors Recalls Vehicles**

Tesla Motors, Inc. has recalled certain model year 2013 Model S vehicles equipped for, and delivered with, certain NEMA 14-50 (240 volt) Universal Mobile Connector (UMC) adapters. During charging, the adapter, cord, or wall outlet could overheat. An overheated adapter, cord, or wall outlet increases the risk of burn injury and/or fire. Tesla will notify owners and provide an "over-the-air" software update. Some owners have already received this update. This update allows the Model S on board charging system to detect any unexpected fluctuations in the input power or higher resistance connections to the vehicle. If detected, the onboard charging system will automatically reduce the charging current by 25 percent.

Tesla owners can verify that they have received the updated software (version 5.8.4 or later) by viewing the vehicle’s center information screen. Additionally, Tesla will mail owners a replacement NEMA 14-50 adapter that is equipped with an internal thermal fuse. At press time, the manufacturer has not yet provided a notification schedule. Owners may contact Tesla Service Center at 1-877-79-TESLA (1-877-797-8352).

**Tiffin Recalls Motorhomes**

Tiffin Motorhomes, Inc. has recalled certain model year 2013-2014 Allegro 33AA motorhomes equipped with an electric fireplace. In the affected vehicles, the fireplace may ignite a piece of exposed wood inside the electric fireplace. If the exposed piece of wood ignites, the rest of the motorhome could also catch fire. Tiffin will notify owners, and dealers will install a heat shield to keep heat from the exposed wood, free of charge. The manufacturer has not yet provided a notification schedule.

**Motorcycles Recalled By Zero**

Zero Motorcycles Inc. is recalling certain model year 2012-2013 XU, S, DS, and model year 2013 FX motorcycles. The affected motorcycles have controller firmware that, as a result of certain system faults, may shut off power to the motor. A sudden loss of power to the motor may increase the risk of a crash.

Zero will notify owners, and dealers will update the controller firmware, free of charge. The recall is expected to begin in mid-January 2014. Owners may contact Zero at 1-888-786-9376.

**SRAM Recalls Hydraulic Bicycle Brakes Due To Crash Hazards**

About 25,550 SRAM Hydraulic Road Rim Brakes and Hydraulic Road Disc Brakes for bicycles have been recalled by SRAM, LLC, of Chicago, Ill. The brake systems can fail, posing a crash and injury hazard. The recalled bicycle brake models include SB Red Hydraulic Road Disc, SB Red Hydraulic Road Rim, SB 700 Hydraulic Road Disc and SB 700 Hydraulic Road Rim, used as either front or rear brakes. The SB RED brake lever is labeled “RED” on the body of the lever assembly. The SB 700 brake lever is labeled “S-Series” on the body of the lever assembly. The serial numbers for the recalled brakes have the digit “3” as the fourth digit of the serial number. The serial number can be found on the bottom of the caliper body. The company says it received 95 reports of brakes failing in the U.S. One minor injury was reported in the U.S. and another in Australia, according to the company.

Specialty bicycle retailers nationwide sold the brakes from May 2013 to December 2013 for between $285 and $581 for the disc or rim brakes. Bicycles sold with the SRAM disc or rim range from $2,500 to $7,500. Consumers should immediately stop using bicycles equipped with the recalled SRAM brake systems and contact any SRAM dealer to arrange for a free replacement product to be installed and to receive a $200 product voucher or cash per customer. Contact SRAM at 800-346-2928 between 9 a.m. and 5 p.m. Monday through Friday CT or visit the company’s website at www.sram.com and click on Recall Information for more information. Photos available at: http://www.cpsc.gov/en/Recalls/2014/SRAM-Recalls-Hydraulic-Bicycle-Brakes/.

**Specialized Recalls Source Eleven And Source Expert Disc Bicycles**

About 173 2012 Source Eleven and Source Expert Disc bicycles with Supernova Switchable Dynamo Front Hubs from Specialized Bicycle Components, Inc., of Morgan Hill, Calif. have been recalled. The set screws in the front hub of the recalled bicycles can loosen and stop the front wheel from turning, posing a fall hazard to consumers. The recalled products are 2012 model year Source Eleven and Source Expert Disc bicycles with Supernova Switchable Dynamo Front Hubs as part of the original equipment. The name “Specialized” is printed on the bicycle’s down tube and “Source Eleven” or “Source Expert” are printed on the top tube. The front hubs have “www.supernova-lights.com” and one of the following model numbers printed on them: 1207, 1208, 1226, 1227, 1228, 1241, 1254, 1263, 1284 and 1344.

Customers should immediately stop riding the recalled bicycles and bring them to an authorized Specialized dealer for a free replacement front wheel and new Supernova front hub. For a list of authorized dealers go to www.specialized.com/ and click on Dealers in the
upper right hand corner of the page.
The bicycles were sold at authorized Specialized Bicycle dealers in the United States from October 2011 to September 2013 from about $2,000 to 2,700.

**GREE EXPANDS DEHUMIDIFIER RECALL**

Gree Electric Appliances, a Chinese company, has expanded its previously announced dehumidifier recall to include GE brand dehumidifiers. The expansion came due to serious fire and burn hazards. Consumers should stop using this product. The dehumidifiers can overheat, smoke and catch fire causing fire and burn hazards to consumers. The recall includes about 350,000 units in the United States and 2,700 units in Canada. Gree had previously recalled 2.2 million dehumidifiers under twelve other brand names in September 2013. This recall involves 30, 40, 50, 65-pint dehumidifiers with the GE brand name. Consumers can contact Gree toll-free at (866) 853-2802 from 8 a.m. to 8 p.m. ET Monday through Friday, and on Saturday from 9 a.m. to 3 p.m. ET, or online at www.greeusa.com and click on Recall for more information.

**COMBI RECALLS CHILD SEATS WITH WEAK HARNESSSES**

More than 30,000 Combi USA Inc. child car seats have been recalled for harnesses that are too weak under federal safety standards and could fail during a crash. The Charlotte, N.C.-based manufacturer said it was recalling three lines of child restraints that were produced before December 2012 because their harness webbing failed to meet the minimum breaking strength requirements of the federal motor vehicle safety standards.

All of Combi’s Coccoro, Zeus Turn and Zeus 360 convertible child restraint produced before December 2012 were all noncompliant. An embedded plastic button in the webbing is to blame, the company said. The button keeps buckle tongues from sliding into the recesses of the restraint but was found to diminish the overall strength of the seat belt assembly. As a result, children might not be adequately secured in the event of a crash, according to the recall notice.

Combi is encouraging consumers to continue using the restraints until they receive remedy kits allowing for the non-compliant harnesses to be replaced. The company expects to send out the kits starting Feb. 6. Consumers were told to wait until then and not to bring the restraints back to retailers.

**ERGOTRON RECALLS TELEVISION WALL MOUNTS DUE TO RISK OF INJURY**

Ergotron Interactive Wall Mounts has been recalled by Ergotron Inc., of Eagan, Minn. The weld between the “VES A” style mounting plate and the mounting ring can fail, allowing the monitor or TV to fall. This poses a risk of injury to bystanders. This includes about 195,000 in the United States, 60 in Canada and 21,000 in Mexico. The adjustable Ergotron interactive wall mount is designed for flat panel displays and televisions which allows users to reposition their display angles. The wall mounts consist of three parts including a wall mount plate for securing the system to the wall; an extendible arm that allows the user to adjust the position of their television in multiple directions and a monitor plate for securing the arm to the monitor. Ergotron says it has received three reports of the monitor plate separating from the wall mount system. Consumers reported property damage to components of the wall mount unit. No injuries have been reported, according to the company.

The brackets were sold at AAFES, h.h.Gregg, Sam’s Club, Walmart and independent retailers nationwide specializing in electronic supplies and online at Amazon.com from February 2012 to January 2013 for between $50 and $400. Consumers should immediately remove the TV/monitor from the mount and contact Ergotron for a free repair kit. You can contact Ergotron Inc. at 800-888-8458 from 8 a.m. to 7 p.m. CT Monday through Friday or online at www.ergotron.com and click on “Recall Information” at the bottom right footer of the home page for more information. To see photos of the recalled products, go to http://www.cpsc.gov/en/Recalls/2014/Ergotron-Recalls-Television-Wall-Mounts/.

**CYBEX INTERNATIONAL RECALLS DECLINE FREE WEIGHT BENCHES**

About 234 Olympic Decline free weight benches have been recalled by Cybex International, Inc., of Medway, Mass. The frame of the bench can collapse forward onto the user, posing fall and injury hazards. The Decline model free weight benches are designed for use in professional gyms and come in three model numbers: 16060, 16061 and 16062. The Decline model free weight bench is a traditional Olympic bench which accommodates a 7” wide Olympic bar, and the back pad declines from the knee to the shoulders at a 15 degree angle. The model numbers can be found on the bottom of the tube near where the feet are placed with serial numbers C1208 through H0913 which stand for the manufacture dates, December 2008 through September 2013. The firm received nine reports of frames fatiguing near the weld point. No injuries were reported.

The benches were sold by Cybex or its distributors directly to gyms from December 2008 through September 2013 for about $1,100. Consumers should stop using the benches immediately and contact Cybex to arrange for instructions for inspecting the frames for cracks or weakness and for installing the free repair. Contact Cybex Internationals toll-free at 888-678-3846 from 8 a.m. to 5 ET Monday through Friday or online at www.cybexintl.com and click on Support for more information.

**CABRINHA KITEBOARDING RECALLS H2 BINDING**

Cabrinha H2 Hydra Series Binding has been recalled by Neil Pryde Limited, Hong Kong. This includes 57 in the U.S. and five in Canada. The binding can detach from its base while riding and lead to loss of control, which poses a risk of injury. This recall involves the standard size H2 Hydra Series Binding. The binding mounts on the twintip style kiteboards and is used to connect the rider by his feet to the board. The H2 binding is blue and black and has dual adjusting straps with ‘Cabrinha’ and ‘H2’ on the footstrap. The product was manufactured in June and July 2013. The H2 binding comes in two sizes: standard and small. The product code is KB4H-2BDSSL which is found on the retail packaging.

They were sold at specialty watersports stores worldwide from August 2013 through December 2013 for about $180. Consumers should immediately stop using the recalled binding and contact any Cabrinha authorized dealer for a free replacement binding. A list of authorized dealers can be found at www.cabrin-
Landscape Structures Recalls Oodle Swings Due To Injury Hazard

About 177 Oodle Swings have been recalled by Landscape Structures Inc., of Delano, Minn. The swing seat is suspended too close to the ground, posing an injury hazard to children who can get their legs caught underneath the swing seat. Consumers should stop using this product unless otherwise instructed. It is illegal to resell or attempt to resell a recalled consumer product. This recall involves Landscape Structures' Oodle Swings. The swing frame is a double arch, comes in a variety of colors and measures 9 1/2 ft. high by 13 1/2 ft. long by 4 1/2 ft. wide. The swing seat is an oval-shaped ring, measures 4 ft. wide by about 3 1/2 ft. deep, comes in a variety of colors and is suspended from the frame by four black cables or chains.

The swing seat holds as many as six children. Landscape Structures is printed on label near ground level on the frame. The swing set's model number 173592 is printed in the swing's instruction manual. 'Landscape Structures' is molded in the black rubber bumper of the swing seat. Nine children have broken their legs or suffered sprains when their legs got caught under the swing.

Consumers should stop using the swings immediately and measure the distance between the bottom of the swing seat and the ground. If the distance is less than 12 3/4 inches, contact Landscape Structures for a free repair. Landscape Structures is contacting its customers directly. These swings were sold to schools and other facilities with playground equipment nationwide from February 2011 through November 2013 for about $4,350. Contact Landscape Structures toll-free at 888-438-6574 from 8 a.m. to 5 p.m. CT Monday through Friday, or online at www.playlsi.com and click on U.S. Voluntary Product Recall at the bottom of the page for more information.

Joovy Recalls Zoom Car Seat Stroller Adapter Due To Fall Hazard

About 1,500 Zoom Car Seat Adapter's have been recalled. Adapter clips can loosen on the stroller frame, posing a fall hazard. This recall involves all Joovy's Zoom gray metal car seat stroller adapters. The adapters are gray with black plastic clips designed to attach infant car seats to stroller frames. The adapter frame's dimensions are approximately 17” x 13” x 10”. Recalled car seat adapter models include 00945 for Graco, 00946 for Chicco and 00947 for Peg Perego frames. “Joovy” and the model numbers can be found on the label at the center of the end bar of the adapter. The company has received nine reports of incidents involving loose adapters on stroller frames. There are no injuries reported.

The adapters were sold at independent specialty juvenile retailers and online at Joovy.com between May 2012 and August 2013 for about $25. Consumers should stop using these adapters and contact Joovy for a free repair kit to help assure proper attachment to Zoom stroller frames. Contact Joovy toll-free at 855-251-0759 from 8 a.m. to 5 p.m. CT Monday through Friday or online at www.joovy.com, then click on the “Customer Service” menu at the top of the page, then select “Recall Information” for more information.

New Yorker Boiler Recalls Home Heating Boilers Due To Carbon Monoxide Hazard

About 191 Gas-fired hot water boilers have been recalled by New Yorker Boiler Company Inc., of Hatfield, Penn. The air pressure switch can fail to shut down the burners when there is a blockage in the vent system, allowing the boiler to emit excessive amounts of carbon monoxide and posing a CO poisoning hazard to the consumer. This recall involves New Yorker Boiler PVCGA model cast iron hot water boilers that use natural gas or liquid petroleum to heat water for residential space heating.

The boilers are light blue in color with black trim, about 40 inches tall, about 26 inches deep and range from 12 to 31 inches wide. The model name and U.S. Boiler logo are on the front cover of the boiler. The front cover of the boiler is vented. Recalled boilers were manufactured between December 2005 and February 2013. The model number, serial number and manufacturing date are located on a silver label on the top panel of ESC models and on the inside of PVG and SCG models on the right side panel. The manufacturing date appears in the upper right corner of the silver label in the MM/YYYY format.

The boilers were sold at plumbing and heating wholesale distributors nationwide from July 2012 through Feb. 2013 for between $1,600 and $3,200. Consumers with recalled boilers should immediately contact the installer or distributor from whom they purchased the boiler or New Yorker Boiler Company to schedule a free in-home safety inspection and repair. Consumers who continue using the boilers while awaiting repair, should have a working carbon monoxide alarm installed outside of sleeping areas in the home.

Contact New Yorker Boiler at 800-535-4679 from 8 a.m. to 4:30 p.m. ET Monday through Friday or online at www.newyorkerboiler.com and click on CPSC Product Recall Announcement for more information. Photos Available at: http://www.cpsc.gov/Recalls/2014/NewYorkerBoilerRecalls-HomeHeating-Boilers/
nationwide from December 2005 through February 2013 for between $1,700 and $4,900. Consumers with recalled boilers should immediately contact the installer or distributor from whom they purchased the boiler or U.S. Boiler to schedule a free in-home safety inspection and repair. Consumers who continue use of the boilers while awaiting repair, should have a working carbon monoxide alarm installed outside of sleeping areas in the home. Contact U.S. Boiler, toll-free at 888-452-8887 from 8 a.m. to 4:30 p.m. ET Monday through Friday or online at www.usboiler.net and click on CPSC Product Recall Announcement for more information. Photos are available at: http://www.cpsc.gov/en/Recalls/2014/US-Boiler-Recalls-Home-Heating-Boilers/.

Philips Selecon Recalls Four- and Eight-Leaf Barndoors For Rama Luminaire Stage Lights Due To Impact Hazard

About 5,500 Stage Light Barndoors have been recalled by Philips Entertainment/Philips Selecon, of Dallas. The heat of the stage lights can make the barndoors detach from the light and fall, posing an impact injury hazard to individuals below it. This recall involves 6-inch barndoors with four and eight leaves. The recalled barndoors are used on Rama Fresnel and Rama PC stage lights. The barndoors are made of hinged, rectangular, black metal flaps/leaves attached to a moveable, round, plastic collar. The collar is six inches in diameter. Four-leaf barndoors are part number 20BDSF12 and eight-leaf barndoors are part number 20BDSF128. The part numbers are only on the invoice for the product. Philips Selecon has received three reports of barndoors used outside the United States detaching. No injuries were reported. No incidents or injuries have been reported in the U.S.

Theatrical, electrical and lighting supply dealers nationwide sold the barndoors from January 2003 to January 2013 for between $75 and $105. Consumers should immediately stop using the recalled barndoors and contact Philips Selecon for a free safety cable and installation instructions at 800-478-7263, Monday through Friday from 8 a.m. to 6 p.m. ET, email entertainment.service@philips.com, or online at www.selectonlight.com and click on Barn Door Update for more information.

Nationwide Industries Recalls Trident Pool Gate Latches

About 2,500 Nationwide Industries Trident Pool Gate Latches have been recalled by Nationwide Industries, Inc., of Tampa, Fla. The magnet contained in the striker portion of the latch assembly can come loose, preventing the latch from securing a gate. The recalled magnetic gate latches are 10” or 20” models in black or white. They are marked with the “Trident” name and image on the face of the latch body below the key hole. The latch body, which is typically attached to a fence post, contains a knob and a key cylinder on the uppermost portion and a recessed area on the bottom portion designed to engage and retain the striker. The striker, which contains the magnet, is typically attached to the active gate portion of a fence gate assembly, and moves with the gate as it is opened and closed. The Trident Latches are frequently used to secure gates for pools.

The latches were sold nationwide from February to October of 2013 to professional fence contractors, dealers and gate manufacturers for between $50 to $60. Consumers should contact Nationwide Industries for a replacement striker kit that can be installed with a Phillips head screwdriver. Contact Nationwide Industries at 800-409-3901 from 8:00 a.m. to 4:30 pm ET Monday through Friday, or use after-hours voicemail, via e-mail at Striker@NationwideIndustries.com, or online at www.nationwideindustries.com and click on “Info on Trident Striker replacements” for more information. Photos available at http://www.cpsc.gov/en/Recalls/2014/Nationwide-Industries-Recalls-Trident-Pool-Gate-Latches/

Toilet Bursting Parts Recalled

Flushmate, the maker of a high-pressure flushing system sold at Home Depot and Lowe’s, has expanded its recall of the parts, because they can burst near a seam with force enough to shatter the toilet tank. The company is recalling 351,000 units in the U.S. and about 9,400 units in Canada of the Series 503 Flushmate 111 Pressure Assist flushing systems installed inside toilet tanks that were made from March 2008 through June 2009.

According to the Consumer Product Safety Commission (CPSC), there were no reports of injuries. But Flushmate says it has received three reports of the units included in the recall bursting, resulting in property damage. The move expands upon a June 2012 recall of the same systems made from October 1997 through February 2008. At that time, 2.5 million units in the U.S. and 9,400 in Canada were recalled. The CPSC says consumers should immediately stop using the recalled system, turn off the water supply to the unit, flush the toilet to release the internal pressure and contact the company to request a free repair kit. Flushmate of New Hudson, Mich., is a division of Sloan Valve Co.

RSI Recalls Bathroom Medicine Cabinets Due To Injury Hazard

About 14,000 Bathroom medicine cabinets have been recalled by RSI Home Products, of Anaheim, Calif. The mirror or its back panel can separate and fall out, posing an injury hazard to consumers. This recall involves four models of Glacier Bay®-branded bathroom medicine cabinets, manufactured between July 15, 2013 and October 10, 2013. They have a mirrored door, two adjustable and two fixed interior shelves. Some models have exterior display side shelves. They were sold in 21, 23 and 30-inch widths and in three finishes: cognac, java and white. “VOC” and the manufacture date are stamped on the exterior of the cabinet’s back panel. The models below are included in this recall. The model and SKU number appear on the product’s box.

The cabinets were sold at the Home Depot stores nationwide from August 2013 through October 2013 for between $70 and $90. RSI has received two reports of the cabinet’s mirror or back panel detaching and falling out. No injuries have been reported. Consumers should immediately stop using and uninstall the recalled bathroom medicine cabinet; and return it to The Home Depot for a full refund.

Sears and Kmart Recall Kenmore Oscillating Fan Heaters

About 42,500 Kenmore oscillating fan heaters have been recalled by Sears Holdings, of Hoffman Estates, Ill. Broken motor mounts can cause the units to overheat, catch fire and ignite nearby items, posing a fire and burn hazard to consumers. This recall involves Kenmore oscillating fan heaters with model number 12790914310. The model
number and Kenmore are printed on a silver sticker on the bottom of the unit. The fan heaters are gray and white, measure about 12 inches tall by 9 inches wide, have two dials at the top for temperature and fan speed and a red on-off button on the front base. Kenmore is printed on the front bottom of the fan heaters. Sears and Kmart have received seven reports of the fan heaters smoking or catching fire, including two reports of injuries. Injuries include one report of smoke inhalation and one report of a blister to a consumer's finger.

The fans were sold at Sears and Kmart stores nationwide from September 2013 through November 2013 for between $35 and $40. Consumers should immediately turn off and unplug the recalled fan heaters and return them to any Sears or Kmart store for a full refund. Contact Sears/Kmart toll-free at 888-820-3341 from 7 a.m. to 9 p.m. CT Monday through Friday, and 7 a.m. to 6 p.m. CT on Saturday, or visit the companies' websites at www.sears.com and www.kmart.com click on Product Recall for more information. Photos available at http://www.cpsc.gov/en/Recalls/2014/Sears-and-Kmart-Recall-Kenmore-Oscillating-Fan-Heaters/

**Wal-Mart Recalls Card Table And Chair Sets After Finger Amputations**

Wal-Mart Stores Inc. has recalled about 73,400 Mainstays five-piece card table and chair sets because the chairs can unexpectedly collapse, posing a fall hazard or potential finger injury. According to the Consumer Product Safety Commission, Wal-Mart has received 10 reports of injuries, including one finger amputation, three fingertip amputations, sprained or fractured fingers and one report of a sore back.

The recall includes the Mainstays card table sets with a black padded metal folding table and four black padded metal folding chairs. “Made by: Dongguan Shin Din Metal & Plastic Products Co.,” the company that made the chair cushions, is printed on a white label on the bottom of the chairs. The sets were sold at Wal-Mart stores across the U.S. and on its website from May 2013 through November 2013 for about $50. Consumers should immediately stop using the set and return it to Wal-Mart for a full refund. Individuals may contact Walmart at 800-925-6278 from 7 a.m. to 9 p.m. CT Monday through Friday, from 9 a.m. to 9 p.m. CT on Saturday, and from 12 p.m. to 6 p.m. CT on Sunday.

**Tandem Diabetes Care Recalls Specific Lots Of Insulin Cartridges**

Tandem Diabetes Care®, Inc. has recalled specific lots of insulin cartridges that are used with the t:slim® Insulin Pump. The affected cartridges may be at risk for leaking. The cause of the recall was identified during Tandem's internal product testing, and has not been associated with any complaints or adverse events reported by customers. However, a cartridge leak could potentially result in the device delivering too much or too little insulin, which can lead to a serious adverse event.

The potential for a cartridge leak was identified during in-house product testing, and the cause has been identified. Customers should discontinue using cartridges labeled with the below lot numbers, which were shipped on or after December 17, 2013. The affected lots represent approximately 4,746 boxes of cartridges (10 cartridges per box).

According to the company, no other cartridge lots and the t:slim Insulin Pump are not affected by this recall. Customers who received affected cartridges are being contacted by the Company or its authorized distributors and asked to call Tandem Technical Support to receive replacement cartridges at no charge. Tandem expects to have sufficient quantities of cartridges to replace affected lots in a timely manner. Tandem Customer Support is available 24 hours a day, 7 days a week at 1-877-801-6901.

**Merck Recalls Supply Of Cholesterol Drug Lipriuzet**

Merck & Co. has recalled all lots of its cholesterol drug Lipriuzet in the U.S. and Puerto Rico due to packaging defects that could affect the drug's efficacy. According to the company, the outer foil packaging surrounding the Lipriuzet tablets may allow air and moisture to come into contact with the drug, which could affect its efficacy and physical characteristics. Merck maintained that it had not received any adverse event reports or quality complaints that sparked the voluntary recall decision. The recall will completely deplete wholesalers' supply of Lipriuzet in the U.S. and Puerto Rico, according to Merck. However, patients can still obtain the drug's active ingredients via Merck’s branded drug Zetia and the generic drug atorvastatin.

**Baby Rattles Recalled By Midwest-CBK Due To Choking Hazard**

About 1,900 baby rattles have been recalled by Midwest-CBK LLC, of Cannon Falls, Minn. The head on the rattle can detach, posing a choking hazard to young children. This recall involves donut-shaped polyester knit fabric baby rattles with heads and arms to resemble a bear, monkey and a lion. They measure about 7 inches in diameter by 2 inches thick. Sweet ums and Midwest-CBK are printed on a hang tag on the rattles. A label sewn into the rattles has Midwest-CBK, the production date 04/2013 and the batch #:00001281 printed on it. The company has received one report of the head on a rattle detaching. No injuries have been reported.

The baby rattles were sold by Small gift stores from July 2013 through December 2013 for about $10. Consumers should take the recalled rattles away from young children immediately and contact Midwest-CBK for a full refund at 800-394-4225 from 8 a.m. to 5 p.m. CT Monday through Friday or online at www.mwcbk.com and click on Product Recall Information. Photos available at http://www.cpsc.gov/en/Recalls/2014/Baby-Rattles-Recalled-by-Midwest-CBK/.

**Playtex Recalls Pacifier Holder Clips Due To Choking Hazard**

Playtex pacifier holder clips have been recalled by Playtex Products Inc., of Dover, Del. The pacifier holder clips can crack and a small part can break off, which poses a choking hazard to small children. This recall involves the Playtex pacifier holder clips that attach a pacifier to items like clothing, diaper bags and strollers. It is a plastic clip with a figure and a “Playtex” copyright logo that slides up and down to adjust the clip, a ribbon and a clear plastic ring that stretches to fit the pacifier. The pacifier holder was sold in green with a monkey figure, pink with a flower and blue with a tow truck. Playtex has received 99 reports of the holder cracking or breaking. No injuries have been reported.

The holders were sold at Walmart, Target, Burlington Coat Factory, other major retailers, juvenile product, baby and discount stores nationwide and online at Amazon.com, among others.
from July 2010 through October 2013 for about $3. Consumers should immediately take the recalled pacifier holders away from infants and contact Playtex for instructions on how to return the product for a full refund. Contact Playtex toll-free at 888-220-2075 from 8 a.m. to 6 p.m. ET Monday through Friday or online at www.playtexproducts.com and click on Recall for more information. Photos available at http://www.cpsc.gov/en/Recalls/2014/Playtex-Recalls-Pacifier-Holder-Clips/.

Once again there have been a large number of recalls since the last issue. While we weren’t able to include all of them in this issue, we included those of the highest importance and urgency. On any motor vehicle recalls, owners can get more information by contacting the National Highway Traffic Safety Administration Vehicle Safety Hotline at 1-888-327-4236 (TTY 1-800-424-9153). You can also go to www.safercar.gov for more information on the recalls or to make reports. If you need more information on any of the recalls listed above, visit our firm’s web site at www.BeasleyAllen.com/recalls. We would also like to know if we have missed any significant recall that involves a safety issue. If so, please let us know. As indicated at the outset, you can contact Shanna Malone at Shanna.Malone@beasleyallen.com for more recall information or to supply us with information on recalls.

XVIII.
FIRM ACTIVITIES

PARKER MILLER BECOMES OUR FIRM’S NEWEST SHAREHOLDER

Our firm is pleased to announce that Parker Miller has become a Shareholder. Parker joined the firm’s Toxic Torts Section as an Associate in 2008. His practice focuses primarily on complex litigation and property owner and business-on-business environmental litigation. He has counseled some of the largest business entities in the Southeast and served as co-counsel to Alabama Governor Robert Bentley in the valuation of the State of Alabama’s BP Oil Spill claims. Parker served as Second Chair to Beasley Allen’s Plaintiffs’ Steering Committee position on the BP Oil Spill litigation, which ultimately reached a landmark uncapped, multi-billion dollar settlement with BP for private claims throughout the Gulf of Mexico. In 2012, Parker was selected by the firm as Toxic Torts Section Lawyer of the Year.

Parker graduated from Auburn University in 2005, earning a B.S. in Business Administration. He obtained his J.D. from Jones School of Law at Faulkner University in 2008. While attending law school, Parker studied international law abroad in conjunction with Tulane University at the Universiteit van Amsterdam. He was recognized as one of the nation’s finest student advocates after receiving the Lewis F. Powell Jr. American College of Trial Lawyers Medal of Excellence in Advocacy.

Parker maintains an active role in various local, state and national legal and non-legal societies. He was selected as an Alabama State Bar Young Lawyer executive committee member, as well as a State of Alabama Young Lawyer Delegate to the American Bar Association. Parker is also a committee member to the Alabama State Bar’s Volunteer Lawyers Program—a program dedicated to providing free legal assistance to those who could otherwise not afford it; a member of the Montgomery County Bar Association’s Grievance Committee; Alabama Association for Justice Emerging Leaders; the American Association for Justice and the Association’s Oil Spill Litigation Taskforce; the American Inns of Court, Hugh Maddox Chapter; and former chairman of the Father Walters Charity Golf Tournament.

Parker is the son of Tommy and Mary Miller of Dayton, Ala. He is married to the former Ashley Brownsberger of Tampa Bay, Fla. We are pleased to have Parker as the newest shareholder at Beasley Allen. He is a very good lawyer and has done excellent work for his clients in the BP litigation.

ALLISON HU NNICUT IS A NEW BEASLEY ALLEN LAWYER

Allison Hunnicutt joined Beasley Allen last month and will practice in the firm’s Mass Torts Section. She is assigned to the Actos Litigation, which is pending in federal court in Louisiana. Actos (pioglitazone), manufactured by Takeda Pharmaceuticals and distributed by Eli Lilly and Company, has been under U.S. Food and Drug Administration (FDA) review since September 2010. In June 2011, the FDA issued a warning for Actos after it was linked to an increased risk for the development of bladder cancer.

Allison received her law degree in 1989 from The Emory University School of Law. Prior to law school, she attended Converse College, earning a Bachelor of Arts degree in English and Business Administration. She is from Destin, Fla., and has been a trial lawyer for more than 20 years. Allison’s previous practice areas have included wrongful death, personal injury, insurance bad faith, and products liability. She was named one of Florida Trend Magazine’s Florida Legal Elite, as well as a Jacksonville “Top Lawyer” by 904 Magazine. Allison has been named a Florida Super Lawyer each year since 2007.

Allison is a member of the Texas Bar Association, the Florida Bar Association, American Inns of Court, and the United States District Court, Middle District of Florida. Allison is engaged to Jeffrey A. Williams of Deatsville, Ala., who is a Senior Account Representative and Engineer with Trane. They attend Morningview Baptist Church of Montgomery. We are pleased to welcome Allison to the firm.

XIX.
SPECIAL RECOGNITIONS

THE MONTGOMERY AREA CHAMBER OF COMMERCE DOES GREAT WORK

As you may know our firm is a proud supporter of the Montgomery Area Chamber of Commerce. We have been an economic development partner and have supported the annual fundraising and membership campaigns throughout the years. I am honored to have served on the board of directors for many years, which means a great deal to me. Hopefully, I have been able to assist the Chamber in its work.

In 2013, the Chamber was led by my good friend, Horace H. Horn, Jr. He spent the last 12 months, not only as the Vice President for External Affairs for PowerSouth Energy, but also as the elected leader of the Chamber. During his tenure, Horace concentrated his efforts on downtown redevelopment, education, military and economic development. I have to say, as a board member, business owner and resident of Montgomery, that Horace has done a fine job. Downtown never looked better, new businesses are opening, our public schools have received national awards and important projects surrounding Maxwell AFB have come to fruition, all on Horace’s watch. We commend Horace for a job well done!

Now that the New Year has begun, the Chamber has a new leader at the helm. Leslie Sanders, the Vice President of Alabama Power’s Southern Division, is the 2014 chair of the Chamber. Leslie has plans to continue the Chamber’s role as a facilitator to encourage new ideas and growth in the city. She understands that the Chamber helps mold our future leaders and that giving those folks an avenue to express their ideas is very
important. Leslie will also continue the drive to improve our public schools by supporting programs that develop our labor force and facilitating a partnership with area organizations for after school programs.

Leslie is also dedicating energy to protecting the missions at Maxwell AFB and Gunter Annex with the possible military consolidation cuts looming in 2015 or 2016. Leslie’s final goal is to work with the Montgomery Regional Airport to increase flight service and improve customer service. While there is much work ahead, all of us at Beasley Allen are convinced that Leslie will do an outstanding job.

**A Worthy Cause Supported**

During the holidays, Kendall Dunson, one of our lawyers, and his wife, Samarria, worked on a very special project helping 57 homeless children from one Montgomery elementary school. Kendall and Samarria, along with several other lawyers in the firm and The Links, Incorporated Montgomery Chapter provided Christmas stockings with basic hygiene products to all of the children in the school. The products included soap, lotion, deodorant, toothpaste and toothbrushes. In addition, they made sure that each child received a Christmas gift. Most of the children would not have had a gift to open had it not been for their good work.

Kendall is a lawyer in our Personal Injury/ Product Liability Section and does a very good job for the firm, but he still has time to contribute to the community and help raise his family. Samarria, also a lawyer, is Assistant General Counsel for the Alabama Department of Public Health. In addition to other organizations, Samarria is a member of The Links, Incorporated, a national organization of African American professional females who provide services to individuals in their communities. Samarria is joined by many other outstanding and dynamic African American professional women, including other lawyers, Judges and community leaders. She heads up the Health and Human Services facet, one of five facets that the organization supports. Samarria and Kendall, along with others in our firm, worked hard to make this a blessed Christmas for those 57 children.

**Grant Enfinger Is A Rising Star**

Grant Enfinger, whose early stock car racing career was assisted by the firm’s sponsorship, is preparing for another year of racing across the country. He is currently preparing for the ARCA race at Daytona Feb. 22.

Grant, who rose through the ranks of go karts, Legends Cars and Late Models, has competed in ARCA and NASCAR Truck races for the past few years. Beasley Allen was happy to have its logo on Grant’s car for several top finishes on national television at major speedways. Grant took first place at the Mobile ARCA race last year and won the ARCA Iowa race on television a few months ago. Grant now races for Team BCR, which operates out of the Charlotte, N.C., area where most top stock car organizations are located. Grant said that his full 2014 racing season is not yet finalized. “We are going to Daytona with a great car and I want to win back-to-back at Mobile. Casite/Motor Honey will be sponsoring us at Daytona and we hope to extend that relationship for more races this year. I could not be living my dream of being a professional racer if not for Beasley Allen giving me the leg up to show the folks in Charlotte that I belong here.”

We wish Grant the very best as he continues to rise in his chosen field of work. You can follow his progress this season by following him on Twitter @grantenfinger, through his website www.grantenfinger.com or through www.arcaracing.com.

**XX. FAVORITE BIBLE VERSES**

Ben Locklar, a lawyer in our firm, furnished a verse for this issue. Ben says in reading Job 1:5b he was convicted that those of us who are parents need to intercede for our children as part of our “regular custom.” He says we should ask God to forgive our children if they have acted inappropriately toward their Heavenly Father in any way. Job was a man who God referred to as His servant, describing him as someone who was “blameless and upright, a man who fears God and shuns evil.” Job 1:8. So if God approved of Job interceding for his children, all of whom were adults at that time, Ben says that we, as Believers, should be interceding for our children. While we no longer need to offer sacrifices, as was the case in Job’s day, we need to pray for our children daily.

**Early in the morning [Job] would sacrifice a burnt offering for each of them, thinking, ‘Perhaps my children have sinned and cursed God in their hearts.’ This was Job’s regular custom.**

*Job 1:5b*

Matt Horne, who serves as Barbour County District Court Judge, sent in Psalms 23:4 to be included in this issue. Matt, who was a very good lawyer before becoming a judge, is doing an excellent job on the bench.

**Yea, though I walk through the valley of the shadow of death, I will fear no evil; For You are with me; Your rod and Your staff, they comfort me.**

Psalms 23:4

Kathy Eckermann, who is my Executive Assistant, furnished a timely verse for this issue.

**Blessed is the man who trusts in the Lord, And whose hope is the Lord.**

*Jeremiah 17:7*

My good friend, Paula S. Hill, who is a Vice President at Sterling Bank in Montgomery, furnished her favorite verse this month.

**The Lord is my strength and song, And He has become my salvation. The voice of rejoicing and salvation Is in the tents of the righteous; The right hand of the Lord does valiantly. The right band of the Lord is exalted; The right band of the Lord does valiantly.**

Psalms 118:14-16

Vicki Dearing, a new lawyer in our firm, sent in some verses that are set out below. Incidentally, Vicki is married to David Dearing, who also is a Beasley Allen lawyer. The verses Vicki sent tell us a great deal about Jesus’ mission on this earth. She says they also give each of us a challenge.

**So He came to Nazareth, where He had been brought up. And as His custom was, He went into the synagogue on the Sabbath day, and stood up to read. And He was handed the book of the prophet Isaiah. And when He had opened the book, He found the place where it was written: “The Spirit of the Lord is upon Me, Because He has anointed Me To preach the gospel**
to the poor; He has sent Me to heal the brokenhearted, To proclaim liberty to the captives And recovery of sight to the blind, To set at liberty those who are oppressed; To proclaim the acceptable year of the Lord.” Then He closed the book, and gave it back to the attendant and sat down. And the eyes of all who were in the synagogue were fixed on Him. And He began to say to them, “Today this Scripture is fulfilled in your hearing.” So all bore witness to Him, and marveled at the gracious words which proceeded out of His mouth. And they said, “Is this not Joseph’s son?”

Luke 4:16-22

Lynn Mathison, who owns Mathison Interiors in Montgomery, sent in two verses for this issue. Lynn is married to my good friend John Ed Mathison, who incidentally is my only retainer client. John Ed pays me a one dollar a year retainer. Fortunately, the retired pastor doesn’t get in any real trouble, so it’s a good deal for me.

For I know the thoughts that I think toward you, says the Lord, thoughts of peace and not of evil, to give you a future and a hope. Then you will call upon Me and go and pray to Me, and I will listen to you.

Jeremiah 29:11 & 12

Let your conduct be without covetousness; be content with such things as you have. For He Himself has said, “I will never leave you nor forsake you.” So we may boldly say: “The Lord is my helper; I will not fear. What can man do to me?”

Hebrews 13:5-6

XXI.
CLOSING OBSERVATIONS

Adullam House Makes A Difference In The Lives Of Children Whose Parents Are Incarcerated

A ministry that is very close to the hearts of all of us at Beasley Allen is the Adullam House. This ministry provides a home and family for children whose parents are incarcerated. The ministry helps youngsters from infants through teenagers, providing not just a roof over their heads, but a family, love, education and a relationship with Jesus Christ.

The ministry was begun many years ago by Pete and Angie Spackman, who came to the United States from Great Britain to minister in the prisons in Alabama. While in the midst of that ministry, their hearts were touched by the stories of inmates who had children they were unable to care for. The Spackmans opened their own home to begin caring for these children, and the ministry grew from there.

Currently, Adullam house operates on 18 acres of donated land near Wetumpka, Ala., just north of the Capital City of Montgomery. The property has facilities to house older children, ages 4 and older, as well as another building housing a Nursery for infants from birth through age 3. Each dorm can house 24 children. There is also a dorm for full-time intern caregivers as well as a chapel. There is even a swimming pool on site, added in the summer of 2008 through a donation by a special benefactor who wanted to provide something special just for the children.

In October 2011, Adullam House broke ground on a new 12.5-acre school campus, establishing Adullam House Christian Academy. The school provides individualized, Christ-centered curriculum at three levels: preschool, young elementary, and older elementary through high school. Youngsters enjoy small classes that provide them lots of one-on-one interaction with teachers.

Once a month, Adullam House caregivers take the children to visit their mothers in prison, generally at Julia Tutwiler Prison in Wetumpka, the only Alabama State Women’s Prison. These visits are the highlight of the mothers’ week, and they often express peace at knowing their children are well cared for and given the love they are unable to give them.

It should be noted that since they do not rely on any government aid, all of the funding of the Adullam House ministry comes from donations. In July of 2013, a thrift shop was opened in the city of Wetumpka, which provides additional income for the ministry. It also serves as a way to create awareness about the mission of Adullam House. In addition to financial donations, Adullam House also welcomes donations of supplies such as diapers, household supplies, food, clothing and toys for the children.

Adullam House also welcomes teams of workers who are willing to donate their time as construction workers on projects inside and outside. Currently, they are looking for workers and supplies that can help provide new paving and asphalt repair on the facility’s driveway. Overnight accommodations are available for worker teams.

For more information about Adullam House, including how to donate, visit www.adullamhouse.org or call Pete and Angela Spackman at 334-514-3070. You can also email angie@adullamhouse.org. If you prefer to mail a donation, send it to Adullam House, P.O. Box 1248, Wetumpka, AL 36092.

MONTHLY REMINDERS

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

2Chron7:14

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

Edmund Burke

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

Isaiah 10:1-2

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

Louis Brandeis, 1937

U.S. Supreme Court Justice

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

The wisdom of our Sages and the blood of our heroes has been devoted to the attainment of trial by jury. It should be the creed of our political faith.

Thomas Jefferson First Inaugural Address 1801

I am still determined to be cheerful and happy, in whatever situation I may be; for I have also learned from experience that the greater part of our happiness or misery depends upon our

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dispositions, and not upon our circumstances.

Martha Washington (1732—1802)

XXII.
PARTING WORDS

Beasley Allen Started In 1979

Our law firm celebrated its 35th anniversary last month. I thought it might be interesting to give a little history on how the firm got started. The firm was started on Hull Street in Montgomery, Ala., on Jan. 15, 1979. I was the only lawyer in the beginning. There were two employees—a secretary and a legal assistant—and things back then were not so complicated. In fact, it was a pretty simple life at the firm in those days.

There are now 253 employees at Beasley Allen, including more than 70 lawyers. By choice, our firm operates out of one location and that’s in Montgomery. We have not opened offices in other cities or states and don’t plan to do so. While Beasley Allen has become a national firm, rather than opening more offices, we prefer to work with lawyers in other states. We have had cases in a large number of states and have worked with hundreds of great lawyers over the years.

God has truly blessed our firm and the clients we have represented over the past 35 years. We have helped lots of folks who badly needed help. We also have been responsible for bringing about badly needed safety changes in a number of areas of concern. I believe that doing things the right way for the right reason has worked for us. We have operated in that manner for 35 years and will continue to do so in the years to come.

I am thankful to have had the opportunity to start the firm and have been truly blessed to be a part of things at Beasley Allen for the entire 35 years of the firm’s existence. I still enjoy my work and especially enjoy trying cases. The firm’s mission has been “helping those who need our help the most,” and that keeps me focused and on the right path.

I learned a long time ago that lawyers need to set priorities in their lives and that includes their workplace. I believe the proper priorities are to put God first, family second and with work coming in last. I must confess that sometimes it’s hard to follow the priorities we set. Human nature tells us to reverse or alter the order of priorities and we must resist the urge to do that.

I know from experience that when you put God first, the other areas will fall in place and things become much easier to deal with. Trusting God and following His will and direction for us in all areas of our lives, at all times and under all circumstances, really works. Back in late 1978, when I had just lost my race for Governor of Alabama, was flat broke and couldn’t get a job with any of the law firms I contacted, I really learned to really trust God and obey Him. My life has never been the same once I came to that understanding. I thank God for that!

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No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.
Jere Locke Beasley, founding shareholder of the law firm Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. is one of the most successful litigators of all time, with the best track record of verdicts of any lawyer in America. Beasley's law firm, established in 1979 with the mission of “helping those who need it most,” now employs over 75 lawyers and more than 200 support staff. Jere Beasley has always been an advocate for victims of wrongdoing and has been helping those who need it most for over 30 years.