I. CAPITOL OBSERVATIONS

JOE BORG PROTECTS ALABAMA CITIZENS

Joe Borg, Director of the Alabama Securities Commission, has long been a thorn in the side of scam artists operating in our state. Joe says he has seen lots of scam artists during the past 20 years. He points out that besides religion—which is the most successful method for scams—fraudsters are adept at coming up with various ways to bilk funds from folks. The fraud level in the United States is reported to be somewhere in excess of $20- to $25 billion a year. Joe says the following areas are where fraud is prevalent:

- **Natural disasters.** For two years after Hurricane Katrina, investigators found dozens of frauds related to real estate, redevelopment and recovery-related businesses offering promises of big returns on just a little invested.
- **Gas prices.** When gas prices were more than $5.50 a gallon, the Commissioner opened up one or two oil and gas scams a week. Everybody knows gas is going up. So they promise they have found oil in places with new technology to get it out, or new technology that can find oil where it hasn’t been seen before.
- **Small business fraud.** An entrepreneur has an idea for a business, but cannot get capital because of tight credit. That leads them to go to other, non-traditional sources besides banks for their startup costs.
- **Overseas credit documents.** These usually involve paying money up-front on the promise of more money later. We see these scams almost weekly.

Regardless of the avenue a scammer utilizes, Joe says they find willing investors because lots of folks are looking to turn their money worries over to someone else. The elderly who fear outliving their savings and the middle-aged population who have seen their investments shrink during the economic downturn and have little saved for retirement are prime targets. Joe observed that folks are “desperate for some safe and relatively easy way to make money. That makes them susceptible.”

Additionally, young adults have become victims of the scam artists. Many in this age group will have lingering student debt and don’t trust about the stock market and traditional investments. They also are fully aware of the economic downturn of 2008 and want to know what else is out there for them. Joe says con artists understand “human psychology” at every age level and use that knowledge in promoting their scams.

Joe and the staff at the Commission have done outstanding work in the past two decades and work hard to protect the people of Alabama against the scam artists. If you need more information about investment frauds, or you need to report suspicious activity, go to the Commission website at asc.alabama.gov. You can also call the Commission at 800-222-1253 or write them at P.O. Box 304700, Montgomery, AL, 36130-4700. Source: AL.com

II. A REPORT ON THE GULF COAST DISASTER

OIL SPILL MEDICAL SETTLEMENT MOVES FORWARD

Recently, the Fifth Circuit Court of Appeals dismissed objector appeals to the Plaintiff Steering Committee’s landmark Medical Settlement reached with BP. Objectors had previously appealed the Settlement, claiming it did not compensate class members properly and fairly. However, the objections fell apart when a dispute arose between lawyers pressing the objections, and their objector clients. With these obstacles resolved and the effective date set at Feb. 12, 2014, the Medical Settlement can finally move forward toward compensating cleanup workers and residents physically harmed by the oil spill.

Class members are typically divided into two distinct categories—cleanup workers and residents that lived in close proximity to oiled shorelines. The settlement provides upfront compensation for claimants in these categories who suffered the common conditions and symptoms from exposure to oil and dispersant chemicals. In addition, the settlement provides for a free 21-year medical consultation program designed to monitor affected residents and cleanup workers suffering from spill conditions.

Participants begin with a thorough baseline test, with follow-up visits every three years. The medical consultation program is a crowning achievement of the settlement, as...
III.
PURELY POLITICAL
NEWS & VIEWS

A QUIET ELECTION YEAR IN ALABAMA

It appears that 2014 will be a relatively quiet political year in Alabama. While there will be a few races getting attention in the primaries, most of the interest will be in the general election. A number of incumbents, at the state and local levels, will be re-elected without opposition.

The Governor’s Race

It appears that Gov. Robert Bentley will cruise through the Republican primary with no difficulty. He will then face Dr. Parker Griffith, who will win the Democratic primary, in the Fall. If the general election was held today Gov. Bentley would be the winner with about 58 percent to 60 percent of the vote according to several polls. Dr. Griffith will have some issues, but that according to the polls play well with Democrats and Independents and even with some Republicans in Alabama.

The Lt. Governor’s Race

James Fields, a former state representative from Cullman, will challenge Lt. Gov. Kay Ivey in the general election. If I were Gov. Ivey, I wouldn’t take the Democratic challenger lightly. If he gets adequate funding, this could develop into a fairly close race. James Fields will be a very good candidate and comes from vote-heavy North Alabama. But Gov. Ivey will be able to easily raise campaign funds and that gives her an early advantage.

The Attorney General’s Race

The race for Attorney General will be hotly contested according to several Capitol sources. But Luther Strange, the incumbent, clearly has the upper hand. His opponent, Rep. Joe Hubbard, is an aggressive candidate who reportedly has access to significant campaign funds. This is another race where the incumbent won’t be able to “coast” through the election cycle and be re-elected. Atty. Gen. Strange will have to work hard to get a second term, but he is clearly a heavy favorite at this juncture.

The U.S. Senate

Jeff Sessions has no opponent and will be re-elected for another term in the U.S. Senate. Jeff has played well to his base and apparently most folks like what they not only hear but receive from him. To his credit, there is never any doubt where this senator stands on any given issue. He is in a position to be even stronger in his next term.

Judicial Races

There will be no statewide race for an appellate court position in Alabama this year. The only contested seat was to be on the Criminal Court of Appeals. Incumbent Beth Kellum would have faced Kim Drake in the general election. But the Republican Party kicked the challenger off the ballot for not being “Republican enough.” As a result, Judge Kellum will get a second term. Since Justice Greg Shaw has no opposition, he will return to the Alabama Supreme Court for his second term.

Other Races

The Congressional Races and Legislative Races will be discussed in the April issue. There will be a few hotly contested races in the legislative races, especially in the Senate. Currently the races for the U.S. House of Representatives, with the exception of the seat being vacated by Spencer Baccus, don’t appear to be generating much interest with the public.

BIG MONEY INTERESTS ZERO IN ON THE RACES FOR SECRETARY OF STATE

Big money, top strategists and party insiders are getting involved in what could be the most hotly contested 2014 races on the state level—secretary of state. That probably comes as a big surprise. These offices around the country have suddenly captured the attention of some of the country’s major political players. National PACs have been created and multimillion-dollar fundraising plans are being made. The nation’s secretaries of state came to Washington last month for the National Association of Secretaries of State winter conference. Interestingly, during this election year, the “Washington crowd” will be going to them.

Winning these offices could give an edge in the 2016 presidential race to one of the major parties. That’s because secretaries of state run elections, can shape voter ID rules, and create other road blocks for potential voters. When margins are tight, those small differences can mean the difference between a win and a loss. So while some candidates and state parties say they fear the new outside money and players are going to turn these local races into expensive—and
nasty—displays. The outsiders, however, say that is a chance worth taking when the stakes are as high as, say, the White House.

While the role of the secretary of state varies from state to state, the officials are primarily tasked with administering elections in their state. For years the importance of that function went pretty much out of the public eye. The Bush-Gore battle in Florida, which resulted in the election of George W. Bush, got the attention of the bosses in both the Democratic and Republican parties. Since then much more attention has been paid to the office of secretary of state, making the office much more important.

The secretary of state serves as the chief election officer in 39 states, oversees the canvassing of election results in 38, and in 24 states receives initiatives and referendum petitions and collects candidate filings and campaign finance disclosure reports. According to the National Association of Secretaries of State, responsibilities of the offices can include everything from shaping and implementing voter registration rules, maintaining state voter rolls, certifying ballot initiative language and certifying elections.

It was reported that since December, three PACs have launched focused entirely on secretary of state races. For example, the conservative super PAC SOS for SoS was founded by Gregg Phillips, a veteran of the pro-Gingrich PAC Winning Our Future. Reportedly, the new PAC hopes to spend $5 million to $10 million in nine key states in 2014: Arizona, Arkansas, Colorado, Iowa, Kansas, Michigan, New Mexico and Ohio.

The Republican Secretaries of State Committee, a division of the Republican State Leadership Committee, said it aims to maintain the majority of secretary of state seats it currently holds. At present, 28 out of the 50 secretary of state offices are occupied by Republicans. According to a strategy memo from the RSSC, released to POLITICO, with 18 GOP-held seats up for election in 2014, the group plans to support incumbents in Michigan, Ohio and New Mexico, and to target open races in Nevada, Arizona, Colorado and Iowa.

It should be no big surprise to learn that many of the states being targeted just happen to be “battleground states.” The groups are looking to make a difference in contentious races in states that will be important in an open 2016 presidential election. So in the battleground states an office that in many states was virtually ignored will be considered very important this year for reasons stated above.

Source: Politico.com

IV. LEGISLATIVE HAPPENINGS

PREDA TORY LENDING REFORM BARELY CLINGING TO LIFE IN ALABAMA LEGISLATURE

Once again, an effort is being made in the Alabama legislature to reform the predatory lending practices of so-called “payday loans” and “title loans.” These lenders prey on the poor, offering easy money on the front end, but tied to the burden of sky-high interest rates and confusing terms for paying off principal versus interest. Borrowers often find their loans rolling over multiple times until they are hopelessly drowning in debt. These predatory lenders have one goal and that’s to get folks in debt and keep them in debt.

In Alabama, payday and car title lenders can charge interest at an annual percentage rate (APR) as high as 456 percent. Title loan companies can charge up to 500 percent APR. Shay Farley, legal director for Alabama Appleseed, which has been strongly advocating for reform in these industries, described these interest rates as “usury and immoral.” I agree wholeheartedly. It’s shameful for the politically powerful predatory lenders to take advantage of folks like they are now allowed to do. It’s even more shameful for political leaders to help them do it!

Payday lending reform has been on the agenda at Alabama’s State House for the last several years. But, astoundingly, the legislation never seems to get any traction. Once again this year, two bills were introduced to address predatory lending. Those are discussed below:

Patricia Todd (D-Birmingham) sponsored one of two bills in the House that would restrict payday lending to 100 percent interest per year, and would limit individuals to having five payday loans per year. In addition, the bill would mandate a database that lenders could use to track who had taken out payday loans, so one person could not exceed the allowable number of payday loans by going from lender to lender. Currently, there is no reliable system in place to share information between payday lenders.

Rep. Rod Scott (D-Fairfield) sponsored a bill to restrict car title loans to 36 percent interest. It also would establish a central database to enforce existing limits on the number of loans one person can take out. Additionally, this bill would cap APR at 24 percent on loans of $2,000 and 18 percent APR on loans of $5,000.

Rep. Todd told AL.com that “In order to get people out of poverty we need to regulate these lending practices.” He pointed out that “the states do it for insurance and for banking,” and he added “Why not for this industry?”

We wrote in another section about an editorial published on Feb. 12 in the Montgomery Advertiser. Rep. Scott had this to say in a statement given to the Advertiser:

This week, my colleagues on the Financial Services Committee in the Alabama House of Representatives will have an opportunity to make a real difference for the state. This morning, they will have the opportunity to move forward important legislation that will protect some of the state’s most vulnerable citizens—working single mothers, veterans, members of the military, senior citizens, etc.—and grow Alabama’s economy through common sense reforms to the predatory title lending industry.

Unfortunately, as of press time for this issue, Rep. Todd’s bill to cap interest rates that payday lenders can charge appears to be headed for a political graveyard. The bill was sent to a House subcommittee, with little, if any, chance of making it out for a vote of the full House. But Rep. Scott’s title loan bill—HB 406—was carried over after the House Financial Services Committee voted to send Rep. Todd’s payday bill to subcommittee.

Interestingly, Sen. Scott Beason, who is one of the most conservative members in the legislature, agreed to sponsor both bills in the Senate. Hopefully, he will have more success in the upper chamber. Both Rep. Farley and Rep. Scott told the Advertiser they feel the title loan industry is more willing to discuss regulation than is the payday loan industry. Frankly, I have serious doubts that the powerful lobbyists for the industry will agree to any reform. But these two reformed-legislators are hopeful the title loan bill will succeed, providing at least partial relief to consumers. Supporters of the legislation include Alabama Appleseed, Alabama Citizens’ Action Program, Alabama Federation of Republican Women, Alabama Arise and AARP of Alabama.

Nationwide, payday lenders target about 12 million customers per year, generating approximately $3.4 billion in annual revenue. Recently the Consumer Financial
Protection Bureau has made the industry one of its top targets, working to implement new rules and cracking down on what it perceives as abusive conduct. Based on recent polls, an overwhelming majority of Alabama citizens are for the reform efforts. However, the predatory lending industry has invested campaign funds wisely and that may spell doom for any reform. With such strong support from individual folks and many groups around the state asking for reform, my question is: why don’t the legislators support reform? What do you think?

Sources: AL.com, Montgomery Advertiser, and ThinkProgress.org

V. COURT WATCH

PROPOSED CHANGES TO THE FEDERAL RULES OF
CIVIL PROCEDURE

It would seem fairly elementary to say that the court system in this country must remain open and fair to all persons who seek justice. But in the past 20 years a system has developed that has become “hostile” to ordinary folks in some jurisdictions—both federal and state. That’s a sad commentary on a system that should be totally independent and fair to all. Recently, some amendments to the Federal Rules of Civil Procedure were proposed by the Federal Rules Committee. The proposed changes relate to the scope of discovery as defined by Rule 26 (b) (1), the reduced presumptive limits on discovery devices, and the elimination of Rule 84 and the Forms.

In my opinion, the current rules already favor corporate Defendants in complex litigation and specifically in cases involving defective products and unsafe drugs. I have great difficulty in understanding exactly what problem the committee seeks to solve. As in 1993 and 2000, the committee is focused on addressing a perceived problem of excessive discovery costs. This problem is caused in large part by recurring abuses of the discovery rules by corporate Defendants.

Studies have shown clearly that in almost all cases recovery costs are modest and proportionate to the issues involved in the specific case. As in those two studies, there is scant evidence of system-wide abuse by lawyers representing Plaintiffs that increases costs. The proposed amendments are not designed to address the small subset of problematic cases that appear to be driving the rule changes. The fact that abuse by corpo-

rate Defendants during pretrial discovery is ignored by the committee is troubling.

In my opinion, the amendments are unnecessary, unwarranted and absolutely counterproductive. If reform of the rules is needed, I suggest that the committee look at the pattern of discovery abuses by corporate Defendants. These amendments, if adopted, will undermine meaningful access to the courts by ordinary folks. Such changes will also impede enforcement of federal and state recognized rights. Hopefully, the committee will realize that these changes are totally unnecessary and reject them.

A CONTROVERSIAL SENTENCE IN AN ALCOHOL-
RELATED CASE

It’s quite evident that drinking and driving are a deadly combination and the consequences for victims of alcohol-related car crashes are always very bad. A judge in Texas has ordered a teenager, who was sentenced to 10 years probation in a drunken-driving crash that killed four people and injured several others, to go to a rehabilitation facility to be paid for by his parents. On Feb. 5, Judge Jean Boyd once again gave no jail time to Ethan Couch. Prosecutors had asked Judge Boyd to sentence Couch to 20 years in state custody.

This controversial sentence has caused fierce debate in Texas. Also the testimony of a defense expert who maintained that Couch’s wealthy parents “coddled him into a sense of irresponsibility” has been widely criticized. This expert termed the condition “affluenza” and it was used as a defense in the case. The boy’s family previously had offered to pay for the teenager to go to a $450,000-a-year rehabilitation center near Newport Beach, Calif. Couch, under his sentence, is expected to receive alcohol and drug rehabilitation. He could face prison time if he runs away from the facility or violates any other terms of his probation.

According to Riley Shaw, the prosecutor in the case, there is no minimum amount of time Couch must spend in the facility before his release. Couch’s defense lawyer blasted the news media and the public for their focus on “affluenza,” saying that his client was “misunderstood.” I have to wonder how the families of the victims react to that type of “defense” of wrongdoing.

It should be noted that Couch’s blood-alcohol level was three times the legal limit for an adult. There were also traces of Valium in his system when he lost control of his pickup truck and crashed into a group of people who were helping a woman whose car had stalled. Seven passengers were riding in Couch’s truck. One of them, Sergio Molina, is paralyzed and can communicate only by blinking. Another, Solimon Mohmand, suffered numerous broken bones and internal injuries. Sadly, there were four people killed in the crash.

Regardless of the age or position of the drunk driver, I believe some jail time should be imposed for this type offense. Also, parents must share some of the blame for the actions of their children. In one year—2012—10,322 people were killed in drunk driving crashes. That’s one person every 51 minutes. Many of the offenders were youngsters. This is a major safety problem that can’t be ignored.

Source: Claims Journal

VI. THE NATIONAL SCENE

OIL COMPANIES FACE FINES FOR MISTAKING
CRUDE RAIL SHIPMENTS

The U.S. Department of Transportation (DOT) has proposed fining three oil companies a combined $93,000 for allegedly misidentifying Bakken Shale crude oil slated for rail transport. This comes as the agency probes the growing oil-by-rail activity that has resulted in the past months in a number of fiery derailments. The Pipeline and Hazardous Materials Safety Administration (PHMSA), a division of the DOT, has issued notices of probable violations against Hess Corp., Marathon Oil Corp. and Whiting Gas and Oil Corp. An investigation revealed that crude oil taken from cargo tanks scheduled for rail loading facilities was not properly classified by the companies.

Shippers are required to use nine hazard classes in order to properly classify hazardous materials. Shipping crude oil—or any hazardous material—without proper testing and classification could result in it being shipped in containers that aren’t designed to safely store it. Also that could lead emergency workers to follow the wrong protocol when responding to a spill, according to the DOT. Transportation Secretary Anthony Foxx said last month in a statement:

Transportation has an important role to play in helping meet our country’s energy needs, thanks to the increased production of crude oil, but our top priority is ensuring that it is transported safely. The fines we are propos-

ing today should send a message to everyone involved in the shipment of crude oil: You must test and classify this material properly if you want to use our transportation system to ship it.

As has been widely reported, because of the U.S. energy boom in this country, rail transportation of crude oil has grown dramatically. With U.S. crude oil production at its highest levels in two decades and outpacing pipeline capacity, the U.S. Energy Information Administration said nearly 1.4 million barrels per day of crude oil and refined petroleum products were transported by rail in the first half of 2013. This compares to 927,000 barrels a day in the first half of 2012—almost a 50 percent increase.

Much of that growth has occurred in the Bakken. PHMSA launched an investigation that tested samples from various points along the crude oil transportation chain to verify that crude oil was being properly classified. Inspectors found that 11 of the 18 samples taken from cargo tanks delivering crude oil to rail loading facilities weren’t assigned to the correct packing group, according to PHMSA. Administrator Cynthia Quarters made this observation in a statement:

These initial findings remind us how important it is to follow the hazardous materials regulations and to do it in the proper sequence. The process begins by testing, characterizing and then properly classifying the hazard and putting it in the kind of container that will offer the highest level of safety.

PHMSA is expanding the scope of its probe to include testing for other factors that affect classification of hazardous materials for transport, including corrosivity. Three separate fiery crashes brought a great deal of media attention on the subject of crude oil rail transport. The most recent derailment occurred Dec. 30 when a BNSF Railway Co. train carrying crude oil from the Bakken Shale collided with another train near Casselton, N.D. This caused several train cars to derail and catch fire. Just a month earlier, a crude-oil-carrying train owned by Genesee & Wyoming Inc. derailed in west Alabama, causing several of the railcars to burst into flames. Fortunately, no one was injured or killed in those crashes.

But that wasn’t the case in July 2013, when a Montreal, Maine and Atlantic Railway Ltd. freight train hauling 72 tankers of crude oil derailed in Lac-Megantic, Quebec, a town of approximately 6,000 people located 10 miles from Maine’s western border. The derailment set off massive blasts. A part of the downtown was destroyed and 47 people were killed.

After a recent meeting with Secretary Foxx, oil and rail industry representatives agreed to enact a series of voluntary safety measures. But so far, there are no mandatory regulations in place. PHMSA said in a Federal Register posting in January that it wouldn’t finalize rules governing the construction of rail tanker cars until at least January 2015. That is a long way off and more derailments will very likely happen in the interim. Meanwhile, the National Transportation Safety Board (NTSB), the agency responsible for investigating train crashes and other transportation accidents, is urging the DOT to adopt tougher safety measures for trains carrying crude oil. One of the measurers would reroute trains around populated areas.

Hopefully, the DOT is really listening now and will act promptly, making the railroads put safety as a top priority on their agenda. Clearly, this is a most serious problem that must be dealt with. I believe most U.S. citizens expect the DOT to take the steps necessary and to do so promptly.

Source: Law360.com

**Efforts Underway To Enact Uniform Data Security Law**

Data thefts at U.S. retailers, without any doubt, have gotten the attention of members of Congress. There is another push for a single federal law to protect customers from such breaches. But, as expected, those efforts face the same roadblock as in the past. There are already dozens of overlapping state laws in place that proponents of a federal law say complicate things. Congressional hearings and calls for new authority and powers by consumer protection agencies followed quickly after the breaches at Target Corp., Neiman Marcus and Michaels Companies came to light.

Several Senate bills that failed to get traction in past years have been revived. Powerful Democrats on commerce, judiciary, intelligence and homeland security committees are now attempting to get something done. But the new bills are pretty much like the ones that failed to advance on more than one occasion in previous sessions. The question remains—should a federal law pre-empt state regulations? Clearly, “Pre-emption” will be a major part of any discussions in Congress.

Although federal laws already regulate how specific industries, such as banks and hospitals, handle compromised data security, certain other kinds of companies, including retailers, face no such uniform standard. Instead, 46 states and the District of Columbia have passed their own laws that tell companies when and how consumers have to be alerted to data breaches and what qualifies as a breach. With that background, the negotiations surrounding fitting state standards under an umbrella federal law face a struggle between companies, consumer advocates and state authorities. I am not at all sure how that debate will work out. Large companies working across state lines contend that state laws present a patchwork of regulations, and compliance with those laws poses a challenge. For example, companies often issue one nationwide notice to consumers with state-specific supplements at the end. The matrix of state laws makes that much more difficult.

The National Retail Federation, in a January letter to Congress, restated its decade-old position in favor of a nationwide standard that would pre-empt state rules. The lobbying group wrote to lawmakers:

* A preemptive federal breach notification law would allow retailers to focus their resources on complying with one single law and enable consumers to know their rights regardless of where they live.

A number of state attorneys general are concerned that federal standards would dilute their power to pursue violators. For example, Illinois Attorney General Lisa Madigan said that states must keep their ability to enforce. She said that so long as the state attorneys general retain the ability to respond to their consumers, a federal law would be acceptable. It should potentially be seen as a floor and not a ceiling, she said.

Consumer advocates say that the call for a single law by companies masks the goal of having a weaker federal standard that would trump stronger laws on the books in states like California and Massachusetts. Those two states have very good laws. Edmund Mierzwinski, consumer program director at U.S. Public Interest Research Group, observed:

* None of the federal proposals are as strong as the strongest state laws and that’s wrong. I don’t think we need (a federal law) that’s weaker than California’s.

California was the first state to adopt a data breach law in 2003. After a decade of fine-tuning, that law requires a detailed disclosure to consumers “in the most expedient time possible and without unreasonable delay.” When personal information, including
emails with passwords, is “reasonably believed” to have been stolen. Even though many state requirements are broadly similar, some states, such as Montana and Ohio, require notification only if a breach poses or is believed to pose harm or material risk such as identity theft.

Many states also use more limited definitions of what personal information is included. A common definition includes name combined with the Social Security number, driver’s license number or payment card number together with information needed to access financial records. My state of Alabama, along with Kentucky, New Mexico and South Dakota, does not have its own data breach notification laws.

It will be interesting to see how all of this works out. It would seem that a strong federal law that doesn’t preempt state laws could be developed in a relatively short time span. The consuming public deserves to be protected, and they may even demand it if more serious breaches occur. Hopefully, those in positions of authority at both the federal and state levels will cooperate and get something done.

Source: Insurance Journal

NEW YORK ATTORNEY GENERAL BACKS PLAN FOR LENDERS TO CARE FOR FORECLOSED HOMES

Lenders would have a duty to care for homes abandoned in foreclosure under legislation supported by New York Attorney General Eric Schneiderman. The Attorney General also wants to increase tracking of such real estate, as well as funding of state land banks, in the effort to reduce the number of so-called “zombie properties.”

Attorney General Schneiderman unveiled the plan as part of an effort to combat blight and associated crimes that come with abandoned foreclosure properties. Under the legislation, mortgage foreclosure Plaintiffs would be required to move as quickly as possible to start keeping up a property that becomes vacant. State Sen. Timothy Kennedy (D-Buffalo) has also introduced legislation that would require foreclosure Plaintiffs to maintain properties “in good faith.”

The Attorney General’s legislation will impose sanctions, as does Sen. Kennedy’s bill, which subjects violators to a criminal negligence misdemeanor charge if they leave properties in disrepair. Municipalities across the country, including Las Vegas, Nev., and Indio, Calif., with similar laws on the books, have had great success in keeping abandoned or vacant homes from falling into disrepair.

A New York law, designed to protect persons whose homes are foreclosed from lengthy, costly and damaging litigation recently became a reality when the state’s court system published a “certificate of merit” requirement. Lawyers representing foreclosure Plaintiffs must complete these requirements before suit can be filed. The certificates are part of a new law requiring lawyers representing foreclosure Plaintiffs to attest that there is “a reasonable basis for the commencement” of an action. The law also requires lenders to file with the court papers necessary to trigger mandatory settlement conferences.

Owners of property entering foreclosure and their neighbors very much deserve to be protected from the neglect and abandonment that frequently occur after banks and other lenders take over ownership of properties. The damage caused by neglect reaches far beyond the boundary lines of a foreclosed property. It’s good to see the New York Attorney General General Eric Schneiderman unveiling a plan as part of an effort to combat blight and associated crime that comes with abandoned foreclosure properties.

Source: New York Times

VII. THE CORPORATE WORLD

TOYOTA IS ON TRACK TO POST RECORD EARNINGS

While the American automakers have made drastic comebacks since the recession, no car company has had a bigger revival than Toyota. In spite of having huge recalls, a tsunami in Japan and a steep drop in sales, Toyota has hit the jackpot. The automaker says it’s on pace to earn its biggest-ever annual profit for the company in the fiscal year that ends this month. Toyota projected that it would earn net income of 1.9 trillion yen for the year (about $18.8 billion). That figure would surpass the profit of 1.7 trillion yen reported by Toyota six years ago, before the global financial crisis, and that’s most significant.

In a recent report, The New York Times said that Toyota’s annual profit will exceed the combined earnings in 2013 for General Motors (GM), Ford and the Chrysler division of Fiat Chrysler Automobiles. This is most interesting when one considers all of the safety problems and recalls Toyota has had in the past few years. As you will recall, millions of its cars were recalled for problems with unintended acceleration.

Last year, Toyota was the best-selling automaker in the world for a second consecutive year, beating out GM and Volkswagen of Germany. Toyota sold 9.98 million new vehicles in 2013. Toyota, if it meets its targets, could become the first automaker in 2014 to sell more than 10 million new cars, trucks and sport utility vehicles.

Net profit soared in Toyota’s most recent quarter that ended in December. For the period, the automaker earned 525.4 billion yen (about $5.2 billion), up from 999 billion yen for the similar period the previous year. Revenue for Toyota for the quarter climbed 24 percent to 6.59 trillion per year. Incidentally, the net worth of Toyota is about $900 billion. Hopefully, in addition to making lots of money, Toyota will make safety a top priority for a change.

Source: New York Times

COURT REVIVES LAWSUIT AGAINST BP OVER ALASKA OIL SPILL STATEMENTS

A U.S. appeals court has revived a shareholder lawsuit against BP PLC over statements the company made in the wake of a 2006 oil spill in Alaska. The ruling from the 9th U.S. Circuit Court of Appeals allows shareholders to proceed with some securities fraud claims against BP. A lower judge had previously dismissed those claims. In the event some of our readers have forgotten about this oil spill, in March 2006 about 200,000 gallons of oil spilled from a BP pipeline onto the Alaskan tundra at Prudhoe Bay. The appeals court in its order wrote:

Despite BP’s public statements suggesting that the spill was an anomaly, a second leak was discovered five months later in a different BP oil transit line in the region. As a result, the company temporarily shut down regional operations.

BP-Alaska eventually pleaded guilty to a “misdemeanor” for negligent discharge of oil, and paid a $20 million fine to settle state and federal criminal claims. This was along with additional civil penalties. A group of shareholders filed a proposed class action against the company in 2008, claiming that BP and its executives made knowingly false statements about the events.

A Seattle federal judge dismissed all claims, but on Feb. 13, the 9th Circuit Court of Appeals ruled that the Plaintiffs had provided enough evidence to show that some of the statements at issue should be litigated. In that regard, the court wrote:

In this case, facts alleged in the complaint support the conclusion that BP had been aware of corrosive conditions for over a decade, and yet chose not to address them.

This case is a prime example of how BP has operated throughout the years. The oil giant has not made safety a real top priority and that reality has become very clear in the Gulf of Mexico. Hopefully, the company will eventually learn that safety and the rights of individuals are important. That’s a lesson that thus far the oil giant hasn’t learned.

Source: Insurance Journal

BP SUED FOR $25 MILLION FOR FRAUDULENTLY COLLECTING MILLIONS FROM STATE FUND

BP is again the center of attention in a lawsuit alleging the company lied on applications, this time regarding fraudulent conduct against the State of Minnesota. The Minnesota Commerce Department has sued BP PLC, alleging that the company has fraudulently collected more than $25 million from a state fund. It’s contended in the lawsuit that BP violated the Minnesota False Claims Act, which carries the potential of triple damages.

Minnesota state agencies have worked for decades to clean up more than 18,000 leaking underground petroleum tanks. The Minnesota Pollution Control Agency handles the technical work and the Commerce Department oversees reimbursements from the Petrofund. From 1988 until now, BP submitted 1,407 applications to the fund for cleanup of underground storage tanks around the state. In each case, the suit claims that BP was required to say whether it had insurance to cover the cleanup. In every case, it appears BP had insurance coverage that it concealed from the five-member Petrofund board—presumably, so the company could collect from the State’s fund as well as collect insurance proceeds from its insurance carrier. Minnesota Commerce Commissioner Mike Rothman says that BP “lied on their applications.”

The lawsuit is another in a long line of similar suits against petroleum companies for double dipping into state underground storage tank cleanup funds while also collecting insurance proceeds for the same costs. The complaint accuses BP of misrepresentation, fraud and unjust enrichment. The claimed damages dwarf that of other companies investigated in Minnesota. Predictably, BP has denied wrongdoing and claims that its dealings with the storage tank funds have been proper. We will see how “true” those statements turn out to be.

Source: Star Tribune

WIDESPREAD GOVERNMENT CORRUPTION IN SOME PARTS OF EUROPE

The nations of the European Union, according to a recent report, are corrupt to a “breath-taking” degree. The report reveals that these nations are losing more than $162 billion a year to bribery and other forms of malfeasance. An investigation, conducted by the office of EU Home Affairs Commissioner Cecilia Malmstroem, found that 73 percent of Europeans believe that bribery or the use of political connections are the best ways to access government services.

In some countries nearly a third of those surveyed reported having personally paid bribes to government officials. That is shocking and apparently recognized as a way of political life in many countries. Residents of Croatia, the Czech Republic, Lithuania, Bulgaria, Romania and Greece reported most often having paid bribes. Interestingly, the majority of bribes paid in those countries were paid to obtain health care. In Greece, 99 percent of survey respondents said they believe their country to be “very corrupt.” The lowest rates of bribery and corruption were reported in the United Kingdom, Denmark and Finland. Less than one percent of respondents in the UK said they have personally paid bribes to government officials.

Source: AL.com

VIII. UPDATE ON WHISTLEBLOWER LITIGATION

JPMORGAN SETTLES WHISTLEBLOWER’S MORTGAGE FRAUD CLAIM FOR $614 MILLION

JPMorgan Chase & Co has agreed to pay the U.S. $614 million to resolve more False Claims Act allegations that it defrauded federal agencies by knowingly originating and underwriting substandard mortgage loans that failed to comply with federal insurance requirements. The settlement began with a whistleblower, Keith Edwards, who sued JPMorgan in January 2013 under the False Claims Act.

JPMorgan, the largest U.S. bank by assets, admitted that it approved thousands of Federal Housing Authority (FHA) loans and hundreds of Veterans Administration (VA) loans that were not eligible for FHA or VA insurance because they did not meet applicable agency underwriting requirements. As a consequence, “both the FHA and the VA incurred substantial losses when unqualified loans failed and caused the FHA and VA to cover the associated losses,” according to the Justice Department. Associate Attorney General Tony West observed in a statement:

The resolution announced today is a product of the Justice Department’s continuing efforts to hold accountable those whose conduct contributed to the financial crisis. This settlement recovers wrongfully claimed funds for vital government programs that give millions of Americans the opportunity to own a home and sends a clear message that we will take appropriately aggressive action against financial institutions that knowingly engage in improper mortgage lending practices.

JPMorgan is one of several banks under fire for defrauding U.S. taxpayers and contributing to the financial crisis in the U.S. Citigroup Inc. and Deutsche Bank have also reached settlement agreements with the U.S. government. Bank of America Corp. is looking at $2.1 billion in penalties after a jury found the bank’s Countrywide unit guilty of mortgage fraud. Last year, JPMorgan agreed to pay a record $20 billion in settlements to the U.S. in an effort to resolve claims related to bad mortgage practices, derivatives, and power trading.

Source: U.S. Department of Justice

CAREFUSION TO PAY THE GOVERNMENT $40.1 MILLION IN WHISTLEBLOWER LAWSUIT

CareFusion Corp. has agreed to pay the federal government $40.1 million to settle allegations that it violated the False Claims Act by paying kickbacks and promoting its products for uses that were not approved by the Food and Drug Administration (FDA). The Justice Department said in announcing the settlement that CareFusion, a California-based medical technology company, develops, manufactures and sells pharmaceutical products, including products sold under the trade name ChloralPrep. Stuart F. Delery, an Assistant Attorney General for the Justice Department’s Civil Division, had this to say:

When companies pay kickbacks to doctors, especially doctors involved in setting standards for the health care industry, they undermine the integrity
WHISTLEBLOWER CLAIMS TRUCKING COMPANY USED UNSAFE VEHICLES

The Victorian trucking company involved in a fatal tanker explosion last year used rundown vehicles that were not fit for the road, a whistleblowing Cootes Transport employee claims. Two men were killed and five injured when a Cootes Transport tanker crashed and exploded in Mona Vale last October. According to the Cootes Transport insider, whose identity has been concealed, the company had used a number of vehicles that should never have been on the road. The insider says this included the tanker in the Mona Vale crash, which was using an old trailer that had been brought out of retirement.

According to ABC’s Four Corners, the whistleblower is a long-time Cootes Transport employee. Four Corners also reports Mona Vale crash investigators found the vehicle’s brake linings were worn down and due to be replaced. The insider said Cootes Transport used older vehicles after winning the contract to supply 7/11 service stations with fuel. It was reported that the insider said:

Cootes’ vehicles were being driven with very poor repair jobs done on them. They should never have been on the road - they should’ve been put on a tow truck. Trucks were being put on the road well and truly over their service times. They just don’t get looked at until they breakdown somewhere or something falls off, mudguards fall off, sets of wheels fall off, brake hubs disappear never to be seen again.

A VicRoads audit of 205 Cootes trucks conducted in October of last year resulted in 79 vehicles grounded and 181 defect notices issued. VicRoads has confirmed that seven of those vehicles were still grounded. Transport company McAleese acquired Cootes in 2012. A spokeswoman said that McAleese had spent $35 million upgrading the fleet. She said that all defects had been repaired at the time of inspection. McAleese has not commented on the Mona Vale incident. That’s because a police investigation is underway with a coronal inquiry pending, according to the spokeswoman. Hopefully, McAleese will correct all of the safety problems it has inherited with the purchase.

OSHA LAWS OUT RULES FOR FOOD SAFETY WHISTLEBLOWERS

The U.S. Occupational Safety and Health Administration (OSHA) published in the Federal Register an interim final rule last month governing its procedures for retaliation complaints under the whistleblower provision of the FDA Food Safety Modernization Act (FSMA). As we have previously reported, the Act protects workers who disclose food safety concerns. The interim final rule outlines how the agency will handle complaints under Section 402 of the FSMA, which protects employees against reprisals by entities engaged in the manufacture, processing, packing, transporting, distribution, reception, holding or importation of food when they raise food safety issues to their employer or the government.

The FDA is responsible for most of the regulations stemming from the coming food safety statute signed into law by President Barack Obama in January 2011. But the Secretary of Labor is responsible for enforcing the whistleblower provision. This puts this portion of the law under OSHA’s domain. According to the interim final rule, OSHA crafted the regulatory provisions governing complaints under the law to be consistent with other whistleblower regulations issued by the agency to the extent that this is possible within the bounds of the statutory language of the FSMA.

The interim rule establishes procedures and time frames for the handling of retaliation complaints under the FSMA. The interim rule will cover:

- procedures and time frames for employee complaints to OSHA;
- investigations by OSHA;
- appeals of OSHA determinations to an administrative law judge for a hearing de novo;
- hearings by administration law judges (ALJs), review of ALJ decisions by the Administrative Review Board (ARB); and
- judicial review of the resulting final decision.
The rule provides that a complaining employee is protected under the FSMA as long as he has a reasonable belief—defined in the regulation as a subjective, good-faith belief and an objectively reasonable belief—that the complained-of conduct violated the Federal Food, Drug and Cosmetic Act. However, the complainant doesn’t have to show that the conduct complained of constituted an actual violation of law.

The employees must file retaliation complaints within 180 days of when the alleged violation occurs. But complaints can be in any form, either oral or in writing, according to the OSHA regulations. OSHA will then investigate whether there is reasonable cause to believe that retaliation has occurred. On the basis of information obtained in the investigation, the agency will issue, within 60 days of the filing of a complaint, written findings regarding whether there is reasonable cause to believe that the complaint has merit.

Objections to the agency’s findings must be in writing and must be filed with the chief administrative law judge for the U.S. Department of Labor within 30 days of receipt of the findings. An administrative law judge will review the case de novo, and the AIJ’s decision will be effective 14 days later unless a timely petition for review has been filed with the ARB, the regulations say. The regulations then give the ARB 30 days to decide whether to grant review of the case. If it does not grant review, the administrative law judge’s decision becomes final. The interim rules also note situations in which an employee is permitted to bring a suit in district court alleging the same allegations in the complaint filed with OSHA.

Source: Law360.com

UBS WHISTLEBLOWER FACES ARBITRATION

U.S. District Judge Katherine Polk Failla of the Southern District of New York ruled recently that a whistleblower’s retaliation claim under the Dodd-Frank Act must go through pre-dispute arbitration due to an agreement the whistleblower signed. Trevor Murray, who was fired in February of 2012 from UBS, signed a pre-dispute arbitration agreement. Judge Failla held that Murray could not cite certain anti-arbitration provisions in the Sarbanes-Oxley Act (SOX) to avoid arbitration for a retaliation claim under the Dodd-Frank Act.

The Dodd-Frank Act, passed in July 2010, established the SEC Office of the Whistleblower in 2011. The program was designed by Congress to provide monetary incentives for anyone who has knowledge of fraudulent activities to step forward and report possible violations. The program protects individuals who report possible violations by prohibiting retaliation by employers against employees who provide information about those possible violations.

Additionally, the SEC is required by law to protect the confidentiality of whistleblowers and cannot disclose any information that might reveal their identity. Meanwhile, the Sarbanes-Oxley Act was passed in 2002 in response to a series of accounting scandals among publicly traded U.S. companies. The SOX Act created enhanced accounting standards for those companies and protects whistleblowers with an anti-arbitration provision.

Judge Failla did not allow whistleblower Murray to re-form his claim to bring it under Sarbanes-Oxley and benefit from SOX’s prohibition of pre-dispute arbitration agreements. The court employed the Second Circuit’s three-part test to determine whether a party has waived its right to arbitrate:

• the time elapsed from when litigation was commenced until the request for arbitration;
• the amount of litigation to date, including motion practice and discovery; and
• proof of prejudice.

The court concluded that the Defendant’s delay to compel arbitration was not enough to establish a waiver. Judge Failla wrote in her order:

Plaintiff cannot recast his claim to arise under Sarbanes-Oxley in order to benefit from the prohibition of pre-dispute arbitration agreements afforded under that statute.

Judge Failla determined that Murray “may have a claim arising under Sarbanes-Oxley,” but dismissed consideration on the issue because it was not the issue before the court. Because Murray complained internally and did not complain to federal regulators, according to Judge Failla, the Dodd-Frank whistleblower provisions did not apply to him. It was not enough that he complained to the people at UBS. Murray’s case is stayed, pending the outcome of the arbitration proceedings with UBS.

Whistleblowers who suffer retaliation for disclosing securities law violations should follow the following procedure: file a claim under the Sarbanes-Oxley Act so that their administrative remedies are exhausted. After 180 days, the whistleblower can remove the claim to federal court and add a Dodd-Frank anti-retaliation claim. Additionally, it is important for potential whistleblowers to consult a lawyer and determine whether it’s beneficial to report internally. It is crucial that a represented whistleblower report the fraud to the appropriate federal agency to qualify under the Dodd-Frank whistleblower provisions.

Finally, whistleblowers should not sign an arbitration agreement as it will likely harm the ability to qualify as a whistleblower under various statutes, including the False Claims Act. Whistleblowers should seek advice and counsel from lawyers who are experienced in whistleblower litigation before signing any waiver of rights with their employer.

Lawyers at Beasley Allen continue to investigate fraud against both the federal and state government and encourage anyone who knows of fraudulent activities to step forward for a free and completely confidential consultation. Potential whistleblowers have the right not to be retaliated against for reporting the fraud they have witnessed. Anyone considering doing the right thing and blowing the whistle are strongly urged to seek legal advice before doing so.

Lawyers in our firm’s Consumer Fraud Section are very familiar with the False Claims Act and the SEC Whistleblower Program and can guide whistleblowers along the process. If you have any information and would like to speak with a lawyer, contact either Archie Grubb, Chad Stewart, or Andrew Brashier at 800-898-2034 or by email at Archie.Grubb@beasleyallen.com, Chad.Stewart@beasleyallen.com, or Andrew.Brashier@beasleyallen.com for more information.

Sources: Chicago Tribune and SEC.gov

TEVA UNDER FEDERAL SCRUTINY OVER POTENTIAL FCA BREACHES

Teva Pharmaceuticals Industries Ltd. is under a federal investigation for potential violations of the False Claims Act. The company told its investors last month about the probe by revealing it in an annual report filed with the U.S. Securities and Exchange Commission (SEC). The U.S. attorney in New York, as a part of the probe, demanded on Jan. 8 to see documents related to sales, marketing and promotion of two of its drugs, the top-selling Copaxone and Azilect. Teva said it is complying with the subpoenas.

Copaxone is Teva’s best seller, bringing in $4.3 billion in global sales in 2013. Copaxone is a multiple sclerosis drug that is facing increased competition from generics. Sales in the U.S. have declined as a result of com-
petition. The company's orange book patent is set to expire in May, which could compound the issue. Teva told investors that the FDA granted approval to a new dose of the Copaxone drug.

The new dosage doubles the amount of the drug that is injected into multiple sclerosis patients, but limits the number of times they must undergo the injections. Teva's financial results depend on the company's ability to commercialize additional generic and specialty pharmaceutical products, the company told investors in the annual report. About 40 percent of the company's total revenues in 2013 came from its specialty drugs, including Copaxone, the company reported.

The company reported that Azilect brought in $371 million to Teva during the quarter. Azilect is administered to patients with Parkinson's disease, the second most common neurodegenerative disorder. The U.S. patents for Azilect won't expire until 2016 and 2027. The company told investors that it was currently defending the validity and enforceability of its patents for Copaxone and Azilect in several lawsuits.

A putative class action was filed in December against Teva in New York federal court, alleging the company intentionally misled the media and investors about a dispute between the CEO of Teva and the board of directors. It was alleged by Plaintiff Jill Edison that the unexpected resignation of CEO Jeremy Levin—just days after the company denied he would resign—caused the company to lose $2.8 billion in market capitalization. Teva called the suit meritless and said it would vigorously defend itself against the class action. It will be interesting to see who prevails in this litigation.

Source: Law360.com

**DECF CO. ENDO GaSTRIC TO PAY $5 MILLION IN FCA KICKBACK SUIT**

Medical device maker EndoGastric Solutions Inc. will pay about $5.25 million to settle a False Claims Act whistleblower lawsuit. The company was accused of paying kickbacks and misleading health care provid-
ers about how to bill federal health care programs. Redmond, Wash.-based EndoGastric manufactures and sells a device called EsophyX, which is intended to treat gastroesophageal reflux disease as an alternative to a more invasive procedure. The government accused EndoGastric of encouraging health care providers to bill for the less invasive EsophyX procedure using codes applicable to the more invasive method, which provided for a higher level of reimbursement and caused the government to pay more than it should have.

EndoGastric also agreed to enter into a corporate integrity agreement with the Department of Health and Human Services Office of Inspector General. Pursuant to the agreement, EndoGastric will launch a series of additional compliance measures. Stuart F. Delery, Assistant Attorney General for the Justice Department’s Civil Division, said in a statement:

*Health care providers that cause the government to pay more than it should for medical devices not only cost us money as taxpayers, they raise the cost of health care for everyone. Medical device manufacturers must deal fairly and honestly with federal health care programs if they want to participate in them.*

Relator Glenn Schmasow filed the qui tam lawsuit on behalf of the government in June 2012, accusing EndoGastric of conducting a fraudulent marketing and inducement campaign that caused up-coded claims to be presented to the Medicare program for reimbursement.

Source: Law360.com

**KENTUCKY ADDICTION CLINIC SETTLES FALSE CLAIMS ACT ALLEGATIONS FOR $15.75 MILLION**

A chain of addiction treatment clinics, a clinical laboratory, and two doctors have agreed to pay $15.75 million to resolve allegations they violated the federal False Claims Act. SelfRefind, which operates 12 clinics in Kentucky, PremierTox, which performs urine testing for the clinics, and Drs. Bryan Wood and Robin Peavler, owners of the clinics and laboratory, entered into the settlement. It was claimed the defendants fraudulently submitted claims to Medicare and Kentucky's Medicaid program for tests that were medically unnecessary, overly expensive, and referred in violation of the Stark Law.

After the doctors acquired an ownership interest in PremierTox, they allegedly referred urine tests to PremierTox that were unnecessary and many times more expensive than other suitable alternative tests. PremierTox then submitted inflated claims for reimbursement from Medicare and Medicaid. Finally, SelfRefind's referrals to PremierTox were said to have violated the Stark Law, which prohibits a laboratory from billing Medicare and Medicaid for certain services referred by physicians who have a financial interest in the laboratory.

The case was handled in partnership between the federal and state government. Stuart F. Delery, Assistant Attorney General for the Justice Department’s Civil Division, stated:

*Billing Medicare and Medicaid for lab tests that are not necessary contributes to the soaring costs of health care. Providers will be investigated aggressively and held accountable for falsely billing federal health care programs.*

Lawyers at Beasley Allen continue to investigate, file, and litigate whistleblower cases under the False Claims Act, especially in the area of health care fraud. Our lawyers have successfully handled cases against addiction clinics in the past. For further information, call 800-898-2034 and ask for either Archie Grubb (Archie.Grubb@beasleyallen.com) or Andrew Brasher (Andrew.Brashier@beasleyallen.com), lawyers in our firm's Consumer Fraud Section.

**HOSPITALS ADMITTED PATIENTS THEY SHOULD HAVE SENT HOME**

The chief financial officer at the Walton Regional Medical Center was fined for reporting what he believed was wrongdoing at the hospital. The CFO, Ralph D. Williams, hired a consultant to study admissions practices at the hospital and found that it was hospitalizing patients who should have been sent home. He took the report to his boss, who allegedly told him to “Burn it.” Williams was fired soon thereafter—and he believes his questions about admissions led to his dismissal.

Williams remembered what he saw at the hospital, and more than four years later he has emerged as a high-profile whistleblower. He is involved in a national case alleging widespread misconduct at Health Management Associates (HMA), one of the nation’s largest for-profit hospital chains. The U.S. Justice Department announced recently that it would intervene in eight federal whistleblower lawsuits against Health Management Associates, including a case filed by Williams in 2009.

While the allegations by Williams and other insiders are years old, they are only just now coming to light. The cases were filed under seal, and the whistleblowers have worked confidentially with the government. Federal authorities determined that the allegations had enough merit to warrant the Justice Department's involvement in the case.

Source: DOJ press release
The government’s announcement that it was intervening in the cases came on the eve of a major corporate change for Florida-based HMA. In late January, the Tennessee-based hospital chain Community Health Systems acquired HMA, creating a system of 206 hospitals nationwide. The deal makes Community Health one of the nation’s largest hospital chains. The 71 HMA hospitals that are now part of the Community Health chain include three in Georgia: Barrow Regional in Winder, East Georgia Regional in Statesboro and Walton Regional in Monroe, which reopened in a new building as Clearview Regional in 2012. Community Health already operated two other Georgia hospitals: Trinity Hospital in Augusta and Fannin Regional in Blue Ridge.

The whistleblower lawsuits investigated by the Justice Department contend that HMA’s executives pressured doctors to admit patients who could have been placed in observation or treated as outpatients. The government says that resulted in HMA submitting inflated or even false bills to Medicare and Medicaid. The suits also allege that some hospitals paid kickbacks to physician groups staffing HMA emergency rooms to induce the doctors to admit patients.

Dr. Craig Brummer, who worked as a medical director at Barrow Regional and Walton Regional, also filed a whistleblower suit accusing the hospital of routinely pressuring doctors to admit patients. Brummer included profiles of patients who were improperly admitted. Among the cases:

• A 71-year-old Medicare patient who came in to the ER complaining of neck pain but was admitted to the hospital for “a chest pain rule out.”

• An infant covered by Medicaid who came in with a fever and was given a full workup of chest x-rays and lab work that came back normal. He was still admitted to the hospital even though his fever had dropped to 98.7.

• An 18 year-old Medicaid patient with a knee laceration who was admitted to the hospital when the wound could have been repaired in the ER and the patient could have then been sent home.

Brummer said in his complaint that “HMA constantly re-emphasized the HMA corporate goal of admitting as many patients as possible regardless of whether the patients needed to be treated on an inpatient basis.” Marlan Wilbanks, an Atlanta lawyer, represents both Williams and Brummer in the cases. The two Georgia cases were the first to be filed of the eight cases that DOJ is now pursuing.

Williams didn’t stop with one hospital chain when he started blowing the whistle. Another whistleblower case filed by the former CEO accuses Tenet Healthcare Corp. of a scheme to defraud Medicaid. Williams claims that Tenet hospitals, including Atlanta Medical Center and North Fulton Hospital, were paying illegal kickbacks to a clinic to steer patients to its hospitals. The U.S. attorney for the Middle District of Georgia is seeking approval to intervene in the case. The Georgia attorney general’s office intervened in the case last year after conducting its own investigation.

Source: Atlanta Journal Constitution

IX. CONGRESSIONAL UPDATE

FDA Pushes For $225 Million In User Fees To Finish FSMA

We have mentioned in previous issues that the U.S. Food and Drug Administration (FDA) depends on user fees for a significant percentage of its funding each year. Currently, the FDA is asking Congress to back the current level of user fees that have been proposed by the agency. Michael Taylor, an FDA official, appeared before a House Energy & Commerce Committee panel on Feb. 4 to make the request.

The panel was told by Taylor that the agency needs the projected $225 million the fees would provide to increase the number of foreign inspections and audits under the Food Safety Modernization Act (FSMA). Although the agency has enough funding for some aspects of the overhaul, including issuing regulations and increasing domestic inspections, it does not have the resources to fully implement other portions of the law, including the mandate to prevent the importation of contaminated food.

The user fee proposal, part of President Barack Obama’s budget for fiscal year 2014, included a food importer fee that was projected to generate an estimated $166 million in 2014. Also included was a facility fee that would generate an estimated $9 million. So far Congress hasn’t enacted those proposals. Taylor said in his appearance before the panel:

FSMA will only be as effective as its implementation. We have adequate resources to issue required regulations … but, simply put, we cannot achieve FDA’s vision without a significant increase in resources.

It should be noted that the FDA received $900 million to go toward the agency’s food safety work in the last budget. It was reported that a number of lawmakers were skeptical about the agency’s proposed fees. Rep. Michael C. Burgess, R-Texas, asked Taylor to account for how the agency has been spending the $900 million it received before trying to seek additional funding. Taylor responded by pointing out that, although some of the $900 million is being used toward the FSMA, lots of those funds also go toward the agency’s other food-related activities, including food additive regulations and the scrutiny of dietary supplements.

In his response before the panel to questions and comments, Taylor said it would take “several years” to fully implement the FSMA. He says that he expects it to be completed in the next decade. The U.S. imports roughly half of its fresh fruit and 20 percent of its vegetables, according to Taylor. He said the import fees would help toward auditing complex supply chain management systems overseas. Taylor added that the facility registration fees would also help support federal state partnerships under the FSMA.

The FSMA, according to Taylor, also needs funding to retrain the FDA and state inspectors on modern prevention systems, as well as to provide technical assistance to small and medium farms. Food industry groups are opposing additional user fees and urged the FDA to seek more Congressional funding instead of imposing fees on food producers. A letter from a coalition of some 50 food industry groups stated:

As consumers continue to cope with a period of prolonged economic recovery and food makers and retailers struggle with fluctuating commodity prices, the creation of new food taxes or regulatory fees would mean higher costs for food makers and lead to higher retail food prices for struggling consumers.

I have always believed that Congress should adequately fund the FDA and not make the agency dependent on funding from the very industry it has to regulate.

Source: Law360.com

www.BeasleyAllen.com
After several months of back-and-forth debate and extensive negotiations S. 1999, the “SCRA Rights Protection Act of 2014,” was introduced last month by Senators Lindsey Graham (R-SC) and Jack Reed (D-RI). Simply put, this bipartisan bill would make forced arbitration clauses involving Servicemember Civil Relief Act (SCRA)-related protections unenforceable against our men and women in uniform and instead allow servicemembers to submit to arbitration only after a dispute has arisen and if the servicemember voluntarily elects arbitration as an alternative dispute resolution mechanism.

Equally important, the bill also preserves the rights of servicemembers to bring class actions for violations of SCRA. Signed into law in 2003, the stated purpose of the Servicemember Civil Relief Act was:

*to provide for, strengthen, and expedite the national defense through the protection...of servicemembers...to enable such persons to devote their entire energy to the defense needs of the Nation.*

SCRA affords certain rights and protections to servicemembers and covers everything from lease agreements, financial arrangements, mortgage interest rates, and automobile leases to life and health insurance policies. SCRA also provides for reduced interest on debts and protects servicemembers against default judgments, evictions, mortgage foreclosures and repossessions.

This is a small, but critical, step toward reversing the disastrous effects of recent Supreme Court decisions. It appears that this bill is moving forward with bi-partisan support. The legislation also has support from numerous and influential active military groups including: Military Officers Association of America, National Guard Association of the United States, National Military Families Association, Reserve Officers Association, Student Veterans of America, and The Service Members Law Center.

This is a tremendous step forward in the broader campaign to end forced arbitration in all consumer and employment disputes. But efforts must continue to build momentum and support for the bills introduced by Senator Al Franken (D-MN) and Congressman Hank Johnson (D-GA), S. 878 and H.R. 1844, the “Arbitration Fairness Act” (AFA). This legislation is currently up to 71 co-sponsors in the House and 25 co-sponsors in the Senate. In December, the bill was the subject of a constructive hearing in the Senate Judiciary Committee where the disastrous consequences of forced arbitration were exposed and highlighted. It’s important to continue the efforts to ensure these bills don’t get derailed and will be allowed to move through Congress and become law.

Sources: Federal Relations Counsel, Public Affairs, and American Association for Justice

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**X. PRODUCT LIABILITY UPDATE**

**The Firm Settles Wal-Mart Case in Arizona**

Rick Morrison and Greg Allen, lawyers in the Personal Injury/Products Liability Section at Beasley Allen, settled a case last month for six clients who received serious injuries in a highway crash. One of our clients was paralyzed from the waist down. The clients were returning from a family vacation in Riverside, Calif., and were only an hour away from their Tucson, Ariz., home when the left rear tire on their vehicle suffered a complete tread separation. This caused the vehicle to become uncontrollable and roll over. The lives of our clients were to be forever changed on that fateful day.

The tire involved was a 1999 Bridgestone Dueler HT 689. It was the vehicle’s full-size spare. The tire had been taken from the spare position and placed on the vehicle four days prior to the crash by Wal-Mart. A technician at Wal-Mart recommended that the family utilize the full-size spare during a routine tire service, assuring our clients that the tire was safe to be used on their vehicle. Clearly, it was not. When Wal-Mart placed the tire on the vehicle, it was 10 years old. The tire failed due to its age.

Wal-Mart, in reckless disregard for safety, placed the 10-year-old tire on our clients’ vehicle and failed to warn of the hazards of operating a vehicle with a tire that was beyond its maximum life span. Wal-Mart was fully aware of the dangers of installing old tires on vehicles and had been several years prior to placing this tire into use on our clients’ vehicle. In fact, in 2006, Bridgestone, the manufacturer of the tire, released a “service bulletin” to Wal-Mart, warning that tires more than 10 years old, including tires used as a spare, should not be placed on vehicles, regardless of use or appearance.

Further, Wal-Mart was also aware that most tire makers warn against installing tires on vehicles that are 10 years old, regardless of use or appearance. Even more troubling is Wal-Mart’s knowledge that almost all automobile manufacturers warn against installing tires that are six years old on vehicles. Remarkably, Wal-Mart’s policy is that they will place a tire on a vehicle regardless of its age. A tire can be 10, 15 or even 20 years old and Wal-Mart will not only install the tire on a vehicle despite its knowledge of tire and car manufacturers’ warnings, but won’t inform customers that the tire is beyond the manufacturer’s service life.

While the tire industry, and tire service centers like Wal-Mart, have been aware of the safety issues presented by old tires, very few consumers are so aware. Most people believe if a tire has good tread depth and appearance, it’s safe. Simply put, that’s not the case. Because a tire’s rubber and/or components deteriorate over time, even if the tire is never used, after six years, the tire is dangerous.

Adding to the problem of consumer awareness concerning the safety issues caused by older or “aged” tires is the manner in which the tire makers “date” when a tire was made. The only way to determine the age of a tire is to decipher the “date code,” which is embedded on the sidewall of the tire. Most people have no idea how to do this. Tire service centers have an obligation to train their employees on how to determine the age of a tire. Many tire service centers do this. But unfortunately, Wal-Mart has adopted a policy to ignore car and tire manufacturers’ warnings. As a result, Wal-Mart will continue placing old tires on vehicles. This will result in its consumers being put at risk of serious injury or death.

The amount of the settlement in this case was confidential. David Karnas and Barry Bellovin, lawyers with Bellovin & Karnas, located in Tucson, Ariz., were our local counsel in the case. They, along with Greg and Rick, did an outstanding job in the case and were able to get a good result for our clients. If you need more information on this case or the aged tires problem, contact Rick Morrison at 800-898-2034 or by email Rick.Morrison@beasleyallen.com.

**Electronic Power Steering Failures in Toyota Cars**

During a two-year span between 2010 and 2011, Toyota recalled more than 19 million cars and trucks worldwide as a result of an investigation into sudden, unintended acceleration problems that Toyota blamed on loose floor mats. Of course, the acceleration problems in those cars were later proven to...
be caused by a defect in the electronic throttle system, with the floor mats playing a very small role. Yet, while the media was focused on the fanfare concerning the electronic throttle system problems in millions of Toyota vehicles, the federal regulators and Toyota quietly closed an investigation related to failures in the electronic power steering in Toyota Corolla and Matrix vehicles.

In February 2010, the federal government opened an investigation of Toyota after receiving more than 168 complaints from consumers that the electronic power steering in the 2009-2010 Corolla and Matrix vehicles was prone to drift or lock up at highway speeds. Specifically, consumers were complaining that the electronic power steering would pull the wheel out of the driver’s hand or, even more troubling, the steering would lock up altogether. In response, Toyota said that there had actually been 437 complaints of steering problems covering 395 vehicles. Privately, it was estimated that there have been more than 900 complaints about the electronic power steering failures in Toyota Corollas. Toyota conceded that, within these numbers, there had been 11 injuries and 18 crashes as a result of the problems. Toyota claimed it was not a “safety defect,” but only a “customer satisfaction issue.” Where have we heard that before? How about in an Oklahoma court?

During this time, Toyota greatly desired to avoid the issuance of yet another recall of one of its most popular-selling vehicles. The Toyota Corolla was Toyota’s second biggest seller in the U.S. with approximately 266,000 vehicles sold in one year alone. Toyota was in the middle of an explosive safety crisis caused by the sudden intended acceleration problems in its other vehicles, including the popular Camry. Thus, Toyota was looking for a boost from the U.S. regulators in hopes of trying to regain consumer trust and could ill-afford another recall affecting such a large population of vehicles. Toyota lobbied the regulators by telling them that the problem was not “a safety defect,” but instead was just a driver “feel” issue.

To avoid a costly and expensive recall, Toyota and the federal regulators agreed that Toyota would send out a Technical Service Bulletin to its dealers advising the technicians to check tire and pressure alignment. If that did not work, Toyota would replace the computer that governs the electronic power steering with a new unit that had been “re-tuned” with an “alternative steering feel.” As a result, NHTSA closed its investigation in May 2011. By not classifying the Corolla/Matrix issue as a safety defect, Toyota saved a lot of money. It avoided additional bad publicity for an automaker that had recalled millions of vehicles worldwide.

Obviously, there are thousands of Toyota Corollas still on the highways that may be experiencing failures in the electronic power steering. If you would like more information about this problem, contact Dana Taunton, a lawyer in our firm’s Personal Injury/Products Liability Section, at Dana. Taunton@beasleyallen.com or call her at 800-898-2054.

**If You Want To Update Your Car—There Will Be An App For That!**

In 2015, we will see new cars functioning more like iPhones and iPads, offering software updates every few months to accommodate consumer needs. Instead of trading your car in for a newer model every two years, you can simply download the app or update the car’s software to get the newest safety and entertainment technology. These software updates and apps can increase fuel efficiency, read road signs, judge distance between cars, and find an available parking spot near your destination. Thomas Weber, the development chief for Mercedes-Benz, observed, “We are entering a new era. Until now, cars retained the properties they had on the day they were purchased.”

Car manufacturers are counting on consumers’ ever-expanding need to remain connected at all times, even while driving. While consumers may have short attention spans when it comes to their smartphones, it remains to be seen whether the same will apply with software in their cars. Software upgrades can come with glitches and can increase the complexity of operating the vehicle.

Recently, Ford suffered the brunt of technological updates through their heavily criticized touch screen systems. To make their cars more like a smartphone, these car manufacturers replaced almost all dashboard knobs and buttons with a touch screen system. Consumers found this system frustrating as it overcomplicated the driving experience. As a result, Ford plummeted to the bottom of the reliability rankings.

Software updates also create the potential for hackers. If car manufacturers are going to replace hardware updates with apps and software updates, they will have to take extra security and engineering measures to protect the software from bugs and outside intrusions that result in enormous recalls as seen in the Toyota unintended acceleration cases.

Source: CNBC

**Aggressive Airbag Inflation Can Cause Injury And Death**

Airbags, when designed correctly and working as intended, save lives. In fact, according to the National Highway and Traffic Safety Administration (NHTSA), airbags have saved approximately 35,000 lives since 1987. But when airbags are defectively designed, they create a high risk of severe injury and death to vehicle occupants. As of 2009, according to reports, defective airbags were responsible for 296 deaths, 59 life-threatening injuries, and countless severe injuries. Injury and death due to defective airbags can be caused when one of the following occurs:

- The airbag inflates too quickly and aggressively, violently hitting the occupant in the face; or
- The airbag ruptures before inflation, spewing pieces of metal into the occupant’s body.

Last year, Takata, a major airbag manufacturer for Honda and Nissan, ordered the largest airbag-related recall in history due to a rash of injuries and two deaths caused from its highly explosive airbags. Takata has since admitted that it did not properly store the chemicals used to inflate the airbags, defectively manufactured the explosives used for inflation, and did not adequately maintain quality-control records. Overall, Takata’s highly explosive airbags resulted in the recall of 6.5 million cars.

Lawyers in our firm’s Personal Injury/Products Liability Section have handled two cases recently involving aggressive airbag deployments causing facial disfigurement and blindness. In one case, our client was the front-seat passenger of a 1997 Ford Contour when the airbag deployed in a low-speed collision well below the inflation threshold. This explosive airbag inflation caused our client to suffer blindness, severe damages to her forehead and right eye, and loss of consciousness. We were able to successfully settle that case for the client. Chris Glover was the lead lawyer in the case. Greg Allen also helped with this case.

In another on-going case, our client was the front seat passenger of a 2000 Mitsubishi Eclipse when the airbag deployment propelled the sun visor into her face, resulting in the removal of our client’s right eye. We are preparing this case for trial and believe that a jury will consider the facts of the case and will find in our client’s favor. Chris Glover is also the lead lawyer in that case.

If you have any questions regarding aggressive airbag inflations or any other...
Highway crashed into a bus carrying passengers to Las Vegas, Nev., killing 19 people. Investigators of that horrific crash concluded that the lack of seatbelts contributed to the high death toll. But 45 years later safety advocates are still waiting for the government to act on seatbelts and other safety measures to protect bus passengers.

In the years since the 1968 bus crash in California, the National Transportation Safety Board (NTSB) has repeatedly called for seatbelts or other means to keep passengers in their seat during crashes involving large buses used for tourist, charter, and inner city passenger service. About half of all such motor coach fatalities are the result of rollovers, and about 70 percent of those killed in rollover accidents are ejected from the bus.

The NTSB has repeatedly recommended stronger windows that do not pop out from the force of a collision and help keep passengers from being ejected, and roofs that withstand crushing. Those recommendations are nearly as old as seatbelt recommendations. No requirements have been put in place, even though all have long been standard safety features in automobiles in the United States and standard safety features for buses in Europe and Australia.

Through the years hundreds of motor coach passengers have died and even more have been injured, many severely, since the NTSB made its initial recommendations. Victims have included college baseball players in Atlanta, Vietnamese church goers in Texas, and members of a high school girls soccer teams on the way to a playoff match. In 2009, the NTSB said government inaction was partly responsible for the severity of injuries in a rollover crash in Utah that killed nine skiers and injured 43.

Ray LaHood, who was Transportation Secretary at the time, and perhaps one of the worst of all time, promised the department would act to improve motor coach safety, including requiring seatbelts. Even today, that has still not happened. Last year, Congress wrapped bus safety improvements into a larger transportation bill, which has been signed into law. However, the regulation requiring seatbelts on new buses is still under review by the White House Office of Management and Budget.

Beginning in November of 2016, all new motor coaches and some other large buses must be equipped by manufacturers with 3-point lap shoulder belts, however, this rule does not apply to school buses or city transit buses. The other regulations on windows and roofs are still under review and have not been implemented at this time.

Many safety advocates compare buses to commercial airlines, which have even fewer deaths and injuries, but still require passengers to buckle up. The nation’s fleet of 29,000 commercial buses transports more than 7 million passengers a year, which is roughly the equivalent to the U.S. airline industry.

Commercial bus operators have fought the use of seatbelts for decades, but their opposition began to weaken after several high-profile bus crashes in the mid-2000s. The bus industry opposes requiring the existing buses to be retro-fitted with seatbelts. Safety advocates and the general public are at a loss as to why it took 48 years for such a safety measure to be implemented in the U.S. That’s especially true when you consider that seat belts have been utilized implemented in Europe and Australia since the mid-1990s. If you need more information on this subject, contact Mike Crow, a lawyer in our firm’s Personal Injury/Products Liability Section, at 800-898-2034 or by email at Mike.Crow@beasleyallen.com.

Sources: Associated Press, USA Today and Business News

Burns Caused by Defective Products Cause Tremendous Harm

One of the more tragic types of serious personal injury and death cases lawyers in our firm handle involve injuries and deaths caused by burns. These cases range from fuel-fed fires in automobiles; fires caused by such things as defective electronic and battery issues in a host of products; heating pad injuries; and home fires. Any lawyer who has handled a serious burn case will tell you they never forget how their client was affected.

In some instances, after a collision, a fire develops and can be hazardous to a trapped occupant. The now-famous Ford Pinto cases are an example of a fuel-fed fire. In the Pinto automobiles, rear-end collisions were causing the fuel tanks to be punctured or ruptured, which was causing fuel-fed fires.

More recent examples of fuel-fed fire defects have come to light with recent recalls in automobiles. For example, during the latter part of 2013, Ford Motor Co. issued a recall in its 2013 Ford Escape. The first recalls dealt with defective fuel lines. The subsequent recall dealt with those fuel lines being improperly installed by Ford-dealer mechanics. Related recalls in the 1.6-liter engine found in some Ford vehicles involved situations where the engine cylinder heads were overheating, leading to oil leaks that were causing fires in some vehicles. In total, the Ford Escape was subject to five recalls for fire risks.

Ford also faced a massive recall of many of its vehicles as a result of a faulty Texas Instrument cruise control. The switches, it was determined, would leak hydraulic fluid and potentially lead to a fire, even with the vehicle turned off. This recall involved 4.5 million vehicles including certain models of Ford Windstars, Ford Excursions, Ford F-Super Duty diesel trucks and vans, Ford Econolines, Ford Explorers and Mercury Mountaineers, Ford Rangers and some Ford F55 motorhomes.

GM has also had to deal with fire risks in some of its automobiles, most notably the Chevrolet Volt. In the Volt, the batteries were causing fires after the car was involved in a highway crash. Similarly, GM has had to deal with older model C/K pickup trucks catching fire as a result of faulty gas tank placement, following side impacts.

But automobiles are not the only products known to cause burn injuries. Sears and Kmart have recently recalled Kenmore oscillating fan heaters. It was determined that broken motor mounts were causing the units to overheat, catch fire and ignite nearby items. Other recent recalls on heaters involved Soleil Portable fan heaters, Optimus Portable infrared radiant quartz electric heaters, Touch Point portable baseboard convection heaters, and others. Other types of heaters, such as some oil filled heaters manufactured by Holmes, and some ceramic heaters manufactured by Lasko Products, Inc., have also been shown to be defective and create fire hazards.

A common product that has also been shown to pose unreasonable burn and fire hazards are fire pits. In the last few months, recalls have been issued on Clay Bowl outdoor fireplaces, Catalina outdoor fireplaces, and other similar products.

Heating pads have also been shown to cause burn hazards. For example, HoMedics and Tristar have recently recalled independent OCS-301A oil filled heaters, Touch Point portable baseboard convection heaters, and others. Other types of heaters, such as some oil filled heaters manufactured by Holmes, and some ceramic heaters manufactured by Lasko Products, Inc., have also been shown to be defective and create fire hazards.

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As you can imagine, the potential for fire and burn injuries and deaths is endless. Lawyers in our firm’s Personal Injury/Products Liability Section continue to monitor the countless recalls on products that cause serious burns and injuries. If you would like additional information on this subject, contact Ben Locklar, a lawyer in the section, at 800-898-2034 or by email at Ben.Locklar@beasleyallen.com. Ben will be glad to help you with your inquiry.

Sources: autoweek.com, autosafety.org and cpsc.gov

XI.
MASS TORTS
UPDATE

AN UPDATE ON THE ACTOS TRIAL

The first federal Actos trial is underway in Lafayette, La., before Judge Rebecca Doherty. Following jury selection, which took place the week before, the trial started on Feb. 4 and was ongoing at press time for this issue. Prior to the start of the trial, Judge Doherty entered an order relating to Takeda’s widespread destruction of documents related to Actos. Takeda admitted that it was unable to produce the files of at least 46 Takeda employees—including high-ranking Takeda executives involved in the development of Actos—which was impossible to understand. In Judge Doherty’s words:

The breadth of Takeda leadership whose files have been lost, deleted or destroyed is, in and of itself, disturbing. (Emphasis added)

The trial is expected to continue into April. Thus far, we believe that the trial has gone very well. It’s quite obvious that Takeda had knowledge of the problems with Actos and withheld it. Mark Lanier, based in Houston, Texas, is the lead lawyer for the plaintiff in this case. Andy Birchfield, who is a member of the Plaintiffs Steering Committee in the multidistrict litigation (MDL), is actively involved in the Actos litigation. More will be reported on this most important trial next month. There were some very interesting developments on Feb. 23rd involving testimony from Takeda officials that may blow the top off this case—stay tuned!

If you need more information on Actos, or you have a potential Actos claim, you can contact Roger Smith, a shareholder in our firm’s Mass Torts Section, at 800-898-2034 or Roger.Smith@beasleyallen.com.

FIVE ANDROGEL LAWSUITS FILED AGAINST ABBOTT

Five lawsuits were filed recently against Abbott Laboratories Inc. and AbbVie Inc. It was alleged in each case that the companies downplayed the stroke and heart attack risks associated with testosterone replacement treatment AndroGel. The lawsuits, filed in Illinois federal court last month, came days after the U.S. Food and Drug Administration (FDA) began investigating the treatment. It’s alleged in the lawsuits that the two drugmakers have engaged in an extensive advertising campaign about low testosterone (Low T), telling consumers that the natural effects of aging in men, such as listlessness and weight gain, were actually symptoms of the condition that could be treated with their products. The complaints each allege:

What consumers received, however, were not safe drugs, but a product which causes life-threatening problems, including strokes and heart attacks.

The suits came four days after the FDA announced it was investigating possible increased risks of stroke, heart attack and death in men using testosterone replacement therapies such as AndroGel. The agency pointed to two recent research articles that found elevated cardiovascular risks in men using testosterone replacement products. The Plaintiffs referenced the same articles in their complaints.

One study, published in November 2013 in the Journal of the American Medical Association, described a 30 percent rise in such risks in a comparison of thousands of patients. The second study, published last month in the journal PLOS ONE, found that risks of heart attack doubled in men older than 65 who were using testosterone replacement. It was alleged that Abbott and AbbVie “purposefully downplayed, under-stated and outright ignored” AndroGel’s risks in their marketing campaign. Three of the plaintiffs suffered heart attacks after taking AndroGel, one suffered a stroke, and another suffered a so-called ministroke, according to the complaints. The P Plaintiffs are bringing claims for:

• failure to warn;
• negligence;
• breach of implied warranty;
• breach of express warranty;
• fraud; and
• negligent misrepresentation.

The five Plaintiffs in their complaints seek punitive and other damages. Abbott has marketed AndroGel since 2010. In January 2013 Abbott created AbbVie as a spin-off company for its proprietary pharmaceutical business, including AndroGel. AbbVie defended the safety of AndroGel in a statement, saying its efforts to educate the public about low testosterone follow the FDA’s guidance. In its defense, Abbott said:

AndroGel has more than 10 years of clinical, safety, published and post-marketing data, with known therapeutic risks well documented in the prescribing label.

The plaintiffs in these five cases are represented by David Ratner and David Sirotkin, lawyers with Morelli Ratner, a firm with offices in New York City, and by Trent B. Miracle, who is with the Alton, Ill.-based firm Simmons Browder Gianaris Angelides & Barnerd. It will be very interesting to see how these cases develop as they go through the system. We will continue to monitor them.

Source: Law360.com

UPDATE ON THE INCREATIN-BASED THERAPIES LITIGATION

The incretin-based therapies litigation is in full swing in the Federal District Court for the Southern District of California (San Diego). Byetta (Amylin / Eli Lilli), Januvia (Merck), Janumet (Merck), and Victoza (Novo Nordisk) are popular diabetes drugs that have been associated with an increased risk of pancreatic cancer and thyroid cancer. Unfortunately, none of the manufacturers have seen fit to properly warn prescribing physicians and the general public of these increased risks. In fact, rather than provide objective and useful reports on the various studies linking these drugs to these potentially fatal side effects, the drug company Defendants in this litigation prefer instead to criticize those studies and the scientists behind them.

Last month, the multidistrict litigation (MDL) Court entertained a two-day science presentation by the Plaintiffs and Defendants. Lawyers on both sides of the aisle spent two full days describing how these drugs affect the human body, differentiating between medical causation and legal causation, dissecting various clinical trials and case studies, and presenting the accumulating epidemiology of incretin-based therapies. In short, there are some studies suggesting a clear and discernable associa-
tion between the drugs and pancreatic cancer, while others do not.

It’s no surprise that the studies reporting no association are typically funded by the pharmaceutical industry. Interestingly, when the statistical analysis of some of these industry studies is carefully scrutinized, a number of studies actually reveal an association between the drug and increased cancer risk, despite the authors’ stated conclusion to the contrary. Other industry studies claiming no association were not adequately powered to reveal an increased incidence of pancreatic cancer and, indeed, some studies claiming no observed association were not even looking for pancreatic cancer.

When it comes to evaluating the strength and reliability of these complicated studies, it is critical to look behind the stated conclusions of the authors, and fully evaluate the data presented. That is the only way to fully appreciate whether the study was adequately powered, properly designed and accurately interpreted by the authors.

The incretin-based therapies MDL is now up to nearly a thousand cases. The first bellwether trial is still about a year away. As to be expected, and as evidenced by the first salvos from the Defendants during the science presentations, the major battles between the litigants will concentrate on the science and causation. The Plaintiffs are well-organized and hold considerable resources, and we continue to consult with and retain the foremost experts in the world to present our cases. Lawyers in the Mass Torts Section are investigating all cancer cases in patients who took these four drugs. If you need more information or have a potential claim, contact David Dearing, a lawyer in the Section, at David.Dearing@beasleyallen.com or call him at 800-898-2034. He will be glad to talk with you.

Boehringer Faces Over 2,000 Pradaxa Injury Suits

Just 18 months after a multidistrict litigation (MDL) was formed, Boehringer Ingelheim International GmbH is now facing more than 2,000 lawsuits in the U.S. over severe bleeding and other injuries allegedly caused by its blood thinner Pradaxa. The suits against Boehringer are in multidistrict litigation. The cases are in Illinois federal court and in state courts in Illinois, California and Connecticut. At the time the multidistrict litigation was created in August 2012, there were only 21 pending personal injury suits over the drug.

In December, U.S. District Judge David Herndon, who is the judge overseeing the multidistrict litigation, fined Boehringer nearly $1 million as a penalty for discovery abuses. Judge Herndon found the company’s failure to produce thousands of documents amounted to bad faith conduct. A week later, Judge Herndon ruled that more sanctions could be assessed against Boehringer. After discovery is completed for the bellwether cases, Judge Herndon has indicated he may issue an adverse jury instruction related to the misconduct or impose another nonmonetary penalty, such as striking certain affirmative defenses or barring Boehringer from making certain arguments at trial.

In the same decision imposing the nearly $1 million penalty, Judge Herndon ordered Boehringer to make executives available for depositions in New York or another convenient locale for the Plaintiffs’ counsel. Boehringer appealed that part of the decision. In January, the Seventh Circuit Court of Appeals ruled that Judge Herndon had overstepped his authority. The court said that federal law doesn’t give Judge Herndon the authority to order the production of foreign-based individuals for depositions in the U.S.

In late January, Judge Herndon unsealed dozens of documents in the litigation, finding the drugmaker had not sufficiently explained why it had marked them as confidential. He granted the Plaintiffs’ motion to de-designate the “confidential” label on 85 documents. Judge Herndon made exceptions for certain German custodial documents that he said should be released in redacted form.

Source: Law360.com

FDA Probes Testosterone Products For Fatal Risks

The Food and Drug Administration (FDA) is investigating possible increased risks of stroke, heart attack and death in men using testosterone replacement therapies. This move follows recent studies that raised red flags. The FDA launched the inquiry after the recent publication of two research articles that found elevated cardiovascular risks in men using testosterone replacement products. The agency said it has not reached any conclusions about possible dangers.

One study, published in November in the Journal of the American Medical Association, described a 30 percent rise in such risks in a comparison of thousands of patients. In that analysis, 26 percent of men using testosterone products died, had a heart attack or suffered a stroke. By contrast, 20 percent of men not using the products experienced those outcomes. A second study, published in January of this year in the journal PLOS ONE, found that risks of heart attack doubled in men older than 65 who were using testosterone replacement. The FDA said:

“We have been monitoring this risk and decided to reassess this safety issue based on the recent publication of two separate studies that each suggested an increased risk of cardiovascular events among groups of men prescribed testosterone therapy.”

The FDA’s inquiry has major implications for treatments that address low testosterone levels, notably AndroGel, a blockbuster topical treatment from AbbVie Inc. The most serious risks of that product, according to its current labels, are a possible propensity for prostate cancer, sleep apnea and swelling and blood clots in the legs. Officials at AbbVie reported recently that AndroGel had slightly more than $1 billion in U.S. sales during 2013.

FDA officials provided no timetable for completing their investigation. In the meantime, the agency said that patients should talk with their doctors before halting therapy, and physicians should weigh benefits against possible risks in deciding whether to continue or begin treatment. Testosterone replacement is only FDA-approved in men with both “Low T” and an associated medical condition, such as a genetic inability to produce the hormone or brain disorders that inhibit production. It’s often marketed as an age-defying therapy that may help boost sex drive, increase muscle mass and strengthen bones, among other things.

Lawyers in our firm’s Mass Torts Section are handling the testosterone cases. If you need more information on this litigation or the subject generally, contact Matt Teague, a lawyer in the Section, at 800-898-2034 or by email at Matt.Teague@beasleyallen.com.

Source: Law360.com

XII.
AN UPDATE ON SECURITIES LITIGATION

Novartis Cancer Unit to Pay $8 Million To Settle Securities Case

Genoptix Inc., a subsidiary of Novartis AG, will pay nearly $8 million to end a putative securities class action alleging the company misrepresented customer demand for diag-

nostic cancer testing and failed to disclose factors dragging down demand. The settlement agreement was filed in a California federal court. Lead Plaintiff City of Ann Arbor Employees’ Retirement System and Genoptix has requested that the court preliminarily approve the settlement. Pursuant to the agreement, $7.7 million plus interest would go to class members who bought Genoptix stock between July 2009 and June 2010.

Genoptix specializes in diagnostic testing for cancers of blood and bone marrow. During the proposed class period, its primary customers were oncologists in private practice. It was alleged in the suit that the company’s bottom line suffered as physicians joined hospitals and insurers resisted coverage for out-of-network care.

After shares lost 55 percent of their value, six confidential witnesses came forward, alleging that Genoptix management consciously ignored systemic weaknesses at the company and padded their bank accounts through insider trading as the firm’s finances were secretly disintegrating. Lead Plaintiff Ann Arbor allegedly lost $267,000 on its investments. The Plaintiffs claimed Genoptix made demand for diagnostic cancer services, its primary source of revenue, appear higher than it was. The suit also alleged that executives knew the company lost its largest customer account, the Georgia Cancer Center, but did not disclose it.

It appears that this lawsuit barely survived. In July 2012, a California federal judge dismissed the Plaintiffs’ complaint, ruling that the firm’s inaccurate revenue forecasts were forward-looking statements immune to litigation. The Plaintiffs had set out 80 allegedly deceptive statements by Genoptix’s big bosses, but U.S. District Judge Cathy Ann Bencivengo ruled that more than half were protected under the Private Securities Litigation Reform Act’s safe harbor provisions. Lead Plaintiff Ann Arbor allegedly lost $267,000 on its investments. The Plaintiffs claimed Genoptix made demand for diagnostic cancer services, its primary source of revenue, appear higher than it was. The suit also alleged that executives knew the company lost its largest customer account, the Georgia Cancer Center, but did not disclose it.

The class action lawsuit was filed by a man who says he was forced into a 400-percent increase in his flood insurance premium. Gordon Casey of Syracuse sued the mortgage lender two years ago over the cost of homeowner’s insurance for his home. His premium had skyrocketed during a decade from $325 a year to $1,478 a year. Casey and a Maryland man sued Citibank on behalf of all homeowners who had been forced by the company into paying increased premiums to insure their homes against floods or hazards.

The class members who were charged for force-placed hazard insurance will receive back 12.5 percent of the premium upon submitting a claim, pursuant to the agreement between Citigroup and the Plaintiffs. The agreement, which must be approved by the court, calls for Citigroup to stop accepting commissions for force-placed insurance for a period of six years from the effective date of the settlement. Mortgage agreements give lenders the right to force-place insurance, but the banks and insurance companies have pushed up policy prices with improper commission and reinsurance agreements.

In September, JPMorgan Chase & Co and the nation’s largest force-placed insurer Assurant Inc. agreed to a $300 million settlement. One of Citi’s units that deals with insurance received a 15 percent commission on hazard insurance premiums during the proposed settlement class period, according to a court filing. Citi has also agreed to refund 8 percent of the force-placed flood insurance premiums and force-placed wind insurance premiums, even though no commissions were paid to Citi or its affiliates on flood or wind insurance. It was stated in the filing that the Plaintiffs in total were charged about $758 million in hazard insurance premiums and $175 million in flood insurance premiums. The law firm of Nichols, Kaston, with offices in Minneapolis and San Francisco, represents the Plaintiff class in the Citigroup case.

Source: Law360.com

XIII. INSURANCE AND FINANCE UPDATE

Citigroup To Pay $110 Million To Settle Force-Placed Insurance Crash

Citigroup Inc. has agreed to pay $110 million to thousands of homeowners who were forcibly charged expensive property insurance premiums. The class-action lawsuit, filed in the U.S. District Court, Northern District of New York, involves “force-placed insurance.” We have described this insurance product in previous issues. It is insurance placed by a bank or other mortgage lenders to protect their interests in a property in the event the homeowner’s insurance lapses. Banks have been under increasing scrutiny from regulators regarding force-placed insurance. As we have previously reported, several U.S. banks and insurers have been criticized by regulators for such practices.

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Source: Insurance Journal

Supreme Court Interprets The Meaning Of “Changing Clothes” Under The FLSA

Many jobs require that workers don protective gear prior to performing their job duties, including such gear as boots, aprons and gloves. The question then arises whether the time spent putting on these protective garments should be compensable logically. It would appear that this required activity would be. But the issue wound up before the highest court in the land.

The U.S. Supreme Court recently answered the question in Sandifer v. United States Steel Corp. The justices in the case interpreted a provision of the Fair Labor Standards Act (FLSA) of 1938. The relevant part of the FLSA excludes from the definition of “hours worked,” time spent changing “clothes” at the beginning of a workday if it’s excluded under a collective-bargaining agreement. The collective-bargaining agreement between the steel workers and the union contained a provision that made the time spent donning the protective gear non-compensable. The Court ruled that the protective gear was “clothes” under the FLSA. Thus, the time spent putting on the protective gear was considered by the high court to be noncompensable.

The Court’s decision in Sandifer is important because the opinion clarifies the meaning of “clothes” under the FLSA. But the decision will only affect those employees subject to a provision in a collective-bargaining agreement that makes time putting on protective gear noncompensable. Had such a provision not existed in Sandifer, the time the steel workers spent putting on their “clothes”—and all time thereafter—would have been compensable.

Source: scotusblog.com
XV.
PREDA TORY
LENDING

PREDA TORY LENDERS ARE HURTING LOTS OF
FOLKS AROUND THE COUNTY

The payday lenders operating in the U.S. have been allowed to take unfair advantage of persons who borrow money from them. While a relatively few states do a fairly good job of regulating this industry, really none of them do an adequate job. In fact, it’s most unfortunate that most states, including Alabama, do a very poor job of regulation. I will discuss the situation in Alabama, which is one of the worst states when it comes to regulation of predatory lenders, in some detail. The Alabama Legislature needs to correct that situation. The Montgomery Advertiser, in a recent editorial, made a strong case for better regulation in my state. Because of the importance of the issue, I am setting the editorial out below in its entirety.

Payday Industry Begs Review

Usury, says Webster’s, is “the lending of money at an excessive rate of interest.” The Random House Dictionary of the English Language defines it as “the lending or practice of lending money at an exorbitant interest.” That sounds a lot like what’s going on in here in Alabama with payday and title loan companies.

It’s hard to argue that interest rates that hit 456 percent for payday loans and 300 percent for title loans aren’t excessive or exorbitant, yet these lenders make straight-faced claims that their business requires such staggering annual percentage rates, that the risky nature of these loans and the circumstances of their customers just won’t let them operate any other way. They argue that they cannot make money making loans at 36 percent interest, the cap called for in two bills currently before the Legislature.

The undeniable reality is that these loans are a potential financial death trap, sucking customers into a virtually inescapable spiral of debt. Borrowers often find themselves taking out new loans to service existing ones, creating an all but impossible situation to manage. Take the case of Pamela Tarver, a Montgomery resident who spoke at a rally in support of the loan cap bills. She originally borrowed $700. In less than four years, she has paid more than $14,000 in interest. Her interest payments reached $580 a month.

No wonder these lenders like things the way they are. No wonder they have been quick to mount massive lobbying efforts in the Legislature to preserve the lucrative status quo. The industry has even opposed efforts to create a central database of borrowers, so that the current law, which is supposed to prohibit borrowers with existing loans from taking out new ones, could be followed. Now, with several different databases in use, such a would-be borrower may not appear in the database a particular lender works from, thus allowing the lender to make a loan it really shouldn’t be allowed to make under the law.

To its credit, the state Banking Department announced plans to create a central database—and was promptly sued by industry representatives seeking to stop it. The lawsuit is pending. The cap bills enjoy remarkably diverse support, from organizations such as Alabama Arise, which advocates for the poor, to the Alabama Federation of Republican Women. As Democratic Rep. Patricia Todd, sponsor of the payday loan cap legislation and perhaps the most liberal member of the Legislature, observed, “When the Republican women and I agree on a bill, you should take note: There must be something good about it.” Indeed there is; quite a lot of good, in fact. Alabama does not have to allow people to be so brazenly taken advantage of, and should not continue to do so.

If you live in Alabama, and agree with the Advertiser, contact your legislators and ask them to support Rep. Todd in her efforts. For those who aren’t Alabama residents, they should consider contacting legislators in their states. The only way to win this battle is for folks who vote in elections to get involved in the fight. The lobbyists for the industry will once again prevail if people fail to get actively involved in the battle. More will be written on the legislative prospects in Alabama in the Legislative Section of this issue.

Source: Montgomery Advertiser

AN ALABAMA LAWMAKER SPEAKS OUT ON A
CONSUMER ISSUE

Unfortunately, payday lenders aren’t the only predatory lenders taking unfair advantage of Alabama citizens. I am reasonably sure most Alabamians have seen the numerous television ads telling folks how great title loans are for them. I hope folks who have seen these ads will take the time to find out about how bad title loans really are. Rep. Rod Scott, (D-Fairfield), is serving his second term in the Alabama House of Representatives. He holds a BA in Economics from Yale University and an MBA from Dartmouth and also is a professor at Miles College in Birmingham. Rep. Scott gave some compelling reasons to support reform of the title lending industry in Alabama. His remarks are set out below.

Reform State’s Title Loan Industry

For years now a bipartisan group of legislators has worked to reform the predatory car title lending industry in Alabama. While a diverse group of conservative, religious, and advocacy leaders and groups have supported such legislation, reform has remained elusive. This is more than partially due to the fact that the victims of this unregulated industry—senior citizens, working single mothers, members of the military and veterans—are no match for the deep pockets of the industry and their lobbyists.

Unfortunately, the borrowers victimized by this unregulated industry are many. Take Pamela, a single mother of two who got behind on her bills and ended up turning to a Montgomery area title loan operation to help make ends meet, only to get buried under an insurmountable debt. So far, she has paid her title pawn lender almost 5 times the amount of the original loan but all those payments have only gone to interest. So, despite having paid more than $14,000, Pamela is still struggling to pay off her loan. Her story is not unique, and stories like hers have not been enough to turn the tide for reform.

But, this year is different. The stakes have been raised. In the absence of legislation to provide basic regulation of this industry, as of today, over sixteen municipalities, including several of the state’s largest cities, have joined the fight to curb the damage done through local ordinances and moratoriums.
Local lawmakers have stepped in, where my colleagues and I have failed in the past, to protect both their communities and their local economies from these predatory lenders. From one end of the state to the other, local lawmakers have watched the economic potential of whole neighborhoods flattening as a result of this unregulated industry. As one Montgomery city councilman put it when discussing how it’s a barrier to economic growth in his own neighborhood, “...No one in their right mind would drive down there and think that it’s an economically flourishing area.”

And he is right. Without basic regulations, this industry is trapping dozens of Alabamians a day into a nearly inescapable cycle of debt and blocking economic progress across the state. Car title lenders and their immoral 300% interest rates are taking money out of the pockets of working Alabamians and from our local economies. Their storefronts increase blight and scare away investment from legitimate businesses. This must end. The time for reform is now. Today, our bipartisan coalition of legislators, 39 strong so far, will introduce legislation to provide true reform to this industry—through remediying the outlandish 300 percent interest rate regularly charged for auto title loans.

This bill will put economic progress in Alabama back on track. This legislation would put in place a more reasonable interest rate, at the most of 36 percent APR, which ought to be plenty of profit on a loan that is already secured by a tangible thing of value—the family car. Under current Alabama law, if a borrower doesn’t repay the loan, a lender can repossess the vehicle and sell it for a profit, sometimes earning thousands of dollars more than the amount loaned. Alabama has always appreciated the value of hard work. But, we don’t appreciate a financial windfall gained by taking advantage of someone who needs money in a desperate time. Our bill will return that surplus money to the borrower.

Alabama deserves real reform. Our local lawmakers and cities deserve to have us heed their calls for reform; they deserve our leadership and strength to fight for them and their economic futures. Our hard working citizens deserve to be protected from this predatory industry.

We can do better and we must do better. Now is the time.

This is another battle that Alabama citizens must get involved in. No lender—regardless of what sort of loans they are involved with—should be allowed to charge outrageous interest rates to their customers. Title loans turn the title to a person’s car over to the lender and the loans carry very high interest rates. I hope folks in Alabama will join with Rep. Scott, support him and also encourage other legislators to help him win this battle.

Source: The Birmingham News, February 9, 2014

XVI. PREMISES LIABILITY UPDATE

ELEVATOR INJURY LITIGATION

Lawyers in our firm have handled lawsuits involving injuries caused by elevators that didn’t work properly. While it is generally accepted that elevators are a safe and reliable means of transportation, it’s known that preventable injuries do occur. The majority of the incidents involving injury or death fall into three categories:

- Faulty door function causes incidents where the doors fail to properly function. Those causes attribute to 37 percent of the incidents.

- Abrupt starts and stops are incidents involving a sudden and unexpected drop of the elevator car. Twenty-seven percent of the incidents are from those causes.

- Mislleving involves an incident where the elevator fails to come level with the finished floor. That cause attributes to 27 percent of the incidents.

- Other incidents (11 percent) include such things as electrical shocks trip and falls on an elevator car’s flooring and construction related injuries.

Few people understand how an elevator works or how the design, construction, maintenance and repair of elevators is regulated. That’s no big surprise. It should be noted that there are many different types of elevator configurations. But the majority of passenger elevators fall into one of two categories: hydraulic or traction.

A hydraulic elevator uses a hydraulic piston to raise and lower the elevator car. A traction elevator uses a geared or gearless hoist machine along with a counter weight to control the travel of the car. Hydraulic systems are typically limited to buildings that are three stories tall or shorter. Traction elevators involve a motor-driven configuration where cables are attached to the car and looped over a drive sheave to a counter weight. The counter weight is located in the hoist way and rides a separate rail system.

If you need more information on this subject, contact Mike Andrews, a lawyer in our firm’s Personal Injury/Products Liability Section, at 800-898-2034 or by email at Mike.Andrews@beasleyallen.com.
CenterPoint management knew about the “extreme degree of risk” posed by insufficient insulators on its guy wires and by buried guy-wire anchors, but did nothing to correct “this systemic problem.”

The children, a 3-year-old boy and a 5-year-old girl, were playing in the backyard when the guy wire contacted the utility pole’s energized components. They were severely shocked, knocked unconscious and badly burned. Another child, a 7-year-old brother, was also in the backyard and was helping to watch his siblings. But he was out of range of the electric current. The injured children were taken by medical helicopter to Shriners Hospital for Children in Galveston, where they received burn treatment, including multiple skin grafts and multiple surgeries.

The confidential settlement reached last month, announced by CenterPoint Energy, included trusts in undisclosed amounts for all three children. While the two children have a long road ahead of them, they have a close and supportive family and the monetary settlement will greatly assist them. Incidentally, the family says the Shriners’ burn unit in Galveston did a tremendous job for the children. Importantly, from a safety standpoint, the public will also benefit from the settlement. The needed repairs uncovered by the inspections are expected to be completed by summer, according to the company.

CenterPoint also asks any person in the territory served by the defendant who sees a broken or damaged guy wire to call the company at 713-207-2222. Of course, folks should stay away from any downed or loose guy wire until it is repaired.

Anthony Buzbee, a lawyer with his main office in Houston, Texas, represented the family in this case. He did a very good job for his clients.

Source: Chron.com

**LAWSUIT FILED IN DEATH OF MAN CRUSHED BY TRASH COMPACTOR**

The wife of a legally blind man who was killed last summer by a condominium trash compactor as he searched for a cellphone has filed suit against the building manager and homeowner’s association. It was alleged that the defendants failed to ensure the man’s safety. Fifty-six-year-old Roger Mirro was killed on July 30 by a trash compactor at the time he was searching for a cellphone that he believed he had accidentally thrown away.

According to the lawsuit filed in Cook County Circuit Court against Willow Creek No. 6 Association and Hillcrest Property Management, Inc., a homeowner’s association board member gave Mirro a key to the dumpster room, but didn’t offer any further assistance. Around 6:45 p.m., according to the lawsuit, Roger Mirro entered the room and climbed on a ladder that was propped on the compactor to look for his disposed garbage. It was alleged that “with the ladder in place, Mirro was encouraged to climb up so that he could see into the loading hopper of the compactor.” While he was looking over into the compactor, according to the complaint, Mirro lost his balance, either by being struck by trash that had been sent down the chute a few feet above him, or by overextending his body over the loading hopper.

Mirro’s body then triggered the compactor’s sensor and signaled for a compaction cycle to begin, according to the lawsuit. It was alleged that there was no control safety device inside that would have allowed him to stop the process and there were no rungs that would allow him to climb out. Mirro’s body triggered the walls, and he was crushed and pushed through the machine.

An autopsy determined that the victim died of crushing injuries that were caused by the compactor, according to the Cook County medical examiner’s office. The lawsuit alleged that the board that represents the homeowner’s association is made up of resident volunteers with no special training regarding professional property management, and that the association should have known not to give residents access to the dumpster room. It is contended that since Mirro was legally blind, he would have had a difficult time reading a warning sign that was any significant distance from him.

The lawsuit alleged that the association and property management company also failed to adhere to standards set by the American National Standard Institute. There were no signs outside the room or on the compactor that warned of the dangers of the compactor. Craig D. Brown, a Chicago lawyer with Myers & Flowers, represents the Plaintiff in this lawsuit.

Source: Chicago Tribune

**SETTLEMENT REACHED IN NEBRASKA BARN FIRE LAWSUIT**

A lawsuit filed in Gage County, Neb., after a Southeast Nebraska barn was destroyed by a controlled burn that got out of control has been settled. Terms of the settlement are confidential. The Barnstorm Rural Fire Department held a controlled burn on April 2, 2011, on property adjacent to land owned by the Plaintiffs, Vince and Charoyl Koenig. The Koenig property was near the village of Virginia. The fire got out of control and a barn, several other outbuildings, fences and trees on the Plaintiffs’ property were burned and destroyed. The Plaintiffs sued the Village, the fire department and the adjoining landowner. The case was settled, which is good for all concerned.

Source: SFGate.com

**CITGO PETROLEUM CORP. IS FINED $2 MILLION FOR REFINERY EMISSIONS AND BIRD DEATHS**

A Texas federal judge has fined Citgo Petroleum Corp. more than $2 million after the petroleum giant’s 2007 convictions for illegally operating uncovered oil tanks at its Corpus Christi refinery and intentionally allowing migratory birds to die in the tanks. U.S. District Judge John D. Rainey, who sits in the U.S. District Court for the Southern District of Texas, ordered the company and a subsidiary, Citgo Refining & Chemicals Co., to each pay $500,000 for each of the two Clean Air Act (CAA) violations they were convicted of. Citgo Refining was ordered to pay another $45,000 for violations of the Migratory Bird Treaty Act (MBTA).

A jury convicted Citgo in June 2007 of operating two open top tanks without installing the proper emission controls required by federal law at the Corpus Christi East Plant Refinery. The tanks were used as oil water separators. The U.S. Department of Justice (DOJ) said they were not equipped with either a fixed-roof, vented to a control device, or had a floating-roof. The DOJ said residents of nearby communities were exposed to emissions of benzene, a known carcinogen, as well as other volatile organic compounds. Robert G. Dreher, who heads the DOJ’s Environment and Natural Resources Division, said in a statement:

Citgo’s illegal and careless operation of two massive tanks without emission controls exposed residents—the company’s neighbors—in the Oak Park and Hillcrest communities of Corpus Christi to unacceptable health impacts from toxic chemical emissions. I am grateful to the prosecutors, the victim specialists and the federal state investigators for fighting tirelessly for justice for these residents who deserve to breathe clean air and to be protected under the nation’s Clean Air Act.

Judge Rainey deferred ruling on victim restitution and a remedial order. He will
A Jefferson County, Mo., jury awarded $12.5 million to Michael Bolen, a railroad worker whose right leg was amputated after being run over by a train. The worker was hurt in May 2012 as he was directing trains being run over by a slow-moving train. The worker was walking along the track when he tripped over a large rock that was left in the rail yard and fell onto the tracks. Both legs were run over by a train and later was amputated. His right leg was crushed and later was amputated below the knee. Bolen also lost part of the heel on his left foot. This is believed to be the largest personal-injury verdict in the history of Jefferson County.

Bolen, a conductor/switchman for BNSF Railway, had worked for the company about eight years. He was earning about $80,000 a year. It was contended that the train company was negligent in having a rocky area where workers walked. The railroad had recently resurfaced the track, bringing in rock from a quarry, but the rock was supposed to be smaller than the one Bolen tripped over, which was about 9 inches by 5 inches.

The suit was brought under the Federal Employers Liability Act (FELA). Bolen sought compensation for medical treatment he will need in the future, lost wages, pain and disfigurement. The damages sought were to compensate Bolen for his injury and not punish the railroad. That's because under the applicable federal law, punitive damages aren't allowed. After the accident, Bolen underwent numerous surgeries and had to learn to walk with a prosthetic leg. He applied for many jobs, but it appears all he could get was an $8-an-hour job at a car wash.

Bolen's case included testimony from an economist who calculated lost earnings. Bolen had been a Marine before the railroad job, and he was in good shape and enjoyed hiking in state parks before his injury. In order to recover, Bolen had to show negligence or that the working conditions were unsafe. The railroad indicated that Bolen wasn't walking along the tracks, but instead was riding on a rail car and had lied about what happened. But an audio recording of dispatchers at the rail yard indicated that Bolen had been walking before the accident.

The railroad hired mechanical engineers who claimed that the forces involved were inconsistent with tripping and falling and getting caught under a train. Another engineer hired by BNSF used computer animation to contend that the incident couldn't have happened the way Bolen described. Another witness for the Defense testified that Bolen could get a better-paying job than the car wash. There was no video of the accident. The only camera in the area was on the front of a locomotive facing the other direction.

After the verdict, a member of the jury, Cecilia Patriarca, said the railroad tried to convince the jury that the accident happened differently, but failed to do so. She said that "they (railroad) just didn't prove their case very well." She said the jurors felt that Bolen had fallen the way he said he had fallen. Nelson G. Wolfe, a lawyer with Schlieder, Bogard & Denton, a firm located in St. Louis, Mo., represented the Plaintiff. He did a very good job in this case.

Source: SLTToday.com

JURY AWARDS NEARLY $17 MILLION IN GRAIN BIN DEATHS

An Illinois jury has returned a verdict of nearly $17 million in a lawsuit involving the deaths of two teenagers and the traumatic entrapment of a third worker in a grain bin in 2010. It was proved that the teenagers Wyatt Whitebread, Alex Pacas and 20-year-old Will Piper were sent into an Illinois grain bin to unclog corn. They had not been trained and safety gear had not been provided, in violation of federal regulations.

Howard Berkes, in a NPR newscast, described what happened to the workers:

The boys carried shovels and picks as they climbed a ladder four stories to the top of the grain bin, which was twice as wide and half-filled with 250,000 bushels of wet and crusty corn. Their job was to walk down the grain, or break up the kernels that clog to the walls and clog the drainage hole at the bottom of the bin. The work went well at first, with the boys shoveling corn toward a cone-shaped hole at the center of the bin.

But around 9:45 a.m., Whitebread began sinking in the corn. He was sucked under in minutes and disappeared. Pacas and Piper also began to sink and desperately struggled to stay on the surface. Six horrific hours later, only Piper was carried out alive.

NPR and the Center for Public Integrity have documented hundreds of similar cases in which workers drowned in grain. Unfortunately, expanding federal regulation of such facilities has drawn "stiff resistance." In such cases, according to Berkes, criminal charges are rare. The jury in Carroll County, Ill., said the deaths of Whitebread and Pacas, and the six-hour entrapment of Piper, deserved damage awards of nearly $17 million. The verdict against Consolidated Grain and Barge follows a settlement last year with a group of farmers also managing the bin. Suffocation from engulfment is a leading cause of death in grain bins. The number of deaths more than doubled between 2006 and 2010, according to the U.S. Occupational Safety & Health Administration (OSHA).

The families of the two teens who died were each awarded $8 million. The other youngster, Piper, who survived, was awarded $875,000. The Chicago Tribune says the jury’s award is a record for Carroll County. Kevin P. Darkin, a lawyer with the Clifford law offices in Chicago, represented the Plaintiffs in this lawsuit. He did a very good job in the case. According to Jonathan Sandoz, general counsel for Consolidated Grain and Barge Company, an appeal will be taken.

Source: NPR.org

COMPANY INVOLVED IN WEST VIRGINIA CELL TOWER COLLAPSE HAD BEEN FINED IN 2009

The company that employed two of the three people killed in the collapse of a pair of cellphone towers in Clarksburg, W.Va.,...
A Canadian National Railway Co train carrying fuel oil and other hazardous materials derailed recently in southeast Mississippi. While the incident forced evacuation of nearby residents, fortunately no one was injured. The incident, which involved the derailment of 21 railcars, eight of which spilled their contents, has rekindled the issue of the safety of certain older tank cars. Federal regulators have been studying railcar design and other issues after the string of explosive derailments, including one last month when a 106-car BNSF Railway Co train carrying crude east crashed into a derailed westbound BNSF grain train near Casselton, N.D. Last July, a runaway oil train derailed and exploded in the center of the Quebec town of Lac-Mégantic, killing 47 people.

Sources: Reuters and Theglobeandmail.com

### DRUNK DRIVING CRASH KILLS SIX PEOPLE

A 21-year-old California woman has been accused of driving drunk and causing a highway crash that killed six people when she drove in the wrong direction on a freeway. Olivia Carolee Culbreath was charged with suspicion of felony DUI and felony manslaughter. According to the investigators, Culbreath was driving east in one of the westbound lanes of a freeway in Diamond Bar, Calif., at 4:40 a.m. on a Sunday when her Chevy Camaro collided head-on with a Ford Explorer.

Another vehicle, a Ford Freestyle, also was involved in the crash. At least two people were ejected from their vehicles. Four people died on the scene and two later died at a nearby hospital. Rodrigo Jimenez, a California Highway Patrol spokesman, called the crash “a horrific collision” and one that was “100 percent preventable.” This is another sad example of why drunk drivers must be kept off the highways in the country. Accomplishing this goal will require a combination of good educational efforts, more legislation passed and strong enforcement of the laws.

Source: AL.com

### TEXT-READING CRASH CONVICTION UPHOL BY NEW HAMPSHIRE HIGH COURT

The highest court in New Hampshire has upheld the assault conviction of a driver who was reading a text message as his car drifted across two lanes and into oncoming traffic. The result of the court’s ruling is that 30-year-old Chad Belleville will continue serving a three-and-a-half-year sentence for vehicular assault and second-degree assault. The court, in its unanimous ruling, said Belleville was recklessly negligent when he took his eyes off the road long enough to nearly hit one vehicle and then smash into two other vehicles without braking. The December 2010 crash on a highway near Pittsfield caused traumatic brain injury to a couple’s teenage son in the first car struck by the texting driver.

## XVIII. TRANSPORTATION

### TRAIN CARRYING FUEL OIL DERAILS IN MISSISSIPPI

A Canadian National Railway Co train carrying fuel oil and other hazardous materials derailed recently in southeast Mississippi. While the incident forced evacuation of nearby residents, fortunately no one was injured. The incident, which involved the derailment of 21 railcars, eight of which spilled their contents, has rekindled the push for stronger regulation of the railroads. Several of the cars were carrying hazardous materials including fertilizer and methanol. There was no fire resulting from the incident. The accident occurred in the city limits of New Augusta in Perry County, Miss., near a mobile home park.

The Mississippi accident follows a string of North American derailments of trains carrying crude oil in the past year, raising questions about the safety of certain older tank cars. Federal regulators have been studying railcar design and other issues after the string of explosive derailments, including one last month when a 106-car BNSF Railway Co train carrying crude east crashed into a derailed westbound BNSF grain train near Casselton, N.D. Last July, a runaway oil train derailed and exploded in the center of the Quebec town of Lac-Mégantic, killing 47 people.

Sources: The Exponent Telegram

## www.JereBeasleyReport.com
radio station or sneezing.” The lesson from this court’s ruling is that texting and driving a powerful motor vehicle—much like drinking and driving—simply don’t mix. That lesson must be learned by folks of all ages. So far it hasn’t fully registered with the public and that’s not good from a highway safety perspective.

Source: Claims Journal

**Lawsuit Filed By Trooper Hurt In Crash That Killed A Worker**

An Illinois state trooper was severely injured after a semitrailer crashed into an emergency vehicle and failing to reduce his speed, failing to yield to a commercial vehicle for more than 14 hours, vehicle while fatigued, operating the commercial truck. The lawsuit against Renato Velasquez and his employer, DND International, Inc.

The lawsuit, filed in Cook County Circuit Court, alleges that the fiery crash on Jan. 27 fractured Trooper Balder’s clavicle, fractured his ribs and gave him multiple head and facial lacerations as well as second- and third-degree burns. The Plaintiffs are seeking damages for pain, suffering, disability and disfigurement, as well as economic damages. Balder, 38, has been a trooper since 2007 and patrols a five-mile stretch on the interstate where he was struck.

The accident happened after Trooper Balder’s vehicle, a towing cab and a Tollway vehicle stopped on the side of the interstate near Aurora to assist a semi tractor that became disabled in the far right lane of eastbound traffic. According to the lawsuit, the Tollway worker who died in the crash, Vincent Petrella, stopped directly behind the disabled vehicle and activated his emergency lights. Parked behind him, Trooper Balder also activated his emergency lights and turned on an arrow board on his car that directed traffic away from the disabled truck.

The driver, Velasquez, was charged with several felonies in the crash. According to DuPage County prosecutors, Velasquez had fallen asleep at the wheel near the end of a marathon shift of more than 36 hours and failed to keep his logbook and skirted safety rules to stay on the road. The lawsuit accuses Velasquez of operating a commercial vehicle while fatigued, operating the commercial vehicle for more than 14 hours, failing to reduce his speed, failing to yield to a stationary emergency vehicle and failing to keep a proper lookout.

The lawsuit also alleges negligence on the part of DND International, Velasquez’s employer, which according to the Federal Motor Carrier Safety Administration (FMCSA) has a history of poor compliance with safety regulations. The lawsuit said that DND International, Inc. failed to inspect Velasquez’ report of duty status and failed to ensure he was in compliance with federal and local transportation safety regulations. It added that the company failed to have a system in place to track and control their commercial vehicle drivers’ hours of service.

The Plaintiffs are represented by Elizabeth A. Kaveny, a lawyer with the Chicago-based firm Burke Wise Morrissey Kaveny. Hopefully, the Plaintiff will be successful in this case. It deals with several safety issues that cause serious problems on our nation’s roadways.

Source: Chicago Tribune

**Appeals Court Upholds Bus Driver Convictions In Deadly Virginia Crash**

An appeals court has upheld a bus driver’s convictions for a Virginia crash that killed four passengers and injured dozens. The incident brought national attention on low-fare carriers operating on the East Coast.

The driver, Kin Yiu Cheung, dozed off as he was driving a Sky Express bus from Greensboro, N.C., to New York City just before dawn on May 30, 2011. The bus with 57 passengers aboard ran off Interstate 95 about 30 miles north of Richmond and overturned. The National Transportation Safety Board (NTSB) concluded that driver fatigue likely contributed to the crash because Cheung, the driver, had limited opportunities for quality sleep the previous few days.

Cheung was convicted of four counts of involuntary manslaughter and was sentenced to six years in prison. The Virginia Court of Appeals rejected Cheung’s claim that prosecutors failed to prove he demonstrated reckless disregard for human life. The appeals court said there was ample evidence Cheung knew he was in no condition to drive, including his heavy consumption of energy drinks and his own admission to police that he was sleepy right before the crash and that he fell asleep while driving.

Witnesses at Cheung’s 2012 trial described the harrowing experience as the bus swerved from side to side and changed speeds erratically for up to an hour while the driver drank coffee and energy drinks that he had picked up at stop along the route. A passenger who speaks Mandarin overheard a cellphone conversation in which Cheung told someone in his native language that he doesn’t get enough rest. Passengers testified that when the bus hit “rumble strips” on the shoulder of the highway, they noticed the driver slumped to the right with his head on his shoulder.

The appeals court:

*Given the difficulty that he had driving the bus during the hour before the crash, Cheung should have realized that his impaired condition was affecting his driving and posing a risk to the safety of those on the bus.*

The crash got the attention of government safety officials, who in June 2012 shut down more than two dozen similar curbside bus operations for safety violations. According to the NTSB, Transportation Department officials had been in the process of shutting down Sky Express at the time of the crash, but had given the company an extra 10 days to appeal an unsatisfactory safety rating.

Sadly, that delay has proved extremely costly!

Source: Claims Journal

**FDA To Review AstraZeneca Diabetes Drug For Heart Risks**

The U.S. Food and Drug Administration (FDA) has launched an investigation into the safety of an AstraZeneca PLC diabetes drug after a recent study found that users of the medication were more likely to suffer heart failure than a control group. The agency requested last month that AstraZeneca supply it with clinical trial data in order to examine a possible link between the drugmaker’s saxagliptin and heart failure. For your information, saxagliptin is marketed as Onglyza and Kombiglyze XR.

The request by the FDA stems from a study that appeared in the New England Journal of Medicine in September, which found that saxagliptin users were hospitalized at a higher rate for heart failure than users of a control treatment. According to the FDA, it will conduct a “thorough analysis” of the trial data after it receives the information from AstraZeneca. The agency cautioned that it viewed the study as preliminary, saying patients should not stop taking the drug and that doctors should continue prescribing it as recommended on its label.

The study, according to the FDA, didn’t find that saxagliptin users were more likely to die or suffer a heart attack or stroke than
the control group. The FDA said that its analysis of the saxagliptin clinical trial data was part "of a broader evaluation of all Type 2 diabetes drug therapies and cardiovascular risk."

Source: Law360.com

DATA FAILS TO SHOW THAT NAPROXEN IS SAFER THAN NSAID

A U.S. Food and Drug Administration (FDA) panel has voted that there is not enough scientific proof to support claims that naproxen, a painkiller sold as Aleve by Bayer Corp., is safer than other nonsteroidal anti-inflammatory drugs (NSAIDs), including ibuprofen. On Feb. 11 the panel voted 16-9 that there is not enough data to show that naproxen poses lower heart health risks compared with other NSAIDs including ibuprofen. Pfizer Inc., a rival drugmaker, markets ibuprofen as Advil and aspirin. The vote came on the second day of a joint meeting between the agency’s arthritis advisory committee and its drug safety and risk management advisory committee.

The FDA has consistently said that such advisory committee recommendations are not binding, and that it makes the final decisions. Pfizer said in a statement that it agrees with the committee’s position that existing data do not show that naproxen has a lower risk of cardiovascular thrombosis—or blood clots forming in a vessel—than do other NSAIDs. Bayer had not commented at press time on the panel’s vote.

Pfizer is backing a large ongoing study called Precision to evaluate the long-term heart health effects of its arthritis medication Celebrex. The drug maker says the study compares Celebrex to other NSAIDs, such as ibuprofen and naproxen, in treating arthritis pain. Pfizer said the clinical trial was devised in agreement with the FDA.

It should be noted that a whistleblower lawsuit was filed in 2012 against Bayer in a New Jersey state court by a former pharmaceutical executive. Dr. Shirley Chen claimed she was fired after telling a senior manager there was no legitimate data to support certain efficacy claims for the pain reliever Aleve. Dr. Chen said that she was fired after pointing out to company officials in November 2011 that certain advertising claims they were poised to make regarding recommended dosages of Aleve for osteoarthritic patients were unfounded. I am not sure about the status of this suit.

Source: Law360.com

18 NORTH CAROLINA PATIENTS MAY HAVE BEEN EXPOSED TO RARE BRAIN DISEASE

Eighteen neurological patients in North Carolina may have been exposed to an incurable and fatal degenerative brain disease while undergoing surgery at the Novant Health Forsyth Medical Center. The hospital says that surgical instruments were insufficiently sterilized. Surgeons operated on the 18 patients in a three week period using tools that had not been sufficiently sanitized after they were used on a patient who had surgery on January 18. That patient later tested positive for Creutzfeldt-Jakob Disease (CJD), the hospital in Winston-Salem said in a news release. Jeff Lindsay, president of the medical center, said at a news conference:

On behalf of the entire team at Novant Health, I apologize to the patients and their families for having caused this anxiety.

CJD causes failing memory, blindness, involuntary movement and coma, and kills 90 percent of patients within one year, according to the National Institute of Neurological Disorders and Stroke. The incubation period—before initial symptoms surface—can last years. After the first sign of symptoms, patients die in an average of four months, according to the statement.

According to reports, the possibility of contracting the disease through surgical exposure is very remote. Kevin Howell, spokesman for the North Carolina Department of Health and Human Services, said the department is aware of the possible exposure of the 18 patients and is closely monitoring the situation. Last year, health officials said at least 15 patients in Connecticut, Massachusetts and New Hampshire may have been exposed to the disease in a case similarly tied to unsanitary surgical instruments.

In North Carolina, the surgical instruments were sterilized using standard hospital procedures, but were not subjected to the enhanced sterilization procedures necessary on instruments used in confirmed or suspected cases of CJD, the hospital statement said. There are no treatments for the disease, which affects about 300 Americans each year. Every year, one in a million people around the world is diagnosed with the disease, which can be contracted through organ transplants or operations, according to Florence Kraknick, president of the Creutzfeldt-Jakob Disease Foundation. She said:

This is not something where there is a possibility they could operate and get rid of it. It is a 100 percent fatal brain disease robbing its victims of their humanity pretty fast.

It’s evident that the hospital made a most serious mistake and that has put 18 persons at risk. The emotional strain on the individuals and their families will be great. Hopefully and prayerfully, none of the patients involved will come down with Creutzfeldt-Jakob Disease, but that won’t be known for a long time.

Source: Reuters

XX. ARBITRATION UPDATE

VONAGE DENIED ARBITRATION DUE TO “ONE-SIDED” SERVICE TERMS

A California federal judge has rejected Vonage America Inc.’s bid to force arbitration in a putative class action claiming the telecom billed consumers an extra monthly “County 911 Fee” that wasn’t required by the government. U.S. District Judge Christina A. Snyder called Vonage’s contract “unconscionable.” After the Plaintiffs filed suit in September, Vonage said an arbitration provision found within the Vonage Terms of Service Agreement, agreed to by all customers who sign up for Vonage services, prohibited the lawsuit. But Judge Snyder denied Vonage’s motion to compel arbitration in the case, saying the service agreement’s terms, including the arbitration provision, is procedurally and substantively unconscionable.

According to Judge Snyder, those terms involved a substantial degree of oppression, which addresses the weaker party’s absence of choice and unequal bargaining power, and of surprise, which looks to the extent the contract clearly discloses its terms. “The subscriber is given no opportunity to negotiate the contract: He or she must either accept the [terms of service agreement] in the entirety, or else reject it and forego Vonage services. Such ‘take it or leave it’ contracts of adhesion are frequently found to be oppressive under California law,” Judge Snyder said. She added that the provision actually grants Vonage the forum of its choice while claiming to mutually bind both parties to arbitration.

The court’s decision allows the Plaintiffs to pursue their allegations in court because of an unreasonable contract. Named Plaintiffs Arthur Merkin and James Smith sued Vonage and others on Sept. 27, asserting

Source: Reuters

claims for violation of the California Unfair Competition Law, obtaining money under false pretenses, violating the Consumer Legal Remedies Act, fraud, unjust enrichment and others. The Plaintiffs said Vonage billed customers for a monthly “government mandated” charge of $4.75 for a County 911 Fee, despite the fact that no government agency mandated the fee.

In late October, Vonage removed the case to federal court pursuant to the Class Action Fairness Act. One month later, the Internet telephony services provider moved to compel arbitration and to dismiss or stay the case. After a Jan. 27 hearing, Judge Snyder found the arbitration agreement at issue to be one-sided and substantively unconscionable. Judge Snyder further rejected Vonage’s contention that he should refer the question of the arbitration provision’s fairness to an arbitrator. He ruled that Vonage did not point to any provision in the terms of the service agreement that would constitute proof that the parties agreed to delegate questions of arbitrability.

The Plaintiffs are represented in the case by J. Michael Hennigan, Bruce R. MacLeod and Elizabeth S. Lachman of McKool Smith a Los Angeles firm; and by Taras P. Kick, James Strenio and Thomas A. Segal of The Kick Law Firm, located in Santa Monica, Calif.

Source: Law360.com

CLAIM AGAINST DELL SENT TO ARBITRATION IN DEFECTIVE LAPTOP SUIT

The claims in a class action lawsuit against Dell Inc. were sent to arbitration last month in a New Jersey federal court. Judge Michael A. Shipp granted a request from Dell and ordered the Plaintiff who had filed a proposed class action lawsuit, alleging the company sells defective laptops prone to overheating, to enter arbitration with the computer giant. A stay of Plaintiff Raheel Khan’s suit was filed in July 2009, however, the NAF was no longer accepting consumer arbitration.

Interestingly, a motion filed by Dell seeking to force Khan into arbitration was denied by the court in 2010 due to the NAF’s unavailability. In early 2012, however, the Third Circuit reversed that ruling, saying the law allowed for an alternative party to be assigned to the case. When the case came back, Judge Shipp wrote in that issue:

_Faced with a divide in relevant case law outside the Third Circuit, the court determined that the parties could substitute another arbitral body for NAF._

The Plaintiff argued that forcing individuals into arbitration against a large company like Dell puts him at a clear disadvantage because Dell has litigated various similar disputes in the past, which allows the company to make “an informed, calculated decision about how to proceed.” The Plaintiff also argued that various other portions of the agreement were legally unconscionable, including its ability to force Plaintiffs to attend arbitration sessions in Texas at their own expense, and the lack of opportunity for customers to object or refuse its terms if they chose to purchase the computer. Judge Shipp rejected all of these arguments.

The Plaintiff filed the class action on behalf of everyone who has leased or purchased a Dell Inspiron 600m notebook laptop computer. According to the Plaintiff, the 600m suffers from a design defect that makes it overheat after as little as 15 minutes of normal use. He alleged that overheating makes the machines’ processors run at dramatically lower speeds, rendering the computers unusable for the intended purpose, and leads to vital system components failing. The case is a classic example of how huge corporations take advantage of their customers.

Source: Law360.com

XXI. ENVIRONMENTAL CONCERNS

ANOTHER TOXIC COAL ASH SPILL—THIS TIME IN NORTH CAROLINA

Early February brought the latest in coal ash disasters when a broken stormwater pipe at Duke Energy’s Dan River Steam Plant released approximately 82,000 tons of coal ash and nearly 27 million gallons of coal ash pond effluent into the Dan River in North Carolina. This is enough ash to fill about 32 Olympic-sized swimming pools and all of it poured into the Dan River upstream of drinking water plants that supply drinking water to communities in both North Carolina and Virginia. Ash flowed from the broken pipe for a week before workers contained it and the ash and effluent drifted downstream where it threatens the safety of drinking water for hundreds of thousands of residents.

Water quality tests of the river near the spill show higher levels of toxic chemicals, including arsenic, aluminum, iron, copper, lead and chromium. The North Carolina Department of Environment and Natural Resources (NCDENR) officials advised that arsenic levels appeared to be decreasing as of mid-February, but recommended avoiding prolonged direct contact with the river in the area of the spill until further notice. Both state and Federal officials are working with Duke Energy to craft a cleanup plan, and it is unclear how long cleanup might take.

Some are comparing the Dan River Spill to the 2008 spill at Tennessee Valley Authority’s (TVA) Kingston Fossil Plant where more than a billion gallons of coal ash sludge poured into the adjacent waterways and community. More than five years after the Kingston spill, the $1.2 billion cleanup continues even as TVA and Environmental Protection Agency (EPA) have recognized that nearly 500,000 cubic yards will remain on the river bottom after cleanup operations are complete. While the Dan River spill is smaller in scale than Kingston, there is no doubt that cleanup will take a significant amount of time and money and that Duke Energy should be held accountable for this disaster.

In mid-February, the U.S. Attorney launched a Federal criminal investigation of the spill and possible corruption between Duke Energy and the North Carolina government. Duke Energy has been under fire in recent years for coal ash pollution at its North Carolina plants, and a Federal grand jury is now looking into whether Duke Energy was criminally negligent.

While Duke Energy may be held liable for violations of environmental laws and regulations as a result of the spill, there were no Federal regulations in place when the spill occurred. A battle to regulate coal ash has been ongoing for a long time and intensified and came under great public scrutiny after the TVA Kingston spill. There have been Congressional efforts to prohibit EPA from regulating coal ash and there have been law-
At Superfund sites in 21 states. The remain-
U.S. Environmental Protection Agency (EPA)
at dozens of sites across the country. The

The first development was a U.S. District
Court for the District of Columbia order that
found EPA to have a duty to revise its waste
regulations, and the second development
was a settlement between EPA and environ-
mental groups in which EPA agreed to final-
ze its coal ash rules by December of 2014.
Unfortunately, neither of these develop-
ments was in time to prevent the Dan River
spill and its threat to public drinking water
in the surrounding area.

Lawyers in the Toxic Tort Section at Beasley
Allen have been involved in the TVA
coa ash spill litigation since its outset, and
they continue to work on behalf of clients
impacted by toxic spills like the Dan River
spill. If you need additional information on
this subject, contact Rhon Jones or Brantley
Fry, lawyers in the Section, at 800-898-2034
or by email at Rhon.Jones@beasleyallen.com
or Brantley.Fry@beasleyallen.com.

Source: Law360.com, CNN and The Associated Press

W.R. GRACE PAYS $63 MILLION TOWARD
ENVIRONMENTAL CLEANUP

Having been reorganized after more than
a decade under court protection, W.R. Grace
& Co. has now paid more than $63 million to
the federal government under its bankruptcy
plan to fund environmental cleanup efforts
at dozens of sites across the country. The
U.S. Environmental Protection Agency (EPA)
received $54 million to cover cleanup costs
at Superfund sites in 21 states. The remain-
ing $9 million went to other federal agen-
cies, the DOJ said in a joint statement with
EPA. Robert G. Dreher, an official in the
DOJ’s Environment and Natural Resources
Division said:

Communities across the United States
will benefit from this payment of
present and future cleanup costs. The
Justice Department is committed to
holding polluters responsible for their
environmental legacy, and won’t just
walk away leaving taxpayers to pick
up the tab.

The announcement came less than 48
hours after the Columbia, Md.-based che-
mi cal conglomerate officially emerged from
bankruptcy. A Delaware bankruptcy judge
signed off on a $1.55 billion financing
package designed to fund Grace’s exit from
bankruptcy. W.R. Grace entered Chapter 11
in April 2001 in the wake of more than
129,000 asbestos-related lawsuits over its
mining and manufacturing operations. The
EPA entered the bankruptcy proceedings in
2003, filing claims for past and future
cleanup costs at locations contaminated by
the company’s asbestos and other hazardous
substances. W.R. Grace and the agency
agreed to various settlements resolving the
environmental liabilities between April 2008
and February 2013.

Among the 39 Superfund sites that will
receive some of the cleanup money are
Amber Oil in Milwaukee; Galaxy/Spectron
in Elkton, Md.; Harrington Tools in Glendale,
Calif.; Vermiculite Northwest in Spokane,
Wash.; and a W.R. Grace site in Weedsport,
N.Y. Under a separate 2008 settlement, W.R.
Grace has already paid the EPA $250 million
to remediate asbestos contamination in the
town of Libby, Mont., where it once
ran a mine.

W.R. Grace had been in Chapter 11 for
more than three years since the bankruptcy
court confirmed its Chapter 11 plan, which
includes the establishment of two trusts to
provide compensation to thousands of people
who claim they suffered personal
injury or property damage as a result of
asbestos-containing products manufactured
by the company. A Delaware district court
judge approved the plan in January 2012,
and the Third Circuit rejected certain
appeals to the confirmation order in
November 2013.

Source: Law360.com

EPA SETS NOTIFICATION REQUIREMENTS FOR 35
CHEMICALS

The U.S. Environmental Protection
Agency (EPA) is subjecting 35 chemicals to
additional government scrutiny. The agency
issued direct final rules last month mandat-
ing that chemical manufacturers, petroleum
refineries and others inform the agency
before using the substances. The significant
new use rules establish a 90-day advance
notification requirement for companies plan-
ing to import, manufacture or process the
35 chemicals. The list includes 14 substances
that are already deemed a heightened health
and environmental risk under the Toxic Sub-
cstances Control Act.

The EPA said it wants to review data asso-
ciated with any proposed new use of the
chemicals to make sure the process is safe.
The agency will evaluate potentially danger-
ous exposure to humans and the environ-
ment during manufacturing, processing and
importing, using detailed information sub-
mitt ed by the companies planning to use the
chemicals. The rule provides:

Receipt of such notices allows EPA to
assess risks that may be presented by
the intended uses and, if appropriate,
to regulate the proposed use before
it occurs.

Chemicals covered by the final rule
include industrial adhesives, conductive
adhesives used in the electronics industry,
additives for heat transfer in electronic
devices, anti-wear additives for greases and
oils, rubber additives and catalysts support-
ing chemical manufacturing. The rule also
applies to chemicals used in wood, plastic
and automotive paint material and seat-hea-
ters, as well as chemicals used as electron
emitters for lighting and X-ray sources.

The health concerns that the EPA is
worried about for these chemicals include
irritation to skin, eyes, lungs, mucous mem-
branes, and lung toxicity if inhaled. Water
contamination leads the list of the EPA’s envi-
ronmental concerns surrounding these
chemicals. The rule, published in the Federal
Register on Feb. 11 will take effect 60 days
after that date. If the EPA receives a notice of
intent to submit adverse or critical com-
ments within 30 days of the publication date,
the agency will withdraw the direct
final rule.

According to the EPA, the rule will pri-
marily impact petroleum refineries, manu-
facturers, chemical processors and chemical
importers. The rule covers all new activity
using the chemicals that are not ongoing
when the rule is published in the Federal
Register. The EPA said:

Persons who begin commercial manu-
facture or processing of the chemical
substances for a significant new use
identified as of that date would have
to cease any such activity upon the
effective date of the final rule. To
resume their activities, these persons
would have to first comply with all
applicable significant new use rule
notification requirements and wait
until the notice review period, includ-
ing any extensions, expires.

If any of our readers need the premanufac-
ture notification numbers for the 14 chemi-
cals covered under TSCA and the other 21
chemicals they can contact Shanna Malone
at Shanna.Malone@beasleyallen.com.

Source: Law360.com

XXII.
THE CONSUMER CORNER

GM KNEW OF COBALT IGNITION PROBLEM

General Motors knew in 2004, a decade before it issued a recall, that its Chevrolet Cobalt had an ignition switch that could inadvertently shut off the engine while driving. This was learned in depositions taken in a civil lawsuit against GM. The stall also would cut off the driver’s power steering and brakes, as well as safety systems such as airbags and anti-lock brakes. At least one GM engineer had the problem while testing the new car, which went on sale in 2004 as a 2005 model, according to documents obtained by USA Today. The lawsuit arose out of a crash that killed a pediatric nurse, Brooke Melton. Ms. Melton died in 2010 on her 29th birthday, in the Cobalt she bought new in 2005.

GM created a snap-on key cover to try to help with the ignition issue. The company advised dealers in a 2005 technical service bulletin (TSB) to install the part if owners complained. GM failed to recall the cars for a mandatory fix until last month. GM settled the lawsuit filed by Ms. Melton’s estate. The terms are confidential and GM refused to comment on the settlement, saying a dealer lawsuit is still pending. Ms. Melton had taken her car into the dealer for ignition switch problems and just picked it up the day before her fatal crash. She bought her 2005 Cobalt new in August of 2005. She never received notice of the TSB and never got the part referred to above.

In the recall announced on Feb. 13, GM said it knows of at least six deaths in five Cobalt crashes in which airbags failed to deploy as a result of switch failure. The company said the switch mechanisms did not meet its specifications and too easily could pop out of the “run” position—because of jarring or a heavy key chain—into “accessory” or “off,” deactivating the airbags.

GM will replace the switch in 778,619 of its 2005-2007 Chevrolet Cobalts and mechanically similar 2007 Pontiac G5 compact cars in the U.S., Canada and Mexico. The carmaker said it knows of a total of 22 related crashes, but GM spokesman Adam Adler said the company would have no further details or comment beyond the original recall announcement.

Even though GM acknowledged the problem in the 2005 technical service bulle-
tin—a type of routine notice from automakers to dealers about possible problems and fixes—the bulletin did not tell dealers to put the new key cover on the keys of new Cobalts before they were sold. The bulletin also did not tell dealers to alert buyers of the possibility that the key might move out of place and the engine might stall. Gary Altman, program engineering manager for Cobalt during its development, testified in a deposition last June. He admitted that “the modification to the key listed in the bulletins was an improvement, it was not a fix to the issue.” But he testified that he “thought that the insert should have been put into the cars, yes.”

Ms. Melton was driving on a rainy night in Paulding County, Ga.,—about 30 miles from Atlanta—wearing her safety belt and traveling at 58 mph on a two-lane state road. She was on her way to her boyfriend’s house. When the ignition failed Ms. Melton lost control of her car, it skidded and was hit on the passenger side by another car. The car’s black box recorded the last 3 seconds before the crash.

Interestingly, it doesn’t appear that Ms. Melton is among the six fatalities cited in GM’s belated recall. The circumstances of her crash were different from those GM described, which all were front-impact accidents. One of the investigating officers said Ms. Melton was “traveling too fast for the roadway conditions.” Occupants in the car that hit her vehicle were injured and they sued Ms. Melton’s estate. Her parents contacted Lance Cooper to represent them. Lance had a “black box dump” done, and that’s when it was discovered that the ignition key had come out of the “run” position and shut off the engine at the time of the crash.

Lance, who is the founding partner of The Cooper firm, located in Marietta, Ga., represents the Melton estate in this most important case. Obviously, the case has already attracted a great deal of national interest.

Source: USA Today

NEARLY 22 MILLION AUTOMOBILES WERE RECALLED IN 2013

Automakers recalled 21.9 million cars and trucks in the United States last year, a nine-year high. According to The National Highway Traffic Safety Administration (NHTSA), automakers initiated 632 separate vehicle recalls in 2013. That was up 9 percent from the prior year. While companies are saving money by using more common parts, that can force them to recall many more vehicles when something goes wrong.

It was reported that Chrysler Group initiated the most recalls, with 36. Among those was a recall of 282,000 minivans whose air bags could deploy on the wrong side. All told, Chrysler recalled 4.7 million vehicles last year. Trailing Chrysler in the number of recalls was General Motors with a total of 23. Mazda had the fewest recalls, with two. Toyota recalled the most vehicles in 2013, with 5.3 million in 15 separate recalls. Mercedes-Benz recalled the fewest vehicles, with 747.

Source: Insurance Journal

NHTSA OPENS PROBE OF MAZDA CX-9 BRAKE ISSUE

U.S. safety regulators have opened an investigation into reduced brake effectiveness for an estimated 62,319 Mazda Motor Corp CX-9 large crossover vehicles from model years 2010 and 2011. The U.S. National Highway Traffic Safety Administration (NHTSA) opened a preliminary evaluation into the vehicles after receiving seven consumer complaints of unexpected loss of power-assisted braking. A preliminary evaluation is the first step in a process that could lead to a recall if regulators determine a manufacturer needs to address a safety problem.

A Mazda spokesman said the Japanese automaker was cooperating with NHTSA officials in the investigation. Consumers had complained to NHTSA that there were incidents of the brake pedal suddenly feeling hard, requiring increased effort to stop the vehicle. NHTSA previously investigated brake master cylinder leaks in the 2008-model CX-9, but closed that probe in April 2012 because of a low probability the condition could affect brake performance, according to NHTSA documents filed online. In the latest investigation, however, the complaints said possible loss of power assist to the brake, reduced brake effectiveness, and several consumers reported hearing a hissing noise during brake application, according to the NHTSA documents.

Source: Insurance Journal

SAFETY OFFICIALS PROBE FIRE TRUCK WHEELS

U.S. safety regulators are investigating a complaint that a front wheel fell off an American Lafrance fire truck last year. The probe covers about 100 Eagle model aerial ladder trucks from the 2008 model year. The
National Highway Traffic Safety Administration (NHTSA) says investigators will determine if the front suspension is defective and a recall is needed. The investigators will also look at other vehicles with the same design.

On Dec. 2, a fire department complained that the passenger side front spindle snapped and the wheel fell off. The complaint said the driver lost control of the truck. It says the problem could have resulted in injury or death if the truck had been responding to an alarm. The complaint does not identify the department, but we do know that the vehicle was from American Lafrance.

Source: Claims Journal

**CPSC AND MANUFACTURERS BLASTED FOR POOR RECALL RATES**

Only 10 percent of recalled children’s products are ultimately fixed, replaced or destroyed, including less than 5 percent of the products in consumers’ homes, according to an advocacy group. The group, Kids in Danger, announced its findings after analyzing U.S. Consumer Product Safety Commission (CPSC) data. The group calculated the recall participation rates based on monthly progress reports for CPSC corrective action plans and incident updates for children’s products recalled from January 2012 to October 2012. Kids in Danger said in a report about CPSC recalls:

> CPSC, manufacturers, retailers and consumers need to focus more attention on getting recalled products fixed or out of the hands of consumers. Once products are in consumers’ homes, recall participation rates are abysmal.

The participation rates for manufacturers, distributors and retailers were better than that of consumers, although the three types of companies were only in possession of 18 percent of recalled children’s products, the group said. For instance, it said that manufacturers fixed or destroyed 94 percent of the recalled products in their possession, but possessed less than one percent of the products overall.

To make recalls more effective, the CPSC and manufacturers should work together to speed up the voluntary recall process, according to Kids in Danger. The CPSC should also alert consumers to recalls using a variety of outreach methods, the group said. There were 63 recalls in 2013 involving manufacturers that had a Facebook page, but the manufacturers only mentioned the recall on the social media site nine times. There were the same number of recalls involving manufacturers on Twitter, but companies only mentioned the recall on the site eight times.

The CPSC proposed a rule in November that aims to standardize voluntary recall notices. Under the proposal, companies would be expected to issue a statement for each recall, as well as post a notice on their website and put out in-store posters about the recall. It calls for companies to notify consumers directly when possible. Recall notices posted on social media outlets such as Twitter would be expected to remain prominent for at least 48 hours.

CPSC staff members have said the rule would make recall negotiations quicker and more efficient. But Commissioner Ann Marie Buerkle maintained in a November hearing that the proposal could slow down the recall process. She said that was because the proposal would require companies to adhere to voluntary recall plans or face court action. I am not sure I understand the commissioner’s concern. Kids in Danger and other consumer groups, including Public Citizen and Consumers Union support the proposed voluntary recall rule.

The CPSC could also improve recall effectiveness by making recall information more easily accessible, Kids in Danger had to file Freedom of Information Act requests to view the monthly progress reports. But the CPSC said that 27 of the reports were missing and others were redacted. In addition to examining recall effectiveness, the report compared 2012 and 2013 recall statistics. The number of children’s product recalls increased by 18 percent in 2013. The number of deaths linked to recalled children’s products also increased, by 22 percent, but the number of injuries fell by 16 percent.

Source: Law360.com

**FDA SETS NEW SAFETY STANDARDS FOR INFANT FORMULA**

The U.S. Food and Drug Administration (FDA) released a rule last month that establishes new safety standards for infant formula, including mandatory tests for dangerous contaminants such as salmonella. The interim final rule sets current good manufacturing practices specific to infant formula and changes the quality control procedures for the products. The required testing of product samples for microbial contamination is included in the new manufacturing standards.

The rule is designed to ensure that manufacturers put all of the nutrients required by federal regulations—such as protein, fat and some vitamins and minerals—into their formula. Under the regulation, manufacturers are required to notify the FDA about new or changed formulas. Michael Taylor, FDA deputy commissioner for foods and veterinary medicine, said in a statement:

> The FDA sets high-quality standards for infant formulas because nutritional deficiencies during this critical time of development can have a significant impact on a child’s long-term health and well-being. This rule will help to prevent adulteration in infant formula and ensure infant formula supports normal physical growth.

The requirements stemming from the Infant Formula Act of 1980 had previously been the standard for formula manufacturers. According to the FDA, manufacturers are already following many of the current good manufacturing practices in the rule. The rule does not apply to formula made for infants with special dietary needs or unusual health problems. The agency released a draft guidance document on Thursday for manufacturers of those products. It issued a second draft guidance document advising manufacturers as to how they can show they have met the final interim rule’s quality factor requirements. The regulation becomes effective on July 10. The FDA is accepting comments on the rule for 45 days.

The FDA was forced to back the safety of the U.S. formula supply five years ago, after test results showed trace amounts of the chemical melamine in a sample of one popular formula made by Nestle SA, and the presence of cyanuric acid, a chemical related to melamine, in a second formula made by Mead Johnson & Co., a unit of Bristol-Myers Squibb Co. Separately from the FDA’s probe, Abbott Laboratories, another major formula maker, revealed that in-house tests had also detected trace levels of melamine. Earlier in 2008, the FDA had determined that it was safe to consume food and drink with melamine below 2.5 parts per million, with the exception of infant formula, but the agency later clarified that it would allow a trace amount of the chemical to be present in such products.

Source: Law360.com
The FDA has warned that a manufacturer of active pharmaceutical ingredients created a “severe hazard” by adopting substandard labeling and storage practices at plants in Arizona and Hong Kong. A warning letter, released on Feb. 12, came after one of the most notable findings by the FDA. The agency said that it encountered a container whose labels indicated the presence of an inactive ingredient, but that testing of the contents revealed a variety of different substances used to treat medical conditions.

The FDA wrote to CBSCHM Ltd. that “the unacceptable practices that resulted in this mislabeling incident can pose a severe hazard to consumers.” Separately, the inspector complained that many records were incomplete, writing that 23 lots of active ingredients didn’t include batch numbers, manufacturing dates, expiration dates or retest dates. Inventory records were another source of concern, as they often omitted key information, making it impossible to identify and track the ingredients that CBSCHM distributed, according to the letter, which stemmed from inspections in April and June.

The manufacturer responded to the FDA’s concerns on that point, but its reply was too vague for the agency to understand how supply chain integrity would be ensured, the letter said. CBSCHM had not responded at press time for the issue. The company’s products have been the subject of import alerts in the past, including an October 2012 notice that involved antibiotic doxycycline and erectile dysfunction medicine sildenafil citrate, the active ingredient in Viagra.

The warning letter at one point suggested a near-total absence of quality assurance at CBSCHM. What the FDA found is shocking. The agency wrote in the letter:

During the inspection, you stated you did not have a quality unit, provided no written documents describing the roles and responsibilities of a quality unit, and had no written procedures for quality activities.

To resolve the issues, regulators advised CBSCHM management to conduct a “comprehensive evaluation” of their global operations and to retain a third-party expert on so-called good manufacturing practices. Until improvements are made, any drug maker using the company’s ingredients may see its applications rejected for new products, the FDA said.

Source: Law360.com

The average cost of a home fire in 2006 was more than $17,000. Eighty percent of Americans don’t realize that home fires are the single most common disaster across the nation. Not only are lives lost in home fires, the economic losses are great. It’s very important for homeowners to have fire escape plans. But only 26 percent of families have actually developed and practiced a home fire escape plan. Fires kill more Americans each year than all natural disasters combined. Folks from all backgrounds and geographic locations are affected by home fires. In 2006, a home fire was reported every 80 seconds, and someone dies from a home fire every 204 minutes.

Children younger than 5, and adults older than 65 are more than twice as likely to die in a home fire as the rest of the U.S. population. African Americans in this country are disproportionately affected by home fires, and account for 25 percent of all fire deaths while they represent less than 13 percent of the population. Cooking fires are the leading cause of home fires and home fire injuries, and two out of three cooking fires start with the range or stove. Heating fires are the second leading cause of home fires. Smoking is the leading cause of home fire deaths. High-rise fires are more injurious and cause more damage than all other structure fires.

Each year more than 200 people die from carbon monoxide produced by fuel burning appliances in the home including furnaces, ranges, water heaters and room heaters. Every two and a half hours someone in the U.S. is killed in a home fire. In a typical year, 20,000 people are injured in home fires.

Having a working smoke alarm reduces one’s chances of dying in a fire by nearly half. In 2005, 74 percent of home fire deaths occurred in homes with no smoke alarms or no working smoke alarms. Smoke Alarms should be installed in every home. Properly installed and maintained smoke alarms save lives and protect against injury and loss due to fire. Sprinklers and smoke alarms together cut your risk of dying in a home fire 82 percent in relation to having neither. From 2000-2004, no smoke alarms were present or none operated in almost half of the reported home fires. An estimated 890 lives could be saved each year if all homes had working smoke alarms. The following are some preparedness recommendations that should be followed relating to fire preparedness and safety:

• Install a smoke alarm on every level of your home and outside of sleeping areas.
• Test smoke alarm batteries every month and change them at least once a year.
• Teach children what the smoke alarm sounds like and what to do when they hear it.
• Keep smoke alarms clean by vacuuming over and around it regularly. Dust and debris can interfere with its operation.
• Install smoke alarms away from windows, doors, or ducts that can interfere with their operation.
• Never remove the battery from or disable a smoke alarm. If your smoke alarm is sounding “nuisance alarms”, try locating it further from kitchens or bathrooms.
• Since smoke alarms wear out, you should replace your alarms every 10 years. If you can’t remember when you last replaced them, buy new alarms that are interconnected if possible. Install them using manufacturer’s instructions and hire an electrician for installing alarms that are hard-wired into your home’s electrical system.

Preparation of a good plan and then following it are essential. Only 26 percent of families have actually developed and practiced a home fire escape plan. The following are some recommendations that should be followed relating to fire preparedness and safety:

• Make sure everyone in your family knows at least two ways to escape from every room of your home.
• Practice your fire escape plan at least twice a year. Designate a meeting spot outside and a safe distance from your home. Make sure all family members know the meeting spot.
• Have your family practice escaping from your home, practicing low crawling and at different times of the day. Make sure everyone in the home knows how to call 9-1-1.
• Consider escape ladders for sleeping areas on the second or third floor. Make sure everyone in your home learns how to use them ahead of time by reading the manufacturer’s instructions and understanding
the steps to use them. Store them near the window where they will be used.

- Teach your family to stop, drop to the ground, and roll if their clothes catch on fire. Practice this with your children.

- Once you get out of your home, stay out under all circumstances, until a fire official gives you permission to go back inside.

- Never open doors that are warm to the touch.

- If smoke, heat, or flames block your exit routes, stay in the room with the door closed. If possible, place a towel under the door and call the fire department to alert them to your location in the home. Go to the window and signal for help by waving a bright-colored cloth or a flashlight. Do not break the window, but open it from the top and bottom.

- You can visit www.redcross.org/homefires for more information on creating home fire escape plans.

**Sources:** American Red Cross, U.S. Fire Administration, and the National Fire Protection Association.

### XXIII.

**RECALLS UPDATE**

We are again reporting a large number of safety-related recalls. We have included some of the more significant recalls that were issued in February. 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.

**ANOTHER MASSIVE TOYOTA RECALL DUE TO SOFTWARE PROBLEMS**

Toyota Motor Corp. has recalled its popular Prius hybrid to fix a software glitch that could cause the car to stall. The Japanese automaker also launched a recall of about 260,000 RAV4 sport-utility vehicles, Tacoma trucks and Lexus RX350 SUVs sold in the United States to address a separate issue. The Prius recall includes 1.9 million vehicles sold from 2010 through 2014 model years. It involves about 1 million cars in Japan, some 700,000 in North America and the rest from Europe and other regions.

Toyota claims that it will update software in the electronic controls of the car. The software’s current settings could create heat in some of the transistors in the circuits of the car, damaging the parts. When this happens, warning lights on the dashboard activate. The hybrid system might shut down while the vehicle is being driven, creating a sudden stall, which is a definite safety hazard. The automaker claims it knows of no accidents or injuries resulting from the problem.

Toyota sold more than 234,000 Priuses in the U.S. last year, making it one of the top-selling passenger cars. It is the most sold vehicle of any type in California, even the nation’s top-seller, the Ford F-150 pickup. In the other recalls, Toyota will update software on certain 2012 RAV4s, 2012-2013 Tacomas, and 2012-2013 Lexus RX350 models in order to address an electronic circuit condition that can cause the vehicle stability control, antilock brake, and traction control functions to intermittently turn off.

This latest recall comes as the automaker is negotiating a settlement of a four-year federal criminal investigation into whether it properly reported safety complaints about incidents of sudden acceleration in its vehicles to safety regulators.

**GENERAL MOTORS RECALLING 778,562 OLDER-MODEL COMPACT CARS**

General Motors has recalled 778,562 older-model Chevrolet Cobalt and Pontiac G5 compact cars in North America due to a defect that can cause the ignition to accidentally switch off. Reuters is reporting in the 2005-2007 model years of the Cobalt and the 2007 G5, a heavy keying or jarring road conditions can cause the ignition to shift out of the run position, which will turn off the engine and airbags.

Reuters reported that the defect caused at least five frontal-impact crashes and six front-seat fatalities in crashes where front airbags didn’t deploy. All of those crashes occurred off road and at high speeds. GM also is aware of 17 more crashes involving some type of frontal impact and nonfatal injuries where airbags didn’t deploy, according to the report. While GM doesn’t make either car anymore, dealers will replace the ignition switch at no charge. More is written about this recall in the Products Liability Section of this issue.

**ASTON MARTIN RECALLS MORE THAN 17,000 LUXURY CARS**

British luxury carmaker Aston Martin has recalled 17,590 sports cars because of a problem with the accelerator pedal molding. According to the company there have not been any accidents or injuries related to the fault, which can cause the engine to idle unexpectedly. The global recall will affect all of the company’s left-hand drive cars made between late 2007 and the end of 2013. Right-hand drive cars made between May 2012 and December 2013 also will be recalled.

The new Vanquish model is not affected by the recall. The company says molding from a Chinese supplier was found to be defective. The Aston Martin is regarded as one of the world’s finest sports car and as a side note they have long associated with the James Bond films.

**PORSCHE 911 GT3 OWNERS TOLD TO STOP DRIVING THEM**

Porsche is asking owners of its 911 GT3 models to stop driving them because they can develop engine problems and catch fire. The German sports carmaker says it will pick up the cars and take them to a dealership for inspection. The problem affects 785 GT3 cars from the 2014 model year, including 408 in the U.S. Porsche says engines were damaged on two cars in Europe, and both caught fire. The company says there were no crashes or injuries.

Spokesman Nick Twork says oil caught fire in both cars. Engineers are doing studies to figure out what caused the problem. The GT3, which costs more than $130,000, is the sportiest of the company’s 911 models. Twork says Porsche will offer loaner cars. No other 911 models are affected.

**GRACO RECALLING NEARLY 3.8 MILLION CHILD CAR SEATS**

Graco has recalled nearly 3.8 million car safety seats because children can get trapped by buckles that may not unlatch. But the company has drawn
the ire of federal safety regulators who say the recall should include another 1.8 million rear-facing car seats designed for infants. The recall covers 11 models made from 2009 through 2013 by Graco Children’s Products Inc. of Atlanta. It’s the fourth-largest child seat recall in U.S. history, according to the National Highway Traffic Safety Administration (NHTSA).

NHTSA warned that the problem could make it “difficult to remove the child from the restraint, increasing the risk of injury in the event of a vehicle crash, fire or other emergency.” The agency also criticized Graco in a sternly-worded letter in January, saying the recall excludes seven infant car seat models with the same buckles. Both the company and NHTSA have received complaints about stuck buckles on the infant seats, the agency said. “Some of these consumers have had no choice but to resort to the extreme measure of cutting the harness straps to remove their child from the car seat,” the NHTSA letter said.

NHTSA wants Graco to identify the total number of seats that potentially have the defect and explain why it excluded the infant seats. NHTSA, which began investigating the seats in October of 2012, said the investigation remains open. The agency said it could hold a public hearing and require Graco to add the infant seats. Graco, a division of Atlanta-based Newell Rubbermaid, says that its tests found that food or beverages can make the harness buckles in the children’s seats sticky and harder to use over time. Rear-facing infant seats aren’t being recalled because infants don’t get food or drinks on their seats, a Graco spokeswoman, Ashley Mowrey said. Graco will send replacement buckles to owners of infant seats upon request.

Ms. Mowrey said the company has issued cleaning tips for the buckles, and began sending replacement buckles to owners last summer. Graco is also sending instructions for how to replace the buckles and posting a video on its website to show parents how to replace them. In documents sent to NHTSA, Graco estimated that less than 1 percent of the seats involved in the recall have had buckles that were stuck or difficult to unlatch. There have been no reported injuries due to the defect, according to Ms. Mowrey.

NHTSA says that parents should check seat buckles and contact Graco for a free replacement. The agency also said people should get another safety seat for their children until their Graco seat is fixed. NHTSA, in the letter to Graco, also accused the company of soft-peddling the recall with “incomplete and misleading” documents that will be seen by consumers. The agency threatened civil penalties and said that Graco should delete from its documents “any statements that may lead the public to discount the seriousness of the safety risk presented by this defect.”

In addition, NHTSA said that in January it started investigating four models of Evenflo child safety seats, which have a design similar to the recalled Graco seats and may use buckles made by the same manufacturer, AmSafe Commercial Products Inc. of Elkhart, Ind. “NHTSA is also in contact with AmSafe to identify any additional child seat manufacturers that use harness buckles of the same or similar design,” NHTSA’s statement said.

**West Marine Recalls Folding Bicycles**

West Marine has recalled about 4,600 folding bicycles. Consumers should stop using this product unless otherwise instructed. The bicycle’s frame can break during use, posing a fall hazard to the rider. This recall involves two models of folding bicycles, the Jetty Express 2 and the Port Runner 2, that are designed for use in and around docks and marinas. The Jetty Express 2 has a blue and white frame and folds at a hinge in the middle. Jetty Express 2 is printed on the bike’s frame. The Port Runner 2 has a red frame and folds at a hinge in the middle. Port Runner 2 is printed on the bike’s frame. West Marine has received three reports of the bicycle’s frame breaking, resulting in bruises and scrapes to a rider.

The bicycles were sold at West Marine stores nationwide, online at www.westmarine.com and in the West Marine catalog from March 2010 through July 2013 for between $300 and $400. They should be replaced. You can contact West Marine at 800-262-8464 between 8 a.m. and 5 p.m. PT Monday through Friday, or online at www.westmarine.com and click on Product Recalls at the bottom of the page for additional information. Photos of the bicycles are available at http://www.cpsc.gov/en/Recalls/2014/West-Marine-Recalls-Folding-Bicycles/

**3T Design Recalls Cervélo Bicycles With Aduro Aero Handlebars**

Cervélo P5 bicycles with 3T Aduro aero handlebars have been recalled by Focus Bicycles USA, Carlsbad, Calif. The forward extension mounts can detach from the base bar while riding causing the rider to lose control, posing a risk of injury. The recall includes 2012 and 2013 Cervélo P5 bicycles equipped with 3T Aduro aero handlebars. The bicycles are black with red and white stripes. “P5” is on the seat tube. “Cervélo” is on the top tube and a large “é” is on the down tube in white lettering. The handlebars consist of four major components: a base bar, which attaches to the bike; a forward extension mount, which attaches to the base bar; forearm rests and forward extension bars, which attach to the forward extension mount. The base bar is black with red and white stripes and has “3T” on the top and rear. The handlebars come with both a high and a low forward extension mount, one of which will be installed based on customer fit. Consumers can purchase an ultra-low forward extension mount separately. The words “Ultimate Performance” are on the forward extensions.

The handlebars were manufactured between January 2012 and July 2012. Serial numbers for the handlebars are on a label inside the base bar under the stem cap on the rear wall. The serial number is the seven-digit number following “FM78-Basebar.” The manufacture date code is the first four digits of the serial number in the MMYY format. Date codes for the defective handlebars range from 1201 to 1207. P5 bicycles which have already been inspected and passed at retailers are distinguished by a green sticker with an “é” on the underside of the Aduro base bar. 3T Design has received 28 reports of incidents, including one report of a broken collar bone and four reports of abrasions.

Consumers should immediately stop using the recalled bicycles and contact 3T Design to have the recalled handlebars replaced free of charge with a

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www.BeasleyAllen.com
modified set of Aduro aero handlebars installed with the high or low mount. Consumers who also purchased the ultra-low mount can receive a full refund for the ultra-low mount and a free modified Aduro aero base bar for use with the originally purchased low mount or replacement of the Aduro aero handlebars with 3T Mistral aero handlebars with a low-position mount, which places a rider in a position similar to the Aduro ultra-low position mount.

The bicycles were sold at Cervélo retailers nationwide from May 2012 to August 2013 for between $7,000 and $10,000. Contact Aduro Recall Hotline toll-free at 855-225-7226 from 10 a.m. to 6 p.m. ET Monday through Friday, or online at www.3tcycling.com and click on Aduro Recall for more information.


**Visonic Amber Personal Emergency Response Kits Recalled**

Visonic Ltd., of Westford, Mass., has recalled its Visonic Amber SelectX Personal Emergency Response System (PERS) Kits. Following a reboot or system reset, the Amber SelectX Base Stations can fail to operate and detect an emergency signal from the personal pendant. The recalled Visonic Amber SelectX Personal Emergency Response System (PERS) kit enables a user to push a button on a pendant to signal a request for assistance. An Amber kit consists of one wireless pendant worn by the user, one Amber brand base station, generally connected to a phone line, a power supply and backup battery. Base stations are white, rectangular and measure about 9-inches wide by 7-inches deep by 2-inches high with grey emergency, call and check buttons.

Recalled models have catalog number 0-100729 and serial numbers 1612002383 through 501206949. The first four digits represent manufacture dates April 2012 through December 2012 in WWYY format. The first two digits are week of manufacturer and the second two numbers are the year of manufacture. For example serial number 2312 600299 indicates a manufacturing date of the 23rd week of 2012 or roughly June 2012. Each unit has an external label on the back of the base station, with the product name and serial number. Amber base stations previously recalled due to a different problem also had catalog number 0-100729 and serial numbers 2308600299 through 3013079617. The firm has not received any reports of incidents or injuries related to this issue.

Visonic distributors and professional alarm installation firms sold the alarms nationwide from April 2012 through April 2013 for between $220 and $240 for the kits. Consumers should immediately contact their system installer or a Visonic alarm installation professional to replace the recalled base station with a new unit. Contact Visonic at 800-223-0020 from 8:30 a.m. to 6 p.m. ET Monday through Friday or online at www.visonic.com and click on North America and click on Product News under the Solutions & Products tab for more information about the recall.


**Air Compressors Recalled by MAT Industries Due To Shock Hazard**

HDX™ and Powermate® two-gallon air compressors have been recalled by MAT Industries LLC, of Long Grove, Ill. The terminals of the pressure switch can come into contact with the motor housing and electrify the air compressors, posing a shock hazard to consumers. This includes about 100,000 in the United States and 7,000 in Canada. This recall involves HDX™ and Powermate® brand two-gallon electric air compressors. Each air compressor has a pair of one-gallon tanks that are stacked upon each other. The air compressors are 120-volts, have an operating pressure maximum of 100 PSI and air delivery of .4 SCFM at 90 psi.

The HDX™ air compressors are gray with HDX printed in white on the top cylinder. HDX™ model number/sku numbers include VSP0000201.HDX, VSP0000201.HDX1 and 947282, with numeric serial numbers. The model and serial numbers are printed on a sticker on the back of the top air compressor cylinder. The Powermate® air compressors are red with Powermate printed in white on the top cylinder. HDX or Powermate compressors with a letter in the serial numbers are not included. Powermate® model numbers include VSP0000201, VSP0000201.01, VSP0000201.KIT and VSP0000201.NS with numeric serial numbers.

They were sold at The Home Depot and online at homedepot.com (HDX air compressors only). Menards and other stores (Powermate air compressors nationwide from June 2010 through October 2013 for between $80 and $120. Consumers should immediately stop using the recalled air compressors and contact MAT Industries for a free repair. Contact MAT Industries toll-free at 855-922-2300 from 9 a.m. to 5 p.m. CT Monday through Friday or online at www.powermate.com and click on Air Compressors, then VSP0000201 and online at www.homedepot.com and click on Product Recalls for more information. Photos available at http://www.cpsc.gov/en/Recalls/2014/Air-Compresseors-Recalled-by-MAT-Industries/.

**Horizon Hobby Recalls Remote Controlled Model Helicopters**

Blade 500 X BNF and Blade 500 3D RTF and BNF Remote Controlled Model Helicopters have been recalled by Horizon Hobby Inc., of Champaign, Ill. The recall involves Blade 500 X BNF and Blade 500 3D BNF and RTF Remote Controlled Model Helicopters with model numbers BLH 1800, BLH 1800M1, BLH 1850, and BLH 4080. The helicopters are about 33.5 inches long and 11.8 inches tall and weigh about 4 lbs. The canopy of the 500 X has the “500 X” logo on each side. The canopy of the 500 3D has the “500 3D” logo on each side. The tail rotor grip for each model is a black plastic holder that holds the tail rotor blades of the helicopter in place. The grips are approximately 1 ¼ inches tall and ½ inch wide. The tail rotor grip used for securing the tail rotor blade to the tail rotor hub can separate and release from the helicopter, posing a risk of a crash and injury hazard.

The helicopters were sold at Hobby stores nationwide and at www.horizonhobby.com. Models BLH 1800, BLH 1800M1 and BLH 1850 were sold from December 2012 through September 2013; and Models BLH 1850 and BLH 4080 were sold from May 2013 through September 2013. Prices range from $600 to $900. Consumers should immediately stop using the recalled radio
controlled helicopters and contact Horizon Hobby for a replacement tail grip and instructions for installation. Contact Horizon Hobby toll-free at 877-504-0233 from 8 a.m. to 7 p.m. CT Monday through Friday, 8 a.m. to 5 p.m. CT Saturday, and noon to 5 p.m. CT Sunday, or online at www.horizon-hobby.com, and click on Product Recalls listed under “Legal” at the bottom of the page for more information. Photo available at http://www.cpsc.gov/en/Recalls/2014/Horizon-Hobby-Recalls-Remote-Controlled-Model-Helicopters/

**Christmas Lights Recalled By Pepe Ganga Due To Fire And Shock Hazards**

Pepe Ganga Corp., of San Juan, P.R. has recalled its 100 Musical Lights. This recall includes about 500 sets. The light string can overheat and catch fire, posing fire and shock hazards to consumers. This recall involves 100-bulb musical Christmas multi-colored lights. The light sets twinkle as eight Christmas carols play. Model number 31411 is printed on the back of the package on the bottom right side of the UPC label. “100 Musical Lights” is printed on the front of the white cardboard packaging. The model number, voltage and “Made in China” are printed on a label affixed to the light string.

The lights were sold at Pepe Ganga and Compra De To stores in Puerto Rico from December 2011 to October 2012 for about $8. Consumers should immediately stop using the recalled Christmas lights and return them to any Pepe Ganga store for a full refund. Contact Pepe Ganga Corp. toll-free at 855-751-4532 from 8 a.m. to 5 p.m. AST Monday through Friday. Consumers can also email the firm at mail@pepegangapr.com. Photos available at http://www.cpsc.gov/en/Recalls/2014/Christmas-Lights-Recalled-by-Pepe-Ganga/

**LEM Products Distribution Expands Recall Including Previously-Repaired 5-Tray Food Dehydrators Due To Shock Hazard**

LEM Products Distribution, LLC of West Chester, Ohio, has recalled its 5-Tray Dehydrators with Digital Timers. Damaged wiring in the food dehydrators can come into contact with a metal bracket inside the machine, posing a shock hazard. This recall involves 5-tray food dehydrators with model number 1009 and serial numbers between 20110506 and 20121008. These food dehydrators were previously recalled and repaired as part of a May 2013 recall. The dehydrators are gray and are made of plastic and metal. The model and serial numbers are located on a label on the back panel. LEM is embossed on the top of the unit, which has a panel with the digital timer, the on/off switch and a temperature control knob. The UPC code 734494910094 is on the bottom of the packaging. Only dehydrators within the serial number range between 20110506 and 20121008 and with a sticker on the back panel stating “Read Manual Before Operating” are included in this recall. LEM Products has received nine reports of electrical shorts, including one report of sparks causing minor damage to the surrounding countertop and carpet. No injuries have been reported.

The timers were sold at Buchheit, Gander Mountain, Rural King, Sportsman’s Warehouse and Theisen Supply stores and other mass merchandisers and retailers nationwide and online at www.lemproducts.com from June 2011 through December 2013 for between $125 and $160. Consumers should immediately stop using the dehydrators and contact LEM Products Distribution for instructions on free shipping and repair of the recalled product. Contact LEM Products toll-free at 877-536-7763 from 8 a.m. to 5 p.m. ET Monday through Friday or online at www.lemproducts.com and click Warranty & Recall at the bottom of the page for more information. Damaged wiring can come into contact with a metal bracket in the food dehydrators. Electrical shorts, sparks reported. It is illegal to resell or attempt to resell a recalled consumer product.

**Agila Specialties Private Limited Recalls 10 Lots Of Etomidate Injection 2 mg/mL - 10 mL and 20 mL**

Agila Specialties Private Limited, a subsidiary of Mylan Inc., has recalled the hospital/user level of 10 lots of Etomidate Injection 2 mg/mL—10 mL and 20 mL (see lot breakdown below). The 10 lots were manufactured by Agila Specialties Polska sp.zo.o in Warsaw, Poland. All of the products bear a Pfizer label. Agila Specialties Private Limited initiated the recall on Feb. 13, 2014, due to the potential for small black particles, identified as paper shipper labels, to be present in individual vials; the potential for missing lot number and/or expiry date on the outer carton, and the potential for illegible/missing lot number and expiry on individual vials. Intravenous administration of particles may lead to impairment of microcirculation, phlebitis, infection, embolism and subsequent infarction. Mylan and Pfizer have not received any reports of adverse events related to the recalled product to date.

Etomidate is a hypnotic drug without analgesic activity. It is indicated by intravenous injection for the induction of general anesthesia. Etomidate is also indicated for the supplementation of subpotent anesthetic agents. Etomidate 2 mg/mL is packaged in glass vials in 10 mL and 20 mL volumes. Product was distributed Nationwide to distributors, retailers, hospitals, pharmacies, and/or clinics.

Mylan notified its customers of the recall by letter on Feb. 13. Distributors, retailers, hospitals, pharmacies, or clinics that have product that is being recalled should stop use and discontinue distribution. Consumers with questions regarding this recall can contact Mylan Customer Service with questions at 800-848-0462 on Monday through Friday between 8 a.m. and 5 p.m. EST. Consumers should contact their physician or health care provider if they have experienced any problems that may be related to taking or using this drug product.

**BeBeLove Recalls Baby Walkers Due To Fall And Entrapment Hazards**

About 3,600 BeBeLove™ Baby Walkers have been recalled by Bebe Love USA, of Pico Rivera, Calif. The walkers failed to meet federal safety standards. Specifically, style number 358 can fit through a standard doorway and is not designed to stop at the edge of a step as required by the federal safety standard. In addition, style number 368 contains leg openings that allow the child to slip down until the child’s head can become entrapped at the neck. Babies using these walkers can be seriously injured or killed.

The recalled includes all BebeLove walkers that were sold for babies age 6
months or older. The walkers contain a plastic-covered foam padded seat with a plastic base and toy tray. Model 358 walkers have a green, pink or orange musical tray with a white toy bar and solid colored seats. Model 368 walkers have green, pink or white musical tray with a yellow toy bar and printed patterned seats. Both models have white stoppers on the bottom of the base of the walker and model numbers printed on a label on the rear bottom inside of the base. “BEBELOVE” is printed on a label on the seat back and on the base of the walkers.

The walkers were sold at Small retail stores in Arizona, California and Utah and online at Amazon.com and Overstock.com from November 2011 through July 2013 for about $25. Consumers should stop using the recalled baby walkers immediately and contact BebeLove for a free repair kit. Contact BebeLove toll-free at 888-464-1218 from 9 a.m. to 5 p.m. PT Monday through Friday or online at www.bebeloveusa.com and click on “Recall Contact” for more information. Photos are available at http://www.cpsc.gov/en/Recalls/2014/ BebeLove-Recalls-Baby-Walkers

Lion Force Inc., of Brooklyn, N.Y. has recalled its Lion Force Boys’ Puffer Coats. The jackets have a drawstring through the hood which can pose a strangulation hazard to children. In February 1996, the U.S. Consumer Products Safety Commission (CPSC) issued guidelines about drawstrings in children’s upper outerwear. In 1997, those guidelines were incorporated into a voluntary standard. Then, in July 2011, based on the CPSC’s actions demonstrate a commitment to help prevent children from strangling or getting entangled on neck and waist drawstrings in upper outerwear, such as jackets and sweatshirts.

This recall involves three styles of Sugarfly-branded hooded, woven cotton and woven polyester jackets for girls with a drawstring through the hood. Style number KMBCJ255 is olive and has a zipper closure and four front pockets with buttons, plus two zipper pockets. Style number KMBCJ410 is a belted, double-breasted, French coat style white garment with faux fur around the neck. Style KMBCJ421 is fuchsia or purple and has a button closure, plus snap button pockets on each side. They were sold in girl’s sizes 7 through 16. The style number can be found on the back of the sewn-in neck label.

The jackets were sold exclusively at Burlington Coat Factory stores nationwide and online at Burlingtoncoatfactory.com from September 2011 through September 2013 for about $40. Consumers should immediately take the garments away from children. Consumers can remove the drawstrings to eliminate the hazard or return the garments to Burlington Coat Factory for a full refund. Contact Runway Global toll-free at 855-248-1566, from 9 a.m. to 5 p.m. ET Monday through Friday, online at www.sugarfly.us and click on “Sugarfly Girls” on the top bar and then click on “Recall Info” at the bottom of the page, or e-mail to willa@runwayglobal.com for more information. Photos available at http://www.cpsc.gov/en/Recalls/2014/ Runway-Global-Recalls-Girls-Sugarfly-Hooded-Jackets/

Company Recalls 8.7 Million Pounds of Meat

A northern California company has recalled more than 8.7 million pounds of beef products because it processed diseased and unhealthy animals without a full federal inspection. That’s just over a year’s worth of meat products processed by Rancho Feeding Corp., which has been under scrutiny by the USDA Food Safety and Inspection Service (FSIS). The agency said that without full inspection, the recalled products are unfit for human consumption.

The products were processed from Jan. 1, 2013, through Jan. 7, 2014, and shipped to distribution centers and retail stores in California, Florida, Illinois and Texas. They include beef carcasses, oxtail, liver, cheeks, tripe, tongue and veal bones. In January, the company recalled more than 40,000 pounds of meat products produced on Jan. 8 that also didn’t undergo a full inspection. The problems were discovered as part of an ongoing investigation, according to the FSIS. At press time, there have been no reports of illnesses.

Big Red Tomato Packers Recall Tomatoes Because Of Possible Salmonella Risk

A Fort Pierce company has recalled its tomatoes that are potentially contaminated with salmonella. Big Red Tomato Packers issued the voluntarily recall last month. The fresh tomatoes were shipped in 20- and 25-pound boxes from lot 1106. Although there are no known illnesses associated with the lot number, a voluntarily recall was issued as a precaution. Tomatoes from the lot were distributed to a limited number of

receivers in Florida, North Carolina, Michigan, Minnesota, Pennsylvania and Tennessee. The company says all receivers of the lot have been notified.

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. 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.

XXIV.
FIRM ACTIVITIES

EMPLOYEE SPOTLIGHT

VICKI DEARING

Vicki Dearing is the newest lawyer in the Mass Torts Section at Beasley Allen. Previously Vicki worked for seven years as an insurance defense lawyer, first in Birmingham, Ala., and then in Jacksonville, Fla. Vicki, a native of Montgomery and a graduate of Lanier High School, also worked as a Plaintiff’s lawyer for three years in Florida. While in Florida, Vicki was an adjunct professor for four years, teaching business law prior to joining the faculty full time in 2004 at Florida Coastal School of Law in Jacksonville. Vicki taught law at the school for eight years.

Vicki graduated from Auburn University in 1987 with a Bachelor of Science in Health Services Administration. After graduation, she moved to Cincinnati to work at Bethesda Hospital. While there, Vicki became involved with Bethany House, an organization helping homeless women. Working with lawyers at Bethany House inspired Vicki to attend law school. She earned her J.D. from Cumberland Law School in 1991. At Cumberland, she was a member of the National Moot Court Team; Order of Barristers and the American Journal of Trial Advocacy.

Vicki is a member of the Florida Bar Association and the Alabama State Bar. She says her favorite part of being a lawyer is being presented with a problem or issue and engaging in the mental challenge of how to resolve it. Vicki made this observation after joining the firm:

*I also love the team approach to practicing law at Beasley Allen and I have found the folks working in the Mass Torts section to be very cohesive and supportive of each other.*

Throughout the years, Vicki has also continued her interest in reaching out to people in need, especially women who have been victims of domestic violence. While working in Florida, Vicki was very involved with a domestic violence shelter. Since moving back to Montgomery she has been praying about where she can get involved. Vicki is very impressed with the Family Justice Center in Montgomery and its programs. She has also become involved with the Footprints Ministry. Vicki is going to get involved in helping Montgomery’s public schools in some manner.

Since joining Beasley Allen, Vicki has focused primarily on cases involving transvaginal mesh. As we have reported, transvaginal mesh is used to repair conditions such as pelvic organ prolapse and stress urinary incontinence. The complications from transvaginal placement of the mesh are very serious and thousands of women have been severely injured and damaged by its use.

Vicki is married to David Dearing, also a lawyer in the Mass Torts section and they have two children. The Dearing family attends Frazer United Methodist Church. Vicki enjoys spending time with her family, traveling, and being involved in prayer ministry. We are blessed to have Vicki with the firm.

XXV.
SPECIAL RECOGNITIONS

A BIG WIN IN DAYTONA

We wrote about Grant Enfinger in the February issue and I observed that he was on the move. Every stock-car driver’s dream came true for Grant last month when he won at Daytona International Speedway, taking the ARCA Racing Series’ season-opening event at the World Center of Speed. Grant led the final 29 laps of the Lucas Oil 200 presented by MAVTV American Real, with 10-time ARCA champion Frank Kimmel chasing him to the checkerered flag, but falling short. After climbing out of Team BCR Racing’s No. 90 Motor Honey/Advance Auto Parts Ford in Victory Lane, Grant told a national-TV audience by way of Fox Sports 1:

*This is something special. To get this, Iowa and Mobile last year, it means the world to me. ... It doesn’t get much better than this.*

Grant will be coming to the ARCA Mobile 200 at Mobile International Speedway on March 22 as the race’s defending champion. But now he will be coming as the winner of ARCA’s previous race. The home-track victory was his first in ARCA, and he won the Prairie Meadows 150 at Iowa Speedway in September. Grant has won three of the past eight ARCA races in which he has driven.

Last year, Grant started only eight of the 21 ARCA races. But in Daytona’s Victory Lane, Grant sounded hopeful that he will be in the No. 90 for the entire 2014 season. He certainly deserves that opportunity. Grant ran the whole ARCA schedule in 2011, when he finished fourth in the point standings. All of us at Beasley Allen are extremely proud of Grant and wish him the very best as he continues to climb the ladder in his chosen field of work.

MUSEUM OF ALABAMA HAS ITS GRAND OPENING

The grand opening of the “Alabama Voices” exhibit was held last month. The Smithsonian-quality exhibit, which includes more than 800 artifacts, hundreds of images and more, spotlights Alabama history from as early as the 1700s to the modern era of the 21st century. The exhibit, housed at the Alabama Department of Archives and History, is located inside the Museum of Alabama. It includes 22 audiovisual programs about various historic subjects, including the Civil War, industrialization, the rise of the cotton economy and more. These experiences are communicated through the voices of Alabama residents throughout history using diaries, letters, speeches, songs and other sources.

Source: AL.com

XXVI.
FAVORITE BIBLE VERSES

Tom Selt from Jefferson County is my wife Sara’s first cousin. Tom was Chief Photographer and headed up the Photography Section with The Birmingham News before he
My good friend Alan Worrell, who is president of Sterling Bank, sent in my favorite verse for this issue. Alan is a strong supporter of many good and worthwhile causes in the River Region, including the Fellowship of Christian Athletes. He is a dedicated Christian who leads the folks at his bank in the right way.

Cast your cares on the Lord and He will sustain you. He will never let the righteous fall.

Psalm 55:22

Rev. Mike McKnight, the Pastor at Fairhope UMC, furnished a timely verse this month. Mike and I have been friends for several years and I can say, without reservation, that he is a true man of God.

Trust in the Lord with all your heart, And lean not on your own understanding; In all your ways acknowledge Him, And He shall direct your paths.

Proverbs 3:5-6

Pam Sexton, who is an interior decorator at Pickwick Antiques in Montgomery, says that all of the wonderful things she received from her “gracious, beautiful, talented mother,” her mother’s love of the Lord was cherished above all. Pam is still amazed that her mother pursued a theological degree after getting her degree from Judson College. Her mother’s favorite verse, Proverbs 3:5-6, has become Pam’s favorite. Pam says that that verse becomes more meaningful and richer with each passing year.

Trust in the Lord with all your heart and lean not on your own understanding; In all your ways acknowledge Him, and He will make your paths straight.

Proverbs 3: 5-6

Ray Smoot furnished another timely verse—Matthew 20:26-27—for this issue. He and I grew up together in Clayton. Ray was a very good athlete and went on to a highly successful career as a high school football coach. He now lives in Fairhope, Ala.

Yet it shall not be so among you; but whoever desires to become great among you, let him be your servant. And whoever desires to be first among you, let him be your slave.

Matthew 20:26-27

Anthony L. Cicio, a lawyer from Birmingham, sent in comments concerning the report. He says that Philippians 2:3-4 emulates how our firm operates. I deeply appreciate his comments and sincerely hope and pray we can live up to the comments in that passage of scripture.

Do nothing out of selfish ambition or vain conceit. Rather, in humility value others above yourselves, not looking to your own interests but each of you to the interests of others.

Philippians 2:3-4

A MESSAGE FROM DR. SIDNEY M. WOLFE FOR THE AMERICAN PEOPLE

Dr. Sidney Wolfe, a long-time health and safety advocate, who is with Public Citizen, sent out some very interesting information last month. Dr. Wolfe has been the editor of Worst Pills, Best Pills, a publication that comes out each month. He turned over the reins as Editor last month. Dr. Wolfe warns folks about “bad drugs” that should not be on the market. He points out that “what you don’t know can hurt you.” The diabetes drug Rezulin, approved in 1997 and then banned by the Food and Drug Administration (FDA) three years later is a prime example of what Dr. Wolfe was saying. In those three years Rezulin had already caused hundreds of cases of liver damage, including 63 reported deaths. Worst Pills, Best Pills News warned of Rezulin’s potential danger in 1998, a year and half earlier. In 1998, Public Citizen petitioned the FDA to ban the medication.

The Health Research Group at Public Citizen, the publisher of Worst Pills, Best Pills News, has helped to remove 25 such dangerous drugs from the market. Dr. Wolfe started the newsletter to warn consumers about dangerous prescription drugs, sometimes years before they are pulled from pharmacy shelves, and it has been effective. Public Citizen does vital work in other ways as well. For example, in 2012, the FDA dropped the ball on regulating a large compounding pharmacy company, allowing it to continue to manu-
the manufacture of drug injections that were contaminated by fungus. As a result, at least 751 people in 20 states have become ill, and 64 people have died thus far. What is particularly tragic for those who have been sickened or killed by the tainted drug—and for their loved ones—is that this situation was completely avoidable.

- Public Citizen warned readers about compounding pharmacies in Worst Pills, Best Pills News back in 2001, publishing subsequent articles in 2006 and 2007. Even earlier, it tried to get the FDA to act. Since the 2012 outbreak began, Public Citizen has issued several letters to the Secretary of Health and Human Services, the FDA, and Congress, criticizing the FDA and the Centers for Medicare & Medicaid Services for years of oversight failures that led to this public health catastrophe and calling for an independent investigation.

- Public Citizen’s work in this regard has been widely covered by numerous media outlets including The New York Times, The Washington Post, USA Today, CNN, National Public Radio’s “The Diane Rehm Show” and “NBC Nightly News.” Unfortunately, the FDA is not the gold-standard agency it once was. For that reason, Public Citizen has had to step up its efforts to keep the public safe. In addition to keeping folks informed, Public Citizen also does the following on behalf of the American people in an effort to protect them from bad drugs:

  - Public Citizen formally petitions the FDA for stronger drug-safety standards. For example, in 2013, the FDA granted Public Citizen’s petition calling for the agency to propose new regulations to allow generic drug manufacturers to promptly update their product labeling to include newly acquired safety information. When finalized, the rule will provide added protection to the tens of millions of people who regularly use generic drugs, which make up 84 percent of all dispensed prescription drugs.

  - Public Citizen formally petitions the FDA to remove unsafe drugs from the market or issue black box warnings. For drugs approved between 1975 and 2000, partly because the FDA sped up the approval process to accommodate the demands of the drug industry, one in five new drugs has to be removed from the market or receive a black box warning after FDA approval. One in five!

  - Public Citizen closely monitors the FDA and its drug-approval process that is, unfortunately, heavily dependent on industry financing. For fiscal year 2014, the FDA budget provides the agency with more than $1 billion in total drug industry user fees, which now include fees for generic drugs. This means that more than 60 percent of the total FDA budget for the review and oversight of drugs comes directly from drug companies. Because of this unhealthy financial relationship, we have had to further increase the speed and intensity with which we petition the FDA to ban or relabel drugs, pointing to the urgent need to supplement the inadequate FDA (and congressional) oversight of the drug industry.

  - Public Citizen staff testify regularly as medical experts at FDA advisory committee meetings about the safety of drugs, trying to stop dangerous drugs from being approved or arguing for them to be banned.

  - Public Citizen takes an active role in stopping Congress from destroying Medicare.

These critical, life-saving activities are expensive, and the modest subscription fee for Worst Pills, Best Pills News doesn’t begin to cover the cost. I encourage our readers to support Worst Pills, Best Pills News by making a financial contribution to Public Citizen. It will be a good investment to help to pay for the research behind the newsletter and Public Citizen’s continuing efforts to force unsafe drugs off the market. Unlike most other publications or websites, Public Citizen does not accept money or advertisements from drug companies. This ensures that Public Citizen can remain independent—its judgment is not clouded by commercial interests. Public Citizen’s only obligation is to the public.

Our readers can help Public Citizen continue its work by making a financial contribution to Public Citizen, publisher of Worst Pills, Best Pills News. Also, by subscribing to Worst Pills, Best Pills News, a person can become an advocate for his or her own health and also an advocate for others.

Whether you know it or not, Public Citizen has been your advocate for safe drugs for years. That will continue. But Public Citizen needs your support. It’s very important for the group to continue working to keep dangerous drugs off the market. You can get more information on Public Citizen by going to www.citizen.org. A contribution to Public Citizen will help Dr. Wolfe and others continue with their work. You can send your donation to 1600 20th St. NW, Washington, D.C. 2003. I also strongly encourage our readers to subscribe to Worst Pill, Best Pills News.

Source: Sidney M. Wolfe, M.D.; Founder, Senior Advisor; Health Research Group at Public Citizen

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 beat 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

Ab, Lord God! Behold, You have made the heavens and the earth by Your great power and outstretched arm. There is nothing too hard for You.

Jeremiah 32:17

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 dispositions, and not upon our circumstances.

Martha Washington (1732 - 1802)

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

Louis Brandeis, 1937

U.S. Supreme Court Justice

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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

XXVIII.
PARTING WORDS

Prayer is a most powerful tool. Fortunately this is a tool that is available to each of us. Prayer, without any doubt, is an awesome power. The Apostle Paul said we are to “be constant in prayer.” That kind of dedication recognizes the importance of prayer, the power of prayer, and the privilege we have in prayer. But we must recognize that God does not force us to pray. Neither does He set limits on how often we pray. Each of those is a decision that each of us must make. We can determine what we pray about, when we pray, and where we pray.

Unfortunately, many of us see prayer primarily as a means of getting us out of trouble. That’s a very big mistake. The Bible calls us to embrace a much deeper scope and dimension of prayer. Each of us is called to be devoted to prayer—to continue in an attitude of prayer daily—to pray all the time, silently or aloud—and to persevere in prayer, without giving up. There are verses throughout the Bible that teach us about the availability of prayer, the power of prayer, how to take full advantage of it, and the results. It would be well worth the time to get into the Word and find out what all Jesus had to say on the subject. That effort will result in a tremendous blessing!

We must all remember that prayer is a wonderful privilege that God has given to us. We have His invitation—and really it’s a command—to pray and to seek Him! Through prayer we can influence the lives of friends and family, bring revival in our own lives, avoid temptations and pitfalls, and literally help to change the world. It requires surrender of self to God, and becoming firmly dedicated to a life of prayer. Making prayer a part of our daily lives will not only help us—it will help to make those around us better. Collectively, in time we can change the world through individual and corporate prayer. May God bless each of our readers, their families and co-workers and may He let them learn how powerful prayer truly is!

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Jere Locke Beasley, founding shareholder of the law firm Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. is one of the most successful litigators of all time, with the best track record of verdicts of any lawyer in America. Beasley’s law firm, established in 1979 with the mission of “helping those who need it most,” now employs over 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.