I. CAPITOL OBSERVATIONS

TOYOTA PLEADS GUILTY TO CRIMINAL CHARGES

Toyota has reached a settlement with the U.S. Department of Justice to settle a four-year criminal investigation into whether the company misled investigators and the public about a sudden-acceleration defect that has caused injuries and deaths. The settlement—for $1.2 billion, among the largest ever paid by an automaker—included an unusual admission of wrongdoing by the company. Attorney General Eric H. Holder, Jr., at a news conference announcing the settlement, said:

"Toyota’s conduct was shameful. He added that “Toyota intentionally concealed information and misled the public.”

The agreement stems from the unintended acceleration of Toyota cars, a problem that has already cost the automaker billions of dollars. Toyota has issued recalls for almost 10 million vehicles. While it’s rare for automakers to be held criminally liable for defects, it’s even more rare for such accusations to lead to a significant fine. The fact that Toyota admitted fault, which included lying to the government and to the public, is unparalleled.

After initially denying publicly and in conversations with federal regulators that it knew about the defect, an FBI investigation found that Toyota had publicly played down the extent of the problem even though internal company records showed that the automaker knew about the full extent of the problem. Our law firm had access to internal documents, including emails, from Toyota that showed employees at the very top level of the company knew about the safety problems back in 2003-2004. George Venizelos, a senior FBI official, said in a statement:

"Toyota put sales over safety and profit over principle. The disregard Toyota had for the safety of the public is outrageous.

Separate from the criminal matter, Toyota is currently in talks to settle state and federal lawsuits filed against it involving wrongful death and personal injury. As was widely reported, our law firm won the first sudden acceleration lawsuit against Toyota in October of last year. An Oklahoma jury found that the Toyota Camry’s electronic throttle system was defective and that Toyota had acted with “reckless disregard” for safety, despite having knowledge of computer problems with the cars. The jury found Toyota liable for the crash that killed one woman and injured another.

The jury in Oklahoma City awarded $3 million in compensatory damages to the Plaintiffs in the case. The jurors found that the 2005 Camry the women were riding in suddenly accelerated through an intersection couldn’t be stopped and crashed into an embankment. Toyota settled the punitive aspect of the case with our clients after the jury’s compensatory damages verdict was returned. That settlement was on the very same day. The amount of the settlement with the families was confidential at Toyota’s request. The jury was to go forward with the punitive damages phase of the trial the next day.

Based on what we were told by the jurors in a post-verdict conference in the presence of the trial judge, the jury was going to “light up” Toyota in the punitive phase. The jurors said they were outraged over Toyota’s conduct and cover up of a known defect. They also said that Toyota’s expert witnesses had no credibility. The jurors saw all of the damaging Toyota documents and said they were shocked at what they contained. For example, one Toyota official told the president that “if we don’t stop lying to the government, we are all going to jail.”

Legal analysts said at the time that the verdict most likely spurred Toyota to pursue a broad settlement of its remaining cases. Separately, Toyota ordered a global recall in February of nearly 2 million gas-electric Prius vehicles because of a programming error that could cause the engine to shut down. The speed and extent of the recall was seen as an attempt to prevent the regulatory and public scrutiny of the sudden-acceleration problem.

The settlement of Toyota’s sudden acceleration problems should provide a template for the authorities pursuing a similar case against General Motors (GM) linked to a defect that caused GM vehicles to shut down unexpectedly. That’s the opinion of a number of legal analysts. Attorney General Holder seemed to signal as much, saying at the news conference that the Toyota settlement was “a model for future cases” involving “similarly situated companies.” He said that “other car companies should not repeat Toyota’s mistake.” I sincerely hope they all got the message and will follow up on it.

Sources: New York Times; Los Angeles Times; CNN and Reuters
GENERAL MOTORS’ FAULTY IGNITION DEFECT INVOLVES SEVEN MODELS

The extent of General Motors’ (GM) response to an ignition defect that engineers first discovered as early as 2001 is the topic of investigations underway by Congress and the National Highway Traffic Safety Administration (NHTSA). Information disclosed during litigation and in a timeline the automaker submitted to NHTSA reveals that GM waited about a decade before it took action to remedy this defect, which is linked to at least 12 deaths and 17 injuries going back to 2005, according to the automaker.


The defect is a loose ignition switch that can move from the “run” position to the “accessory” or “off” position while the vehicle is underway. The module’s position exacerbates the problem—for example, it’s easy for the driver’s knee to make casual contact with a dangling key ring, and jog the ignition out of position. Drivers experience a sudden loss of power, including the function of the power steering and the antilock brakes. The movement from “run” to “accessory” or “off” also disables the airbags, leaving the driver and passenger unprotected in a crash. In its notification to NHTSA, GM described this defect as an ignition switch torque that does not meet the automaker’s specification:

If the torque performance is not to specification, and the key ring is carrying added weight or the vehicle goes off the road or experiences some other jarring event, the ignition switch may inadvertently be moved out of the “run” position. The timing of the key movement out of the “run” position, relative to the activation of the sensing algorithm of the crash event, may result in the airbags not deploying, increasing the potential for occupant injury in certain kinds of crashes.

Consumer complaints to NHTSA, however, indicate that the ignition can move under a variety of less extreme scenarios. In the Vehicle Owner Questionnaire database, drivers have described the ignition switch moving with “the slightest touch,” “trying to tilt the steering wheel,” or “hitting a bump.” GM is offering to replace the ignition switch.

A TIMELINE ON THE GM RECALLS

According to a chronology General Motors submitted to NHTSA, engineers first discovered the problem in 2001, during pre-production development of the Ion. One internal report from the early 2000s indicated that the ignition switch problem had been identified, but resolved by a design change. A second report described a service technician’s experience of a sudden stall while driving, and the observation that the weight of the key ring had worn out the ignition switch.

The problem resurfaced in 2004 during a 2005 Chevy Cobalt test drive. Although the Cobalt was not yet on the market, GM engineers couldn’t come up with a cost-effective solution before the vehicle’s launch date, so the automaker left the issue unresolved. Consumers soon began complaining about loss-of-power episodes. In 2005 and 2006, GM tried to fix the problem by re-designing the key head from a “slotted” to a “hole” configuration, but it did not announce a recall.

Instead, GM settled for a Technical Service Bulletin (TSB), which only informed dealership service technicians about inadvertent turning of the key cylinder. The TSB covered the 2005-06 Chevrolet Cobalts, 2006 Chevrolet HHRs, 2005-06 Pontiac Pursuits, 2006 Pontiac Solstices, and 2003-06 Saturn Ions. Owners who complained received a re-designed key head which was supposed to keep the key ring from moving in the slot, and keep any dangling keys from hanging low enough to be jostled by the driver’s knee.

The remedy identified in the TSB did not resolve the issue. In 2006, GM changed the design of the Cobalt ignition switch, to be implemented in 2007 model year vehicles. In 2007, the link between the loose ignition switch and deadly crashes was established. NHTSA officials informed GM of a fatal crash that killed 16-year-old Amber Marie Rose of Maryland in July 2005. The investigators wanted to talk specifically about the failure of Ms. Rose’s airbag to deploy in a frontal collision. But they also told GM that diagnostic data showed that the car’s ignition was found in the “accessory” position after the crash.

This discovery touched off an internal investigation within GM that lasted six years. The company began to study frontal collisions in which the airbags did not deploy. It should be noted that the 12 deaths identified by GM are most likely an undercount, because no other types of crashes were studied. At least one other non-frontal, fatal crash, in which the ignition was found in the “Accessory” or “Off” position has been documented. Non-fatal injury crashes that may have been caused by the sudden loss of power have not been investigated by either GM or NHTSA.

Consumers continued to complain, but GM didn’t discover significant differences in the design of the switches in 2005 compared to 2010 vehicles—the Cobalt’s last model year—until 2012. In its timeline to NHTSA, GM maintained that its supplier, Delphi, made those changes. In 2013, GM decided to recall only the Cobalt and G5 vehicles.

On Feb. 7, 2014, GM announced a recall for 619,122 Chevy Cobalt and Pontiac G5 vehicles from the 2005-2007 model years. But it had not yet admitted to NHTSA its long-standing knowledge about the defect. USA Today published stories charging that documents disclosed in a civil lawsuit filed by Lance Cooper, an Atlanta area lawyer, involving a fatal crash tied to the faulty ignition switch traced the problem back to 2004. These highly publicized revelations compelled GM to add four more American models covering 748,024 vehicles to Recall 14V047, and submit a more complete history of its knowledge of the problem. Lance’s work in his case and his post-settlement revelations have been most helpful in exposing GM’s cover-up of a known safety defect.

NHTSA has opened a Timeliness Query (TQ14-001) to determine if General Motors violated a regulation requiring automakers to report to the agency within five days of determining that a defect exists, and issued a detailed Special Order to GM about the defect.

Source: Sean Kane
Safety Research and Strategies, Inc.

Our firm has filed the first of what will be a number of lawsuits against GM involving the recalled vehicles. We filed a wrongful death lawsuit on March 24 on behalf of the
During that time in our nation’s history, what a person achieved in life was not dictated by his social status, nor by which side of the track she happened to be born on. Many believed that trend was the wave of the future. Those in the middle class in America were respected. But things have certainly changed and today the middle class is pretty much ignored by many persons in positions of authority, both in government and in Corporate America.

Since the Committee’s report referred to above was released almost 29 years ago, the disparity between the working class and the super-rich has grown dramatically. Divisions between those who do the work and those who reap the rewards have become far more pronounced. The lives of the extreme well-to-do in this country almost seem to take place at a different time and space from the reality experienced by the great majority of Americans. Needless to say, and most unfortunately, the income gap between the super-rich and the rest of the American people is growing at an alarming pace.

Today, the middle class and working folks as a whole are hurting badly. The middle class is getting smaller and the poor category is increasing daily. In my opinion, something must be done to right the economic ship in this country. I believe two factors have contributed greatly to our nation’s severe economic problems.

• One is that our government in recent years has allowed manufacturing jobs in great number to be shipped overseas. The loss of these jobs has been devastating to working men and women and has hurt our nation’s economy badly.

• The refusal to pay decent wages to workers at the bottom rung of the economic ladder has made the rich even richer. That has had an overall bad effect on the country. The refusal to pay decent wages in a nation such as ours is just plain wrong. There are thousands of working families.

The president and members of Congress must take steps necessary to protect all American workers. Keeping manufacturing jobs at home is an absolute necessity. Trade agreements that have cost hundreds of thousands of jobs and made our nation’s trade deficits soar must be carefully scrutinized. I also believe raising the minimum wage would be a step in the right direction and is something that is badly needed. Not only is the increase badly needed, it’s the right thing to do from a moral perspective. Raising the minimum wage will make an important contribution toward reversing an ugly reality that is hurting our nation in many ways.

Despite strong opposition from those on the extreme right, even the recent Congressional Budget Office report on the minimum wage supports the conclusion that the increase is needed. A recent poll revealed that 70 percent of Americans believe the federal government should increase the minimum wage to $10. This poll was conducted by Selser & Co., and cited by Bloomberg on March 12. The results even showed that 45 percent of Republicans supported the increase to 10 percent. Congress should—for the good of all Americans—act on this issue without delay.

Source: Scott Lilly
Senior Fellow
Center for American Progress
1333 H Street NW
Washington, DC 20005

II.
A REPORT ON THE GULF COAST DISASTER

CORPORATIONS—LIKE PEOPLE—SHOULD KEEP THEIR WORD

An excellent piece appeared in The Litigation Daily last month that explained how BP has been pulling out all stops in an effort to get out of an agreement that it not only agreed to, but actually helped draft. BP’s lawyers actively promoted the agreement to Judge Carl Barbier for approval. The article by Susan Beck is set out below.

FIFTH CIRCUIT TO BP ON OIL SPILL DEAL: LIVE WITH IT

If you still read print newspapers, then you’ve probably seen those full-page BP plc ads in which the company blasts the Deepwater Horizon claims settlement process. BP has condemned this court-supervised process by claiming that it repeatedly allowed bogus awards for losses not caused by the 2010 Deepwater spill in the Gulf of Mexico. In design and substance, the ads are perfectly executed to provoke outrage against plaintiffs and their lawyers and garner sympathy for the oil giant. In a word, they’re masterful.

But BP may have forgotten that a media campaign isn’t a legal strategy.
Monday, the company stumbled with an embarrassing loss before the U.S. Court of Appeals for the Fifth Circuit, as my colleague Amanda Bronstad at The National Law Journal reported. In a 2-1 ruling, the court told BP that it has no one to blame but itself for the claims process that it rails against: You may not like how this settlement has worked out for you, the court told BP, but you’re stuck with the agreement you signed.

The reason this is such bad news for BP is because, in an unusual move, it agreed not to cap its liability when it negotiated the settlement in 2012. It’s obligated to pay all valid claims, no matter how large that total may ultimately be. At the time of the settlement, BP estimated it would pay $7.8 billion; last year it raised that estimate to $9.2 billion.

The case is complicated, but in a nutshell the Fifth Circuit was asked to interpret the settlement agreement’s causation requirements. BP argued that businesses are only entitled to a payout if they can show that their losses were actually caused by the spill. The plaintiffs countered that the two sides had painstakingly developed a series of formulas intended to be used as a substitute for proof of actual causation. If a plaintiff passes these formulaic tests (which look at a business’ drop in revenue after the spill), they can qualify for an award. These tests, the plaintiffs pointed out, were intended to simplify and streamline the processing of more than a quarter of a million claims. (For a more lengthy analysis of the BP case, you can read my feature article in the current issue of The American Lawyer.)

Siding with the plaintiffs on Monday, the Fifth Circuit majority didn’t even find it a close call. The two judges neatly shot down BP’s arguments and held that the settlement clearly doesn’t require proof of actual causation, dissolving an injunction that had stopped the payment of claims. “The settlement agreement contained many compromises,” the court wrote. “There is nothing fundamentally unreasonable about what BP accepted but now wishes it had not.” BP said it disagrees with the ruling and is considering its appellate options.

The Fifth Circuit’s decision is vindication for U.S. District Judge Carl Barbier in New Orleans, who vigorously rejected BP’s arguments on the settlement’s causation requirements. In some of the harshest language that I’ve seen a federal judge direct at a major company and its lawyers, Barbier came close to accusing BP and its counsel of lying to the courts. In a ruling last November, the judge accused them of making a “startling reversal” of position on the settlement’s causation requirements and of contradicting their earlier stance before the court. He called their actions “deeply disappointing.”

It’s worth noting that while Kirkland & Ellis took the lead for BP in negotiating the settlement, Gibson, Dunn & Crutcher has steered the case since last spring. Gibson Dunn—which today won a big victory for client Chevron Corp. in the Ecuadorian pollution case—has developed a reputation for using tough tactics to discredit its clients’ adversaries. To its credit, Gibson Dunn did win an earlier Fifth Circuit appeal for BP on the accounting method used to process claims. But on the causation issue, the firm’s efforts have so far landed with a thud—and have risked alienating Barbier. That’s a big risk because Barbier is also overseeing civil lawsuits brought by the federal government and several Gulf Coast states against BP, where the company’s liability could reach $17 billion.

There are many fascinating developments to watch in this case, including whether BP will face any consequences for its “startling reversal” of position before the courts. I also wonder if BP will one day decide to point the finger at Kirkland, regardless of whether that’s fair. When I asked the company on Tuesday if it believes Kirkland sufficiently protected BP’s interests when it drafted the settlement agreement, the company responded with a press release that did not address the question.

The ruling by the 5th Circuit was a devastating blow for BP, but it was a result the giant oil company’s lawyers had to know was coming. In another significant ruling, Judge Carl Barbier last month denied BP’s bid for additional oversight of the claims center overseeing the economic loss settlement. BP’s request to adopt several recommendations that it had claimed would serve as a “necessary starting point” to ensure the integrity of the court-supervised settlement program and establish procedures to better assess claims was rejected.

Source: The Litigation Daily. Summary Judgment is American Lawyer senior writer Susan Beck’s regular opinion column for the Litigation Daily.

**Florida Sues BP For Oil Spill Environmental Damage**

Florida has joined the multistate lawsuit stemming from the 2010 Deepwater Horizon oil spill. The complaint, filed on March 4, seeks to hold British oil company BP accountable for damage to the state’s natural resources. The complaint was filed in Panama City federal court by the state’s Secretary of Environmental Protection and the head of the Florida Fish and Wildlife Conservation Commission. It is separate and apart from a lawsuit Florida’s attorney general filed against BP last year for economic losses related to what we all know as “the worst offshore oil spill in U.S. history.”

Along with BP, Florida’s lawsuit lists minority partner Anadarko and rig owner Transocean as Defendants responsible for environmental harm caused by the spill. The complaint states: “The Deepwater Horizon spill caused, is causing and will continue to cause extensive damages to the state of Florida’s natural resources.” Those resources include “Florida’s sandy beaches, salt marshes, wetlands, estuaries, submerged aquatic vegetation, deepwater communities and coral reefs,” as well as wildlife such as manatees, oysters, sea turtles, birds and fish.

The April 2010 blowout of BP’s Macondo well triggered an explosion that killed 11 workers on the rig and, for weeks, spilled millions of gallons of oil into the Gulf of Mexico. Herschel Vinyard, Secretary of Florida’s Department of Environmental Protection, observed:

I am proud of the work being done to restore Florida’s Gulf Coast and provide additional recreational and environmental opportunities to offset the losses suffered as a result of the Deepwater Horizon oil spill. We will now focus on holding the responsible parties accountable for the oil spill. While the natural resource damage assessment process is still ongoing, nearly four years after the Deepwater Horizon accident, preliminary analysis of available data collected indicates that the worst predictions about its environmental impact have not come to pass. With the help of the clean-up efforts, early restoration projects, and natural recovery processes,

the Gulf is returning to its baseline condition, which is the condition it would be in if the accident had not occurred.

The multistate lawsuit is pending in the Eastern District of Louisiana. Florida’s complaint asks the court to declare “that the defendants are responsible and strictly liable for past and/or future removal costs and natural resource damages, including the loss of recreational and other uses of those resources.”

Source: Claims Journal

III. DRUG MANUFACTURERS FRAUD LITIGATION

Our Firm Is Responsible For More Than $1.3 Billion In AWP Settlements For Eight States

As we have previously reported, our law firm has represented eight states in the Average Wholesale Price (AWP) Medicaid fraud litigation. To date, Dee Miles and lawyers in the Consumer Fraud Section have tried a number of lawsuits in Alabama and Mississippi. The total amount of jury verdicts to date is $458.3 million. Last month, there was an order from Judge Hollis McGehee awarding $17.8 million in punitive damages to the State of Mississippi in the Watson case. That makes the total recovery in the Watson case for the State $50.2 million.

We have also been able to obtain settlements totaling $913 million in the eight states that we represent. While there are still negotiations ongoing in some states, most of the AWP litigation has been completed. There are still trials to be done in Mississippi, Kansas and Utah. The total amount of the jury verdicts and settlements to date are $1,388,800,000.

During the AWP litigation, our firm uncovered other fraudulent activity occurring in the Medicaid arena. We are continuing to work with the attorneys general in the states we have been representing on these new issues in an effort to halt the continuing abuses that are crippling many state Medicaid programs. We consider it not only an honor to represent these states, but also a privilege as lawyers to be able to provide help to a program that cares for our country’s most needy citizens. We are willing to assist even more states in addressing these important problems and hope that we will be called on to do so.

Source: Realclearpolitics.com
I am sort of mixed up on how some of our politicians really feel about the federal government. Almost daily, I hear one or more of them “cussing the feds” and proclaiming things like “states’ rights” forever. But then I read where the State of Alabama depends heavily on funds from Washington to operate state government. For example, more than a third of Alabama’s revenues in 2012 came from the U.S. federal government by way of grants and transfers. That’s according to researchers at the Pew Charitable Trusts, who are evaluating each state’s financial health as part of their ongoing Fiscal 50 series. I really don’t believe revenues to the states from the federal government are necessarily a bad thing. In fact, it’s our money since the federal government does get its money from taxpayers in each state. But I suspect Alabamians do better on their return on what we pay to Washington than do most states.

Unfortunately, Alabama state government revenues have failed to recover, relative to where they were before the national recession hit. That’s a fact that we have to live with. But Alabama has always relied on the federal government to fill gaps in its budget, even in so-called good times, and that hasn’t changed. Since George C. Wallace was governor, starting in 1963, politicians in our state have almost continuously used the federal government as a “whipping boy.” But at the same time, they were taking money from the feds at every opportunity. If that seems sort of hypocritical, that’s because it definitely is.

Personally, I have never believed the federal government to be the evil empire. Usually when politicians blame Washington for problems in their state, it’s primarily because they themselves weren’t doing their jobs very well. Maybe we should make peace with the federal government and work together—and in harmony—to solve our state’s economic and social problems. That approach might just work. In any event, it’s worth a try.

Source: AL.com

**SUPER RICH DONORS PLAN GOP WAR COUNCIL**

As the midterm elections approach, a group of major GOP donors, led by Paul Singer, a New York billionaire, is quietly expanding its political footprint. In what appears to be an increasingly assertive effort to shape the direction of the Republican Party, the operation was launched last year. A club called the American Opportunity Alliance was discreetly formed to bring together some of the richest pro-business GOP donors in the country. Several of those donors share Singer’s support for gay rights, immigration reform and the state of Israel. At about the same time, Singer and his allies also formed a federal fundraising committee called Friends for an American Majority. That group raised huge amounts for a select list of the GOP’s most highly touted 2014 Senate hopefuls.

A few big donors can now command tremendous influence on the efforts of government in the post-Citizens United era. A small group of wealthy individuals can “reorder elections” with just a few huge checks, and the recipients—if elected—are obligated to do this bidding. That new reality has shifted some of the power and control once maintained by the parties and their candidates to factions of major donors. The libertarian-infused Koch network is a prime example of how that works.

The American Opportunity Alliance is registered as a for-profit corporation in Delaware. The group appears to represent a new center of gravity in the world of GOP money—politics. The effort is anchored by a famously prolific Republican bundler with a distinct ideological agenda. It will be most interesting to see how this works out as we approach this year’s general election and move on toward 2016.

Source: Politico.com

**Koch Brothers Spending Millions In Senate Races**

Charles and David Koch, and their dual networks of undisclosed donors and “dark money” non-profits, are at it again. The billionaire activists have once again emerged as the largest independent political force for the Republicans this year. The brothers are largely responsible for the Tea Party and its virtual takeover of the Republican Party.

The organizations linked to the Koch brothers include Americans for Prosperity, Concerned Veterans of America and The American Energy Alliance. From all accounts, the Koch brothers and their groups will be heavily involved in this year’s congressional races. Groups linked to the Koches have already spent more than $25 million on television and radio in crucial 2014 House and Senate races. If you included digital advertising, the total would be closer to $30 million, according to sources. As a point of reference, the Koch brothers’ political network raised $400 Million in 2012. They are expected to exceed that amount this year.

**LEGISLATIVE HAPPENINGS**

**The Alabama Regular Session Winds Down**

By the time this issue is received, the Alabama Legislature will have completed the regular session. Unless something drastic happened during the last week of the session, this will have been another typical election-year session. That means very little of real importance or value to the people of Alabama became law during the session. The important issues facing our state were again pretty much ignored.

I had hoped that improving public education at every level would be a central feature in this session. But that didn’t happen. In my opinion, continuing to treat public school teachers like second-class citizens is a tremendous mistake. We are losing men and women from the teaching ranks whose talents and experience are badly needed, to other states or to jobs outside education.

Losing good, qualified school teachers to Georgia, Florida, Tennessee and Mississippi is not good for the future of Alabama. Also, the negative message sent by the legislature to young men and women who are considering becoming teachers will add to our state’s problems in years to come. Hopefully, things will get better for education in Alabama after the elections are over. To Gov. Robert Bentley’s credit, he stood up for the teachers during the session.

It’s high time for Alabama to move forward and take advantage of all of the resources that we as a state have been blessed with. Instead of spending time “tilting at windmills,” the Legislature should face up to the fact that major problems in our state exist and must be dealt with.

Our state’s prison system is another prime example of the neglect of major problems. The system is a powder-keg, ready to explode, and it’s a problem that won’t go away. This is one that must be dealt with and soon. If we don’t do it, the federal courts will. The Legislature also failed to provide adequate funding for the Alabama judicial system during the session. Considering that severe cuts had been made in previous years, the courts can’t stand this sort of budgeting.
The court system—based on our Constitution—must be adequately funded. Eventually, that will be forced to happen.

THE CONGRESSIONAL AND LEGISLATIVE RACES IN ALABAMA

I had intended to write on the congressional and legislative races in this issue. But since there are only a handful of primary races, I will wait until later to do so. Thus far these races have created very little interest. Hopefully, that will change fairly soon.

ALABAMA HOUSE PASSES BILL TO CREATE STATEWIDE PAYDAY LENDING DATABASE

Payday lenders will have to keep a unified statewide database under a bill passed during the session. Under the existing law, payday lenders may lend only $500 to a single borrower, and no borrower may have greater than $500 worth of payday loans at any one time. That sounds good in theory, but without a unified statewide database, that restriction has been totally unenforceable. As a result, tremendous numbers of individuals have been trapped in revolving debts. The bill’s sponsor, Rep. Patricia Todd, D-Birmingham, worked hard to get this bill passed and she is to be commended.

The bill that passed was a compromise from a previous version that would also have capped interest rates on payday loans. Rep. Todd thanked Alabama House Speaker Mike Hubbard for helping all the parties reach a compromise in the House. She had this to say about the new law:

It’s a first step. We will have data now instead of relying on the industry to give us that data, and we’ll be able to see how many people are served, how many they get per year, how long it takes them to pay it off.

While this new law does not solve the real problem, I agree with Rep. Todd that at least it’s a step in the right direction. Frankly, I have great difficulty in comprehending how any member of the House or Senate could support the payday lending industry. I have to wonder what really motivates any legislator who would be a party to allowing payday lenders to change interest rates that are in the 400 percent range and to keeping families in debt with little hope of escaping the trap they are in. Hopefully, things will change in due time so that real reform will have a chance to pass in Alabama and become law.

Source: AL.com

VI. COURT WATCH

ALABAMA SUPREME COURT UPHOLDS VERDICT AGAINST BAPTIST HEALTH

The Alabama Supreme Court, in an opinion issued last month, has upheld a jury’s $3.2 million medical malpractice judgment involving a Montgomery hospital. The court ruled that the university-affiliated Health Care Authority for Baptist Health that ran the hospital did not qualify for the legal immunity granted to state entities. The court on a 6-3 vote rejected the hospital’s request for a rehearing.

This case dates back to 2005 when a 73-year-old woman was treated in the emergency room of Baptist Medical Center East. She tested positive for a dangerous drug-resistant bacteria, but the results were not communicated to her treating physician. The woman later died. In 2011, the court ruled for the hospital, vacating the judgment. The court then said that immunity should be extended to Baptist Health because of its relationship with the University of Alabama at Birmingham (UAB) Health System. In this opinion, two immunity issues were decided by the court:

• First, the Court held that the Health Care Authority for Baptist Health is not an “immediate and strictly governmental agency of the State.” That is, the Authority is not the State or an arm of State such as to be absolutely immune under the sovereign immunity provided by Section 14 of the Alabama Constitution of 1901. Note that page 52 of the main opinion indicates that the legislature has no role in interpreting Section 14 because interpretation and application of Section 14 immunity is a judicial function. The vote on this issue was 6-3 because the concurring Justices agree with the main opinion on this issue.

• The second issue involved the cap on damages. The question was, if the Authority is not absolutely immune, under Section 14, is it nevertheless entitled to the $100,000 cap on damages provided for local governmental entities in Alabama Code Section 11-93-2? The Supreme Court said “no.” Even if the statutes cited by the Authority for Baptist Health really intended to apply the $100,000 cap to all health care authorities, such an intent by the legislature would be unconstitutional.

Many legal scholars believe the effect of the court’s opinion is that legislative attempts to grant immunities and to cap damages are limited by the Constitution. The court ruled that the legislature by the passage of laws can only affect the immunities of cities and counties. This opinion indicates that the legislature cannot grant immunity to any person or entity other than cities and counties, nor can it cap damages. To do so, according to the court, would be unconstitutional.

ADVISORY OPINION ISSUED ON REWRITING THE STATE’S CONSTITUTION

The Alabama Legislature may be acting without legal authority by rewriting the state Constitution a few sections at a time. In advisory opinions sent to legislators, Supreme Court Chief Justice Roy Moore and Justice Tom Parker said the Legislature’s article-by-article approach is not allowed by the Alabama Constitution. The Chief Justice said putting out a few new provisions each year for voters to approve does not change the reality that the Legislature has undertaken a near total revision of the Constitution through an in-house constitutional convention. The Chief Justice wrote in the advisory opinion, which was supported by Justice Parker, as follows:

By wresting the convention process from the people, the Legislature has unconstitutionally made itself the paramount mechanism of constitutional revisions.

The court’s other seven justices, for whatever reason, didn’t join in on the issue. But in 2013, many of the same justices upheld the dismissal of a lawsuit filed by Sandra Bell, executive director of the Association for Judeo-Christian Values. Ms. Bell was challenging the Legislature’s article-by-article approach to rewriting the Constitution. The current opinion came after Attorney General Luther Strange took the position that the state officials had immunity from suit. Republican Bryan Taylor of Prattville, chairman of the Senate’s Constitution and Elections Committee, had asked for the court’s advice in the form of an advisory opinion. For our readers’ information, the Alabama Constitution can be changed in two ways:

• Two-thirds of the Legislature can approve an amendment to one part. The amount
will take effect only if a majority of voters approved it in a statewide referendum.

- The entire document can be rewritten if a majority of the Legislature and a majority of voters decide to have a constitutional convention with delegates from across the state.

The current Constitution was written by a constitutional convention in 1901. Since then it has been amended more than 800 times. Now it’s the longest Constitution of any state. The Republican leadership in the Legislature has made revision of the state’s Constitution a priority. They wanted to delete portions that were outdated or negated by court rulings, and modernize the portions addressing businesses. The leadership elected not to go the constitutional convention route. Instead, the Legislature created a commission that includes public officials and private citizens to recommend revisions to a few articles each year, with the goal being to address 11 of the 18 articles in the Constitution.

This is how the article-by-article approach works. The Legislature submits the recommendations, reviews them and then passes the recommendations. Those are then submitted—each article individually—to voters for approval. Thus far, the Legislature has rewritten the articles on banking and corporations, which have been approved by voters. In the current legislative session, lawmakers are considering these rewrites:

- Article 3 on the separation of powers;
- Article 4 on the Legislature;
- Article 5 on the Executive Department;
- Article 7 on impeachment of elected officials; and
- Article 10 on homestead exemptions, which gives Alabamians tax breaks on their homes.

It appears Constitutional reform—by whatever name—is dead for this session. Any real enthusiasm for constitutional revision cooled off after the court’s advisory opinion. Senate President Pro Tem Del Marsh says that the reform movement will continue in future sessions. But I am reasonably sure that the legislature will continue in future sessions to follow the same approach for “reform.”

If the people of Alabama would really get behind reform, I believe we would see a vastly different attitude in the House and Senate. Personally, I prefer a constitutional convention where the people of Alabama would have a real voice in revision of the 1901 Constitution, a document that literally has already been amended into a new constitution. Unfortunately, few Alabama citizens know what most of those amendments do either to or for them.

Source: Associated Press

**Corporate Giants Push Federal Discovery Rules Overhaul**

We wrote in the March issue about the push by some to make major changes in the Federal Rules of Civil Procedure. Since then we have learned that more than 300 of the largest companies in the U.S., including energy, life sciences, and technology are supporting the proposed changes to the federal discovery rules. In fact, the corporate giants suggested further restrictions on the types of evidence destruction or loss that warrant sanctions. Hopefully, the rules committee for the U.S. Judicial Conference, the body of judges, lawyers and others that help set policy for federal courts, will not be unduly swayed by these politically powerful special interests. I don’t believe they will be.

In a letter to the committee, general counsel and executives for the companies praised the proposed changes, which they claim will improve the discovery requirements currently in place. They described these as inefficient, confusing and overly expensive. Among the signatories to the letter were the following companies: American International Group Inc., Bank of America Corp., BP America Inc., Exxon Mobil Corp., General Electric Co., Google Inc., Johnson & Johnson, Merck & Co. Inc., Microsoft Corp., NBCUniversal Media LLC, Toyota Motor Sales USA Inc. and Wal-Mart Stores Inc.

The companies expressed explicit support for the proposed changes to Rule 37. That rule governs sanctions for litigants that fail to preserve information relevant to a case. Under the proposal, sanctions are limited to actions that “caused substantial prejudice in the litigation and were willful or in bad faith” or that “irreparably deprive a party of any meaningful opportunity to present or defend” against allegations. Based on our firm’s experience in litigation with some of these companies, I can say without reservation that these proposed changes are not needed. In fact, the sanctions for extreme discovery abuse should be made stronger.

Source: Law360.com

**Georgia Supreme Court Chastises Ford Motor Company**

The Georgia Supreme Court has ruled unanimously that Ford Motor Co. intentionally misled Plaintiffs in a product liability trial in 2009. As a result, the Plaintiffs will get a new trial. Justice David Nahmias, writing for the Supreme Court, said:

If this case is to teach any lesson, it is that the civil discovery process is supposed to work to allow the parties to obtain the information they need to prove and defend their cases at trial before impartial juries. Discovery is not supposed to be a game in which the parties maneuver to hide the truth and relevant facts, and when a party does intentionally mislead its adversary, it bears the risk that the truth will later be revealed and that the judgment it obtained will be reopened to allow a new trial based on the truth.

The case involved the death of a person in a 2006 rollover crash of a Ford Explorer Sportrac and the traumatic brain injury of another person. We contended that both were caused by vehicle defects. Ford got into trouble for how it answered questions in discovery about whether it carried insurance to cover a verdict against the company. The questions were asked so that potential jurors who also hold policies with a Defendant’s insurers may be screened for conflicts of interest. Ford failed to disclose the name of its liability insurance carriers. After our trial, Ford lawyers acknowledged in a separate case that it did in fact have insurance policies—leading to new trials or sanctions in three cases, including this one.

Ben Baker, a lawyer in our firm’s Personal Injury/Products Liability Section, represented the Plaintiffs at trial. Robin Frazer Clark, an Atlanta trial lawyer, represented the Plaintiffs during oral arguments before the Supreme Court in October. She said the opinion may well have an effect on future discovery answers, adding that while it doesn’t absolutely directly apply to other cases, Defense lawyers will need to abide by the court’s instructive opinion regarding what happened in this case.

The high court’s decision upheld an order for a new trial by Cobb County State Court Judge Kathryn Tanksley. The judge granted a new trial after information came to light in another Ford Explorer rollover crash case. Judge Tanksley declared a mistrial in that case after Ford’s defense counsel announced

that the answers they had given to questions about insurance coverage were incorrect. That case ultimately settled.

Ford appealed the new trial order in our case and a new trial ordered in a third case with similar issues. The national Product Liability Advisory Counsel Inc., including makers of everything from cars to electronics and retailers such as Wal-Mart, filed a brief supporting Ford. The Georgia Trial Lawyers Association filed a brief backing our position, saying the new trial must be upheld in order to insure “the right of all litigators to a just verdict rendered by a fair, impartial and constitutionally valid jury.” We plan to try the case again.

Source: Daily Report

VII. THE NATIONAL SCENE

A LOOK AT THE REAL CONCERNS OF FOLKS IN AMERICA

It’s a safe bet that in any poll taken attempting to determine what is really concerning the American people, economic issues will top the list. A recent Gallup poll verifies that to be the case. “Jobs and unemployment,” according to the poll, has regained its position as the number one problem facing Americans. “Government and politicians” was knocked from the top spot, but that issue runs a close second with the people. The poll shows that nearly one in four Americans—23 percent—say the most important problem facing the country is jobs and unemployment. The economy ranks number two, with 20 percent saying it’s the biggest problem.

Since the government shutdown in October, government and politicians had topped the list, according to Gallup. Since the shutdown, politicians were held in very low esteem. The jump in the poll was most pronounced among Republicans, from 11 percent naming jobs and unemployment in January to 24 percent in February. The survey of 1,023 adults was conducted in early February and has a margin of error of plus or minus 4 percentage points. The message to the two political parties—when you consider the numbers in the top two categories—is that while the American people have a low regard for both government and the politicians, they definitely want an improved economy.

Source: Pollicco.com

A SYSTEM IN OUR COLLEGES THAT BADLY NEEDS TO GO

It’s most significant that Sigma Alpha Epsilon (SAE), one of the largest U.S. fraternities, has banned pledging. The fraternal organization says the reason for the change was the toll that hazing has taken on recruits, as well as the damage to the organization’s reputation. SAE calls its decision to eliminate pledging “historic.” For those who may not be familiar with what goes on in fraternal circles on college campuses, there is typically a months-long induction period featuring “secret rituals” and lots of “stupid” stuff done to pledges. During pledging, according to reports, recruits have been subjected to “forced drinking, severe paddling, humiliation and other abuses.” At least 10 deaths since 2006 have been linked to hazing, alcohol or drugs at SAE events, more than at any other fraternity, according to data compiled by Bloomberg News.

SAE now becomes one of only a handful of about 75 national fraternities—and the most prominent—to eliminate pledging. Hopefully, the ban that took effect on March 11 will result in broader changes among Greek organizations on college campuses. There have been more than 60 fraternity-related deaths since 2005. Many victims were freshman pledges, considered the most vulnerable because many are away from home for the very first time. I strongly believe that all national fraternities should follow the lead of SAE and ban the pledging system. There is absolutely no reason for the sort of thing that led SAE to take its action to be a part of college life. Hopefully, most parents with youngsters about ready to enter college will agree.

Sources: Claims Journal and Bloomberg News

VIII. THE CORPORATE WORLD

BP IS UNDER INVESTIGATION IN ASIA

It was revealed last month that regulators in Asia have joined European and U.S. agencies investigating potential manipulation of oil prices by BP. The giant oil company said in its annual report that in June 2013 the Japanese Fair Trade Commission sent an “initial request for information” to BP, and that the Korea Fair Trade Commission “initiated an investigation” in December. In January of this year, according to BP, the U.S. Commodity Futures Trading Commission (CFTC) also requested documents.

European Union (EU) regulators have been looking into whether big oil companies including BP, Norway’s Statoil AS, and Royal Dutch Shell PLC manipulated oil-price benchmarks. Last year, EU antitrust authorities conducted a series of unannounced inspections of oil companies and Platts, a division of McGraw Hill Financial that calculates oil benchmarks.

In June, the U.S. Federal Trade Commission (FTC) also sent a “request for voluntary submission of documents and information” about an investigation into whether or not BP, Shell or Statoil “have engaged in unfair methods of competition or manipulative or deceptive conduct.” BP says it is producing documents for the FTC.

Source: Dow Jones Business News

ROCHE AND NOVARTIS FINE $250 MILLION FOR DRUG COLLUSION IN ITALY

The Italian Competition Authority (ICA), the country’s antitrust enforcer, has fined two Swiss drugmakers, Hoffmann-La Roche Ltd. and Novartis AG, more than $250 million for colluding to direct eye patients away from the companies’ drug Avastin to their more expensive Lucentis drug. The ICA found that since 2011 the two companies arranged to portray the cheaper Avastin as more dangerous than Lucentis in order to influence the prescriptions of doctors and health services.

Medical doctors use both drugs, which are based on a similar active ingredient, to treat eye problems such as age-related macular degeneration. But it should be noted that only Lucentis was specifically approved for such a use. The ICA fined Novartis, which has the rights to market the drugs outside the United States, 92 million ($126 million). Roche, which markets the drugs stateside, must pay about 91 million. The ICA claims the two drugmakers’ intrinsically linked economic interest gave rise to the arrangement. Roche collects royalties from the sales of Lucentis and Novartis holds a 30 percent share in Roche.

The ICA said that “Roche and Novartis set up a complex collusive strategy.” It also said that, in steering patients toward the more expensive drug, the Italian National Health

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Service incurred additional expenses of more than $60 million in 2012. Genentech, a Roche subsidiary since 2009, first marketed Avastin in 1997 as a treatment for cancer. But the drug was later used off-label to treat macular degeneration. Lucentis, also a Genentech product, was approved in 2006 specifically to treat eye conditions for which Avastin was previously used. In 2003, Genentech granted Novartis exclusive rights to distribute the drug outside of the United States.

Although they are similar, the two drugs differ considerably in cost. For example, an injection of Avastin costs about $100, while an injection of Lucentis costs more than $1,200. The ICA began investigating Novartis and Roche in February 2013, following complaints from an association of private Italian hospitals and the Italian Ophthalmologic Association. Local governments and an Italian consumer association were also involved in the investigation.

The efforts to portray Avastin as more dangerous than Lucentis intensified, according to the ICA, as researchers published studies indicating that the two drugs were equally effective at treating eye conditions. For example, a 2011 study published in the New England Journal of Medicine, revealed that Avastin and Lucentis had “equivalent effects” when used on the same schedule over the course of a year.

Source: Law360.com

**Senators Request Probe Into Zohydro “Pay To Play” Meetings**

A pair of Republican senators is requesting the Department of Health and Human Services Office of Inspector General (HHS OIG), a government watchdog, investigate claims that pharmaceutical companies paid a university to attend private meetings between the U.S. Food and Drug Administration (FDA) and medical professionals to influence the approval of controversial opioid painkiller Zohydro ER. Senators David Vitter, R-La., and Mike Lee, R-Utah, asked the government in a letter to open an investigation for what they referred to as “disturbing” media reports that drug companies had paid into what they referred to as “disturbing” meetings involving medical experts and the FDA. Sen. Vitter said the Department of Health and Human Services, individuals as well as our very government, is “unfair and unenforceable.”

The two Senators said that participation in “pay-to-play” meetings would give the pharmaceutical companies “undue influence” over FDA policy and its approval process and constitute an improper relationship between FDA employees and industry. The letter asked the OIG to investigate:

- whether any FDA employees were invited to participate in conferences involving certain pain management expert groups or any other neuropathic pain conferences, going back to 2001. This should include a list of any honoraria the FDA employees received to attend these conferences.
- whether any payments were made to the FDA or its employees through the Continuing Professional Education program at URMC.
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A report to Congress was requested to be sent by the end of this month. The letter said that “the FDA approval process should not compromise patient safety for personal financial gain.” The Senators’ letter did not mention any specific drugs or pharmaceutical companies. Sen. Vitter noted that this letter was meant to accompany a late-February message he and Sen. Joe Manchin, D-W. Va., sent to the named university, which specifically questioned the role meetings between the medical center and the FDA that had played in the agency’s approval of Zohydro ER.

The potent painkiller, manufactured by Zogenix Inc., was approved by the FDA in October of last year, even though the agency’s own Anesthetic and Analgesic Drug Products Advisory Committee voted 11-2 against its approval in a nonbinding recommendation. The entire approval process was surrounded by controversy. There was outrage from dozens of state attorneys general and consumer groups, as well as opposition from prominent lawmakers, citing the potential for abuse and overdose. You may recall that in December of last year 28 state attorneys general asked the FDA to reconsider approval of Zohydro.

Zohydro contains between five and 10 times more of the semi-synthetic opioid hydrocodone than common existing hydrocodone-based painkillers such as Vicodin or Lortab. The drug lacks the abuse deterrents that have been built into drugs like the revised version of OxyContin, the narcotic pain reliever blamed for a skyrocketing rate of prescription drug overdoses in recent years.

Those who have objected to the drug’s approval urged the FDA to take action. The agency’s options include revisiting its approval decision or limiting how the drug is marketed and prescribed. The objectors are also calling for the setting of a timeline for the development of an abuse-resistant formulation. Some have even called for the U.S. Department of Health and Human Services, the parent agency of the FDA, to exercise a rare veto over the approval.

Source: Law360.com

**Increase In Cyber Attacks Costing Millions**

It was reported last month that crashing websites and overwhelming data centers, a new generation of cyber attacks, is costing millions. These attacks are also straining the very structure of the Internet. Based on reports, the attackers appear to be a mixed group made up of diehard activists, criminal gangs or nation states looking for a covert way to hit enemies. The attacks also include teenage hackers simply looking for kicks. Distributed Denial of Service attacks have always been among the most common on the Internet, using hijacked and virus-infected computers to target websites until they can no longer cope with the scale of data requested.

But recently we have seen a series of much more serious attacks. The motivating faces of the attackers include extortion, political activism, and providing distraction from data theft. Also, the “hobbyist” hackers are just testing and showcasing their skills, according to security experts. Victims in recent months have included the Federal Bureau of Investigation, Royal Bank of Scotland and several major U.S. banks. Needless to say, a huge problem faces businesses, institutions, individuals as well as our very government.

Source: Insurance Journal

Source: Insurance Journal

Source: Insurance Journal

Source: Insurance Journal

Source: Insurance Journal

Source: Insurance Journal

Source: Insurance Journal

Source: Insurance Journal

Source: Insurance Journal

Source: Insurance Journal
IX. UPDATE ON WHISTLEBLOWER LITIGATION

RECORD-BREAKING RECOVERIES IN HEALTH CARE FRAUD CASES

The Department of Justice (DOJ) and the Department of Health and Human Services (HHS) released their annual Health Care Fraud and Abuse Control Program report. The good news is that courageous individual whistleblowers are helping the government recover unprecedented amounts in the war against health care fraud. The bad news is that fraud continues to run rampant in the health care industry, costing taxpayers billions of dollars each year, as well as depriving health care services from those who need it most.

In 2013, the federal government recovered $4.3 billion, up from $4.2 billion in 2012, against companies who defrauded federal health care programs. This marks the fifth consecutive year that the government has increased health care fraud recoveries. Additionally, the DOJ opened 1,013 new criminal health care fraud investigations and 1,083 new civil investigations against 1,910 potential defendants. As these investigations progress, 2014 should continue the record-setting trend.

The government’s successes came largely as a result of the bravery and diligence of individual whistleblowers who reported fraudulent activity they witnessed in the health care industry. Without the assistance of these men and women, the massive recoveries of taxpayer dollars would not have been possible. In short, we need to raise the awareness of health care fraud because you can make a difference.

If you, a family member, or someone you know has information concerning health care fraud or any type of fraud against the government, lawyers at Beasley Allen would welcome the opportunity to assist you. Lawyers in our firm have played a significant role in the campaign against health care fraud in the last decade, and have obtained unprecedented recoveries for both individual and governmental clients. For more information, you can visit our website at www.BeasleyAllen.com or you can call 800-898-2034 and ask for any of the lawyers mentioned in the next part of this section.

Sources: www.whistleblower-insider.com; www.compliance.com; and www.hhs.gov

10 WAYS TO EVALUATE A WHISTLEBLOWER CLAIM

In 2006, health care entrepreneur and author Adam Resnick sued Omnicare Inc., a major supplier of prescription drugs to nursing homes. The suit, brought under the federal False Claims Act, alleged the company was involved in illegal kickback schemes that put nursing home profits ahead of patients’ medical care. Since then, Resnick has acquired several years of experience as a whistleblower, successfully exposing Medicare and Medicaid fraud and helping the U.S. government recover vital health care funds.

In an article written by Resnick for the Huffington Post, 10 tips were offered to anyone considering blowing the whistle on fraud and other wrongdoing. His advice includes getting an experienced lawyer who can help you make sure you have a good claim—a person who is open to answering tough questions and—who will look honestly at the factual truth of the situation. Resnick also advises potential whistleblowers to be prepared for the investigation to take a long time.

Resnick speaks from experience when he says whistleblowing can be the career equivalent of walking through a mine field. He emphasizes how important it is to contact a lawyer immediately who can navigate a potential whistleblower through the process. That lawyer will know what documents the person is allowed to take and which ones are under any type prohibition and can’t be taken. One wrong move could potentially destroy a very good case and also the person’s career.

For the above reasons, Resnick says finding a lawyer with experience handling whistleblower cases is very valuable. He advises potential whistleblowers to make sure the lawyer they select isn’t representing another person with a similar claim before divulging specific information. Resnick says to always hire a whistleblower lawyer who works on contingency fees, never on an hourly basis unless the case is an employment one. That’s very important because of the time and expense involved in investigating, preparing and trying a whistleblower case.

Also, potential whistleblowers should expect the lawyer selected to thoroughly question all of the allegations. This is a necessary measure in order to make sure that a solid case exists. If the allegations don’t convince an experienced lawyer, those allegations will not hold water with the federal government or a judge. Resnick emphasizes that the government needs solid evidence of fraud before a whistleblower claim under either the False Claims Act, the IRS, or the Securities and Exchange Commission can go forward. Some whistleblowers may think they can act on generalized tips and simply have their lawyers subpoena the evidence. But that’s not how it works.

Potential whistleblowers also should expect their case to take a fairly long time from start to finish. Many individuals who become whistleblowers are under the misconception that companies will settle quickly to avoid trial and lots of bad press. “They never do,” says Resnick, so he warns not to expect a quick resolution to your case. Additionally, expect that the whistleblower will eventually be identified. While whistleblower cases are filed under seal, anonymity is never guaranteed. In fact, every whistleblower should expect to be outed eventually, even if precautions have been taken to mitigate that risk.

The above recommendations are just some of the advice Resnick offers. You can read his 10 Tips list at Huffington Post. Lawyers in the Consumer Fraud Section at Beasley Allen continue to investigate, file, and litigate whistleblower cases under the False Claims Act. The lawyers are also taking cases under state law in states that have whistleblower statutes. The Resnick article is an excellent summary of what all potential whistleblowers should do and expect if they elect to blow the whistle on corporate fraud or wrongdoing. The goal of Beasley Allen lawyers in whistleblower cases is not only to give a fighting chance to potential whistleblowers, but ultimately to win their cases.

We have several lawyers in the firm who have regularly handled qui tam claims. They will be glad to speak to potential whistleblowers under complete confidentiality at no charge to consider and evaluate their potential case. If you would like more information about a whistleblower case, call 800-898-2034 and ask for Chad Stewart (Chad.Stewart@beasleyallen.com), Larry Golston (Larry.Golston@beasleyallen.com), Lance Gould (Lance.Gould@beasleyallen.com), Archie Grubb (Archie.Grubb@beasleyallen.com), or Andrew Brashier (Andrew.Brashier@beasleyallen.com). Each of these lawyers is actively involved in ongoing whistleblower litigation.

Source: Huffington Post

AMERICAN FAMILY CARE TO PAY $1.2 MILLION TO SETTLE FALSE CLAIMS CHARGE

American Family Care will pay $1.2 million to resolve allegations under the False Claims Act that it knowingly submitted...
claims to Medicare for outpatient office visits that were billed at a higher rate than was appropriate. American Family Care is a network of walk-in medical clinics headquar- tered in Birmingham, Ala., with offices in Alabama, Tennessee and Georgia. Following guidance adopted by the Centers for Medi- care and Medicaid Services, health clinics such as American Family Care bill Medicare for their services by selecting a correspond- ing Evaluation and Management code.

The codes are divided into five different levels—from basic (level 1) to most complex (level 5). Higher level codes result in higher reimbursement from Medicare than lower level codes. The government alleged that American Family Care knowingly selected Evaluation and Management codes for a level of services that exceeded those actually provided in order to artificially increase the amount of reimbursement it received for those visits.

The civil settlement resolves a lawsuit filed by Anita C. Salters, a former employee of American Family Care, under the whistle- blower provision of the False Claims Act, which permits private parties to file suit on behalf of the government for false claims and to obtain a portion of the government’s recovery. Salters’ share of the settlement had not yet been determined at press time.

Source: Corporate Crime Reporter

**FORMER STAGO DIRECTOR SAYS HE WAS FIRED FOR WHISTLEBLOWING**

The former director of regulatory affairs for Diagnostica Stago Inc., Amarjit Jowandha, has filed suit against the medical device company under New Jersey’s whistleblower law. It was alleged in the suit that Jowandha was fired for reporting noncompliance with state and federal laws to the U.S. Food and Drug Administration (FDA). He served as director of regulatory affairs and quality assurance in Stago’s Parsippany, N.J., office. He alleges in his complaint that he discovered “numerous instances of evasive and purposeful conduct” within several months of his hiring in April 2013 regarding the company’s compliance with federal and state regulations involving the importation and distribution of medical devices, including hemostasis analyzers, reagents and test kits, and others.

The whistleblower says he diligently tried to bring Stago into compliance with various FDA and other regulatory mandates but that the company, including CEO Stephane Zamia, a Defendant in the case, failed to correct the deficiencies and, instead, conti-ued to violate state and federal laws. The whistleblower says he was terminated shortly after he reported the violations to the FDA and informed the company that he planned to report its continued noncompliance in December 2013. The complaint states:

*Plaintiff was terminated from Stago for disclosing and/or threatening to disclose wrongdoing on the part of Stago that involved the continued and persistent illegal, unethical, harmful and noncompliant conduct in the regulated industry of medical device distribution, said conduct having a negative impact on the health, safety and welfare of the public.*

According to the complaint, the violations involved end-user complaint handling, device tracking, investigation training, misla- beling, recall tracking, investigation techniques and clinical trial oversight and monitoring. For instance, Jowandha says Stago pressured him to sign off on documents relating to clinical trials that he says were not up to par with federal regulations.

In addition to attempting to bring the company into compliance with state and federal regulations, Jowandha also tried to correct the numerous corrective and preventive action notices Stago received from the FDA and other regulatory agencies, he says. When Jowandha made his recommendations to Stago’s upper management, including Zamia, according to the complaint the company asked him to falsify or “cover up” irregularities and regulatory deficiencies.

It’s alleged that after Jowandha reported the deficiencies to the FDA—which he says the company was aware of—the agency conducted an on-site inspection and investiga- tion of Stago and issued additional notices to the company. It’s further alleged that Jowandha was fired on Dec. 18, 2013, shortly after he notified the company that he intended to report Stago’s persistent noncompliance and its unwillingness to achieve regulatory compliance to the FDA.

The complaint alleges Stago violated the Conscientious Employee Protection Act by terminating Jowandha to retaliate for his whistleblowing. It also alleges the company has refused to return Jowandha’s personal property to him. The New Jersey Supreme Court said in a ruling last month that it would consider the rights of watchdog employees when it certified a Johnson & Johnson subsidiary’s appeal of a revived whistleblower suit. That suit involved the retaliatory firing of a former director who raised concerns about the safety and efficacy of the company’s products.

Source: Law360.com

**X. CONGRESSIONAL UPDATE**

**BILL WOULD GRANT IMMUNITY TO THE CHEMICAL INDUSTRY FOR POISONING AMERICANS WITH DANGEROUS TOXINS**

U.S. Rep. John Shimkus has a bill, the “Chemical in Commerce Act,” that if passed would give virtual immunity to the chemical industry. When you consider this is an industry that currently is already poorly regulated, the last thing we need to do is to give chemi- cal manufacturers immunity. The following statement on this bill by Burton LeBlac, Pres-ident of the American Association for Justice (AAJ), explains why the legislation should not become law.

Far too often the lives of American families are dangerously impacted by chemicals in our drinking water, children’s toys and consumer products. The Toxic Substances Control Act (TSCA) must be reformed to effectively protect the public, but Rep. Shimkus’ draft bill doesn’t come close as it evis- cerates public health safeguards, pre- empts state law and grants immunity to the chemical industry.

The draft bill completely disregards known concerns of advocates for public health, the environment, consumers and states’ rights. Instead, Rep. Shimkus’ bill allows the chemical industry to control the science the EPA uses to regulate chemicals, preempts states from taking action on dangerous toxins, and all the while ensures that chemical manufacturers cannot be held accountable in the civil justice system.

The end result is that Rep. Shimkus’ draft bill only benefits corporations responsible for poisoning and killing Americans and places the health and safety of American families at risk. Congress must prioritize the health and safety of Americans by passing meaningful and effective TSCA
That’s certainly understandable. For those who fall into this category, and would like to learn more about LSC, I hope they will check out what the LSC is all about. I can tell you that they do a good and badly needed service for low-income folks and specifically for “the poor” in our country.

I believe strongly that LSC, which has asked Congress for $486 million in funding for 2015, should be adequately funded. This is the same amount it requested a year ago. But Congress only provided $365 million in that budget. The bulk of the nonprofit corporation’s request—some $451 million—would flow toward grants that fund the delivery of civil legal assistance in areas including housing and foreclosure, consumer lending cases, bankruptcy filings and fights over the retention of private or public benefits including disability. These areas where low-income folks badly need access to legal representation. The budget request by Legal Services Corp. is broken down as follows:

- $5 million in technology grants;
- $1 million to help legal aid attorneys repay loans;
- $19.5 million for management;
- $4.2 million for its Office of Inspector General; and
- $5 million to expand a pro bono innovation effort.

LSC has a definite role in our country’s system of justice. It helps low-income folks who can’t afford to pay a lawyer in a variety of areas. LSC President James J. Sandman had this to say: “Our request to Congress balances record-high demand for civil legal aid against the realities of the federal budget environment.”

The pro bono line item comes from LSC’s 2012 report that calls for a separately funded effort aimed at encouraging innovations and best practices in pro bono. It was recommended by LSC that “this challenge grant be a newly funded program, and that resources not be taken from critically needed existing funds for LSC grantees.” LSC noted that the White House’s proposed budget of $430 million—plus potentially more money from a $56 billion Opportunity, Growth and Security Initiative that would be paid for with tax loophole closures and various spending reforms—showed President Barack Obama “understands the importance of adequately funding civil legal assistance, even in these tough financial times.” LSC Board Chairman John G. Levi said he was grateful that the president proposed a nearly 18 percent increase over current funding and has included LLC in his new budget initiative.

In late January, the delayed signing into law of a $1.1 trillion federal spending plan funded LSC at $365 million, marking an increase of $25 million from 2013, it said. That signing marked the federal government’s first move to fund the pro bono innovation effort to the tune of $2.5 million.

Meanwhile, the request for money for technology grants would allow LSC to fund efforts such as growing online destinations where users can get legal forms and documents completed using interactive questions and answers, as well as civil legal “triage” systems that interactively guide users to resources most likely to help them. LSC noted on March 5 that had its budget kept pace with inflation since its 1995 appropriation of $400 million, the current request would now top $600 million. Hopefully, Congress will adequately fund LSC. I know for a fact that the Montgomery office provides a most valuable service to low-income citizens in our area.

Source: Law360.com

**XI. PRODUCT LIABILITY UPDATE**

**GENERAL MOTORS WILL HAVE TO DEAL WITH SOME VERY SERIOUS SAFETY PROBLEMS**

It’s become very clear that General Motors faces some grave problems because of its failure to act appropriately relating to a most serious safety issue. General Motors has to deal with the problems caused by a defective ignition system in its vehicles. Those problems, without any doubt, are a major safety concern for lots of folks. Hazards caused by a specific vehicle defect in GM vehicles have caused the deaths of more than 300 people, according to reliable reports. The defect causing the safety hazards, a badly designed ignition system, has been known to General Motors for more than a decade. The automaker also knew about at least some of the deaths that have occurred. It admits to knowing of 12 deaths. In a shocking display of a lack of concern, the automaker refused to issue a recall of the affected vehicles until February of this year. The following will give some insight into the magnitude of the automaker’s problems.

**Legal Services Corp. Submits $486 Million Budget For 2015**

It’s likely that many of our readers are not familiar with Legal Services Corp. (LSC), the nation’s largest provider of funding for civil legal services for low-income Americans, and the good work they do around the U.S.
IGNITION SWITCH RECALL LINKED TO SERIOUS INJURIES AND DEATHS

On Feb. 13, 2014, General Motors recalled 780,000 Chevrolet Cobalts and certain Pontiac vehicles to repair an ignition switch problem that can allow the key to slip from its “run” position when the car hits a bump or if the keychain is too heavy. When this happens, the defect can cause an engine shutdown and loss of power steering, brakes, and safety systems, including airbags and anti-lock brakes. The ignition switch default, according to GM, has been linked to 31 crashes involving airbags that failed to deploy and the deaths of 13 motorists. That number is now believed to be grossly understated.

On Feb. 25, GM expanded the recall to include hundreds of thousands of additional Chevy, Pontiac, and Saturn cars, bringing the total number of affected vehicles to 1.4 million. It is evident that GM knew about the safety problem and failed to notify either the National Highway Traffic Safety Administration (NHTSA) or their customers. Deposits taken during a civil lawsuit against GM revealed the automaker knew in 2004, a full 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 an obvious safety hazard and one that should have been reported.

1.5 MILLION VEHICLES RECALLED

General Motors has now recalled an additional 1.5 million vehicles. That recall includes three different models for a variety of problems, all safety-related. The majority of vehicles included in the new recall are the 2008-13 Buick Enclave and GMC Acadia, the 2009-13 Chevrolet Traverse and the 2008-2010 Saturn Outlook, which are all crossover SUV models. These vehicles make up 1.2 million of the recall number. GM cites the reason for the recall as a problem with the wiring in the seat-mounted side airbags.

GM says customers will see a vehicle warning light that says “Service Air Bag.” If this warning is ignored, it can result in the airbag not deploying in the event of a side-impact crash. The defect can also cause other side-impact crash safety systems not to work.

GM issued a second recall encompassing 64,000 Cadillac XTS full-size sedans, model years 2013 and 2014 for overheating brakes. The brake problem has been linked to two vehicle fires.

Additionally, GM has recalled 303,000 Chevrolet Express and GMC Savana full-size vans. The automaker says it needs to “rework” the material on the instrument panel to improve safety for passengers who are not wearing a seat belt and may impact the area in a crash. These vans are usually sold for commercial use.

AIRBAG FAILURE MAY HAVE CAUSED MORE THAN 300 DEATHS

U.S. safety regulators have recorded 303 deaths when airbags failed to deploy in the 1.6 million compact cars that were recalled last month by General Motors. A study released on March 13 by the Center for Auto Safety, a well-respected safety watchdog group, reveals that GM has big time safety problems. The new report and higher death toll ratchet up the pressure on GM, which has said it has reports of only 13 deaths in 34 crashes in the recalled cars. GM did not recall the cars until February, despite learning of problems with the ignition switch in 2001 and issuing related service bulletins to dealers with suggested remedies in 2005. It failed to notify NHTSA at the time.

The Center for Auto Safety said it referenced crash and fatality data from the NHTSA Fatal Analysis Reporting System (FARS). Clarence Ditlow, the center’s executive director, said:

NHTSA could and should have initiated a defect investigation to determine why airbags were not deploying in Cobalts and Ions in increasing numbers.

NHTSA has been criticized for not pressing GM to recall the cars with defective switches, despite receiving hundreds of consumer complaints in the past 10 years and implementing its own investigations of two fatalities related to the faulty ignition switches. That’s impossible to justify.

The Center’s study, conducted by Friedman Research Corp of Austin, Texas, also cross-referenced fatality data supplied by GM to NHTSA’s Early Warning Reporting (EWR) database. “Combining EWR and FARS data (the center) did should have raised a red flag to NHTSA,” Ditlow said in a letter sent to NHTSA. In a review of the EWR filings, Reuters found GM reports of three fatal crashes involving the Saturn Ion in 2003 and 2004, well before the first confirmed fatality in a Chevrolet Cobalt. Two of the three Ion crashes involved non-deployment of airbags, according to the center’s analysis of the data.

Sources: USA Today, CNBC, New York Times, and General Motors, CNN Money and Reuters

CONGRESS AND THE JUSTICE DEPARTMENT WEIGH IN ON THE PROBLEM

The U.S. Department of Justice has launched a criminal investigation into whether General Motors waited too long to recall the 1.6 million vehicles. On March 10, House lawmakers announced they were investigating both GM and the National Highway Traffic Safety Administration (NHTSA) about whether the recall came too late. The House Energy and Commerce Committee said a federal law enacted more than 10 years ago should have prevented any delays. The Transportation Recall Enhancement, Accountability and Documentation Act, authored by Rep. Fred Upton, R-Mich., was meant to help the federal government protect against auto safety defects, according to a statement by the committee.

On March 11 House lawmakers asked GM and the NHTSA for specific details on how they responded to complaints about problems with those vehicles, including issues with airbag deployment and ignition switches in certain vehicles. They pointed out that reports had shown that consumers had complained to the NHTSA of these problems dozens of times in the past 10 years. Mary Barra, the new CEO at GM, will testify before Congress on April 1. It will be most interesting to see how she handles this appearance.

Then on March 18, the federal government finally began to look into the matter. It’s highly likely that criminal charges will be brought against GM for its handling of the recall. House Energy and Commerce Chairman Fred Upton, along with other Congressional committee leaders, sent letters to GM CEO Mary Barra and to David Friedman, acting head of the National Highway Traffic Safety Administration, giving
them two weeks to provide documentation and incident reports regarding the ignition switch problems.

**Beasley Allen Lawyers Are Already Handling GM Cases**

Beasley Allen lawyers have been investigating cases involving serious injuries or deaths resulting from crashes involving the 2005-2007 Chevy Cobalt, or model year 2003-2007 Pontiac G5, Saturn Ion, Chevy HHR, Pontiac Solstice and Saturn Sky. It’s quite obvious that GM has some most serious safety problems that have caused injuries and deaths and that the automaker elected not to notify either the National Highway Traffic Safety Administration (NHTSA) or the owners of the vehicles. That’s inexcusable.

For more information, contact either Cole Portis, Mike Andrews or Rick Morrison, lawyers in our Personal Injury/Products Liability Section, at Cole. Portis@beasleyallen.com, Mike.Andrews@beasleyallen.com or Rick. Morrison@beasleyallen.com. You can call them at 800-898-2034.


**More States Consider Requiring Disclosure Of Tire’s Age To Consumers**

We have written about the problems involving aged tires in previous issues. This is a safety issue that most individuals were totally unaware of until most recently and many still don’t know about it. A bill was recently introduced in the Ohio Senate that would require tire dealers to disclose the tire’s age to consumers if the tire was either retreaded or three years old by the date of the sale. The disclosure must be in the form of a written notice and must state, “This tire is not new.” If tire dealers do not properly disclose the tire’s age, the dealer will be fined $250 for each violation.

Ohio is the fourth state this year to introduce a bill on tire aging. The Legislative Assembly of Puerto Rico introduced a bill that would ban the sale of tires older than six years. Massachusetts introduced a bill that would require tires older than six years to be removed if found during a safety inspection. Maryland’s bill is similar to the one in Ohio in that it requires disclosure of the tire’s age if the tire has been retreaded or is older than three years. Like the Ohio bill, the Maryland bill requires disclosure in the form of a written notice that informs the consumer that the tire is not new and that the tire should be replaced after six years.

The introduction of tire aging bills is causing a much needed uproar in the tire industry. In legislative hearings, legislators have rightfully noticed that tire manufacturers and dealers have not been truthful with the public about the dangers of tire aging. Further, legislators are realizing what Plain-tiffs’ lawyers have known for years—that tire inspections do not reveal the dangers of tire aging. In a recent hearing before the Maryland House Committee on Economic Matters, Delegate Benjamin Kramer stated:

*Tires degrade over time, no matter how carefully they are stored. The rubber material becomes more brittle, and at high speed when the centrifugal force gets to a point, the tread can separate, causing a catastrophic failure. They can examine tires until the cows come home, but the degradation is not visible to the eye.*

Our firm has successfully handled a number of cases involving tire aging. A recent case involved a crash resulting from the failure of a 10-year-old tire. In that case, our client took her car into a tire and lube franchise to have one of her tires repaired for being low. When the tire technician informed her that her tire could not be repaired, he recommended that she use her full-size spare. Our client expressed concerns about her spare tire’s age and condition to the technician. She relied on the technician to tell her if the tire was unsafe or if she needed to purchase a new tire.

The technician, without verifying the tire’s age, repeatedly assured her that her tire was safe. The tire was actually more than 10 years old. On her way back home, the tire failed on the interstate, causing our client’s vehicle to leave the road and roll over. This crash resulted in severe injuries to our client and her passengers. Fortunately, Rick Morrison, a shareholder at our firm, has extensive knowledge about tire aging defects and was able to negotiate a favorable settlement for our clients.

Legislative regulation of tire aging will hopefully raise awareness of the dangers of tire aging among consumers, dealers, and manufacturers. Increased awareness could help avoid accidents like the one experienced by our client. If you have any questions regarding the dangers of tire aging, contact Rick Morrison, a lawyer in our firm’s Personal Injury/Products Liability Section at www.BeasleyAllen.com
becomes three times more likely to roll over when it’s utilized as intended. As alarming as that proposition is, what is more shocking is that these dangerous characteristics were recognized very early in the design of these vehicles and that numerous alternative designs that are safer have existed for years.

As early as the 1970s, Ford engineers appreciated the lack of stability associated with the 15-passenger van. In fact, one such engineer who has since left Ford recalled watching a 15-passenger van prototype show signs of instability on a test track prior to production. The engineer described watching a trained test driver struggle to maintain control of the prototype vehicle during a series of turning maneuvers. Internal Ford documents even show some of the engineers working on the 15-passenger van suggested extending the vehicle’s wheelbase, or adding dual rear tires as a means to address the unstable condition. These ideas were rejected due to delays in production and lost profits.

For more than 30 years, these vans have been on the roads and many are still being produced today. Dodge discontinued production of 15-passenger vans in 2002. Many believe this decision was in response to the growing data which illuminated the dangerous qualities of these vehicles. On April 9, 2001, NHTSA issued a “consumer advisory” alerting the public about the increased rollover risk under certain conditions. That advisory came after NHTSA reviewed nearly 10 years of statistics related to the vehicles. Ford, however, is still producing virtually the same 15-passenger van that its engineers were concerned about in the late 1970s.

These vans not only suffer from poor stability and a heightened propensity to roll over, but to make matters worse, they have weak roof structures and inadequate seat belts. In addition to being inherently dangerous due to their faulty design, many of these vehicles are poorly maintained, and driven by ordinary folks not accustomed to operating such large vehicles. This deadly combination has resulted in catastrophic consequences. All too often those injured or killed are young adults and children due to the popularity of the vans with schools, day cares, camps and churches.

As spring and summer approach, many of these dangerous vehicles will again hit the highway in large numbers. These vans are common, and yet the dangers are still not widely known. NHTSA warns those who travel in 15-passenger vans not to overload the vehicle, regularly maintain the vehicle, insure all tires are properly inflated and to wear their seatbelt. Remember the more weight on the vans, the more dangerous they become.

I would caution folks to avoid these vehicles at all cost. The dangers are real and no amount of caution can prevent the unforeseen accidents that may occur. In fact, the odds of a rollover of a loaded 15-passenger van are pretty good. So, stay out of these vans, and if you value the lives of your families, keep them out of these vans. Lawyers in our firm’s Personal Injury/Product Liability Section have handled a number of tragic cases involving these vans. If you need more information on this subject, contact Evan Allen, a lawyer in our firm’s Personal Injury/Products Liability Section, at 800-898-2034 or by email at Evan.Allen@beasleyallen.com.

PepsiCo Failed To Disclose Cancer-Causing Ingredient

A lawsuit has been filed against PepsiCo Inc., alleging that the food and beverage company failed to warn consumers that its diet drink, Pepsi One, contains a cancer-causing component. The Plaintiff, Kelly Ree, contends in her lawsuit that Pepsi One contains a dangerous level of 4-methylimidazole, or 4-MEI, which has been shown to cause cancer in laboratory mice. She contends that the company was required to warn consumers of the danger under California’s Proposition 65, but failed to do so. The Plaintiff says she “would not have purchased the product had she known that it contained 4-MEI well in excess of Proposition 65 guidelines.” Ms. Ree said she purchased the drink in 2012. The lawsuit seeks certification as a class-action. If a class is certified, it would include potentially thousands of consumers as Plaintiffs.

The chemical is formed during the production of certain caramel-coloring agents used in many foods and beverages. It is found in colas, beers, soy sauces, breads, coffee and other products, according to California’s Office of Environmental Health Hazard Assessment. Studies published in 2007 by the federal government’s National Toxicology Program showed that long-term exposure to 4-MEI led to increases in lung cancer in mice. As a result, 4-MEI was added to the list of carcinogens that must be disclosed under California law.

Coca-Cola Co. and PepsiCo said they were altering how they made cola beverages to reduce the amount of 4-MEI and avoid the disclosure requirement. But in February, Consumer Reports noted that its testing found that Pepsi One contained in excess of 29 micrograms of 4-MEI per serving. In her lawsuit, Ms. Ree seeks compensatory damages and an injunction requiring PepsiCo to either reduce the amount of the chemical in Pepsi One or include a warning on product labels. It will be most interesting to see how this lawsuit winds up as it goes through the system.

Source: Los Angeles Times

XII. MASS TORTS UPDATE

ENDO FACES MULTISTATE INQUIRY OVER PELVIC MESH PRODUCTS

It has been revealed that Endo Health Solutions Inc. is under investigation relating to its pelvic mesh products. The company has received subpoenas from states including California in the investigation. The device maker revealed this information in a U.S. Securities and Exchange Commission (SEC) filing last month that warned investors that the “strain of pelvic mesh litigation” threatens its unit’s women’s health business. Endo, whose American Medical Systems Inc. unit is facing thousands of lawsuits in multidistrict litigation over the products, said in the filing that the company is now facing investigation by a number of states. Endo did say that it is cooperating with the investigation.

The investigation, according to the filing, includes transvaginal surgical mesh products that are meant to treat pelvic organ prolapse and stress urinary incontinence. Endo said it received a subpoena from California in November and that other states followed suit. Currently, there are more than 20,000 lawsuits pending against American Medical Systems claiming that the company’s vaginal mesh products are defective and have caused chronic pain, incontinence and other injuries. As we have previously reported, the suits are in multidistrict litigation in West Virginia, as well as state and Canadian courts. Endo has said recently that it expects to spend at least $520 million to settle or otherwise end the product liability litigation it faces, which primarily consists of thousands of vaginal mesh injury cases.

The company increased its product liability reserve to about $520 million as of the end of last year, according to a securities filing. But the company said a loss in excess of that amount remains “a reasonable possibility.” Endo agreed in June to pay $54.4 million to settle an unspecified number of

Three juries in two Topamax cases previously tried in Philadelphia have returned verdicts in favor of the Plaintiffs. A jury in October 2014 found drugmaker Hoffman LaRoche must pay more than $1.5 million in damages to a woman who developed a form of inflammatory bowel disease after using the company’s Accutane acne medicine. Jurors found that Switzerland-based Roche failed to properly warn Kamie Kendall’s doctors and that Accutane caused the ulcerative colitis and were liable for her injuries.

About 16 million people have taken Accutane since it went on the market in 1982. Once it was the company’s second biggest selling drug. Patent protection was lost in 2002, but the company continued to sell the drug along with generic competitors. In addition to bowel disease, Accutane has been linked to birth defects and depression.

This was the second trial of the Plaintiff’s Accutane claims. A New Jersey appeals court overturned a $10.5 million verdict in 2010, ruling that a judge improperly barred the drug company from using evidence about the medication’s use. The company has lost 10 of 13 suits brought by former Accutane users that have gone to trial since April 2007, according to data compiled by Bloomberg. The Plaintiff began an Accutane regimen at age 12 to combat her severe recalcitrant nodular acne and developed ulcerative colitis at 15. The condition worsened until doctors removed her colon in 2006, when she was 21. The verdict in this case was Roche’s ninth loss in an Accutane liability suit.

Roche, the world’s biggest maker of cancer drugs, pulled its brand-name Accutane off the market in 2009 after juries awarded millions of damages to former users over the bowel disease claims. Mike Hook, a Pensacola, Fla., lawyer, and Dave Buchanan, a lawyer with Seeger Weiss located in New York City, handled this case. They did a very good job for their client.

**Suicide Lawsuit Against GSK Is Allowed To Proceed**

In a groundbreaking ruling, an Illinois federal judge determined that GlaxoSmithKline PLC (GSK) can be held liable for a corporate and securities lawyer’s suicide. The lawyer had taken a generic version of the antidepressant Paxil, not the brand-name version made by the company. The decision is in conflict with some other court rulings around the country holding that brand-name drugmakers cannot be held liable for an injury caused by a generic drug. The Illinois court follows rulings by the Alabama Supreme Court, a California state appeals court and a Vermont federal court. The ruling by U.S. District Judge James Zagel, the Illinois judge, in my opinion is legally sound.

The case appears to be the first time a court in the Seventh Circuit has considered this issue. The suit involves the 2010 suicide of a lawyer, who was the onetime chairman of a large law firm’s corporate and securities group. Six days after the lawyer began taking paroxetine hydrochloride, a generic version of Paxil, to treat work-related anxiety and depression, he left his office and killed himself by jumping in front of a train.

The decedent’s wife sued GSK and Mylan, Inc., the manufacturer of the generic drug her husband took, claiming they failed to warn patients that adult users of paroxetine were at greater risk of suicidal behavior. Judge Zagel dismissed Mylan from the suit, but granted only part of GSK’s motion for summary judgment. While GSK cannot be held strictly liable for the suicide, Judge Zagel ruled that the company can be found to have been negligent. The judge rejected GSK’s contention that the negligence claims were actually product liability claims “in disguise,” saying Illinois law did not require him to construe one as the other. Judge Zagel wrote in his order:

>The injury here did indeed occur in connection with a product. And GSK manufactures products. Yet plaintiff has not brought suit against GSK for tortious conduct committed strictly as a manufacturer of products. And, though GSK implicitly urges to the contrary, I see no reason why all suits
Judge Zagel said that in order to determine whether a Defendant owes a duty to a Plaintiff, even if they are not directly connected, Illinois courts are supposed to consider four factors, which are:

- the reasonable foreseeability of an injury,
- the injury’s likelihood,
- the burden of guarding against the injury and
- the consequences of putting that burden on the defendant.

These factors indicate GSK owed a duty to Dolin, according to Judge Zabel. He said that GSK should have expected generics manufacturers would make paroxetine once the patent for Paxil expired, adding that GSK brand manufacturer knew the companies would have to follow its label for the drug. Judge Zabel said GSK failed to show that the likelihood of an injury was so remote that it eliminated its duty of care.

Judge Zabel said to guard against the risk of suicide by someone like this lawyer, GSK could have simply changed its warning label. There is a danger of overwarning about a risk, but GSK did not argue that the danger outweighed the duty it owed to Dolin, he said. Judge Zabel added:

That GSK did not manufacture the pill (the lawyer) ingested is largely immaterial on this point. GSK will not be tasked with the burden of crafting one new warning label for Paxil, and then other discrete warnings for various generic iterations of the drug—that all of the iterations of paroxetine are bio equivalent and require the same warning is precisely the point.

Judge Zabel pointed out that GSK ‘has been compensated for taking responsibility for paroxetine’s design and warning label’ through the Hatch-Waxman Act, which extended brand-name makers’ exclusivity over sales of their drugs. Judge Zagel dismissed Mylan from the suit based on the U.S. Supreme Court’s landmark Bartlett ruling last year, in which it held that federal law preempts design defect claims against generic-drug makers.

The Plaintiff is represented by Bijan Esfandiari, Michael Baum, Frances Phares and R. Brent Wisner of Baum Hedlund Aristei & Goldman, a firm with offices in Los Angeles, Philadelphia, and Washington D.C., and Joshua L. Weisberg and Lindsey A. Epstein of the Chicago-based Rapoport Law Offices. Wisner praised Judge Zagel for eliminating the ‘doughnut hole of liability’ faced by Illinois generic-drug users seeking to hold a manufacturer accountable for their injury.

Source: Law360.com

FDA WArns Drug COMPounders For Bad Practices

The Food and Drug Administration (FDA) released to the public last month separate warning letters it had sent to three drug compounding pharmacies. Each of the companies was criticized for unsanitary conditions at its facilities. Two were hit hard for producing drugs without individual prescriptions. All three of the companies, Nora Apothecary and Alternative Therapies Inc., Pallimed Solutions Inc. and Wedgewood Village Pharmacy Inc., received FDA warnings detailing the shortfalls in their sterile facility procedures. The problems ranged from visible sterile drug contamination to inadequate clean room facilities and monitoring programs. Each of these involves very serious issues.

Source: Law360.com

$100 Million Settlement In NECC Meningitis MDL

The trustee of bankrupt New England Compounding Pharmacy Inc. (NECC) and other parties are close to completing a proposed settlement in which victims of the 2012 meningitis outbreak would receive $100 million. The Bankruptcy trustee reported in early March that he and a committee representing the victims would complete the settlement very soon. A fund set up for the victims would have to be approved by the Massachusetts bankruptcy judge overseeing NECC’s Chapter 11 case.

Under the laws in many states, NECC must be declared insolvent before victims can begin pursuing health care providers and others who distributed the tainted NECC products in individual suits or the multidistrict litigation (MDL). The nationwide meningitis outbreak, which received widespread media attention, resulted in at least 64 deaths. In October 2012, NECC halted its operations and recalled all of its products. Two months later, the company filed for Chapter 11 bankruptcy protection in Massachusetts. There had been a number of lawsuits filed. Plaintiffs in the suits alleged that they contracted meningitis after being injected with the NECC steroid.

This settlement would resolve all claims involving NECC and its companies, as well as other claims involving other allegedly responsible entities and individuals. Our law firm is working in conjunction with Plaintiffs Steering Committee (PSC) member Mark Zamora of the Atlanta-based Zamora Law Firm. Mark was one of the first lawyers to file a lawsuit and the first to have a court ordered inspection of the NECC facilities. Mark and members of the PSC have done a tremendous job.

Source: Law 360

AN Update On The Risperdal Litigation

Lawyers in the Mass Torts Section at Beasley Allen continue to handle Risperdal claims on behalf of individuals who have been injured as a result of taking the drug. Risperdal is the brand name drug manufactured by Janssen Pharmaceuticals, Inc., a division of Johnson & Johnson. The drug went on the market in 1993 after receiving approval from the U.S. Food and Drug Administration (FDA) for the treatment of schizophrenia. In 2003, the drug was approved for short term treatment of acute manic/mixed episodes associated with Bipolar I Disorder in adults. Until 2006, the drug was not approved for any indication to treat minors.

In 1997, the FDA denied a request by Janssen for a pediatric indication for the drug. Despite this denial, Janssen marketed the drug for the treatment of depression, anxiety, Attention Deficit Disorder (ADD), Attention Deficit and Hyperactivity Disorder (ADHD), conduct disorder, sleep disorders, anger management and mood enhancement/stabilization. Janssen promoted the use of the drug to treat these conditions in children and adolescents from 1994 until September 2006 despite no approved indication for such use.

In 2006, Janssen obtained approval to market the drug for autistic irritability for children and adolescents between the ages of 5 to 16 years old. In 2007, Janssen obtained approval to market the drug for treatment of schizophrenia in adolescents between the ages of 13 to 17 years old and short-term treatment of manic or mixed episodes of Bipolar I Disorder in children and adolescents between the ages of 10 to 17 years old.

Use of Risperdal can cause gynecomastia (enlarged breasts in males), galactorrhea (milky nipple discharge), weight gain, hyperglycemia, diabetes and inhibited repro-
productive function. There have been two settlements of note involving Risperdal:

- In November 2013, the Department of Justice (DOJ) reached a $2.2 billion settlement with Johnson & Johnson to resolve criminal and civil liability arising out of the marketing of Risperdal. The DOJ and several states brought criminal and/or civil claims against Johnson & Johnson. The company pleaded guilty to misbranding Risperdal in relation to treatment of dementia in elderly patients. Both the criminal and civil claims also involved the marketing of the drug to children and adolescents.

- In that settlement, Janssen Pharmaceuticals agreed to plead guilty to one misdemeanor count of misbranding for improperly encouraging prescribers to treat dementia with Risperdal, even though it was approved only to address schizophrenia when the conduct took place in 2002 and 2003. Montana was not part of that multi-state settlement.

- In March 2014, Janssen reached an agreement with the Montana Attorney General to pay $5.9 million to settle a suit alleging that Janssen marketed Risperdal as safe despite knowledge that it posed health risks. It was alleged in the suit that the company promoted its antipsychotic drug Risperdal as safe even though it knew the drug posed risks of health problems including diabetes. Janssen agreed to the settlement as part of an agreement that prevents the company from misleading consumers about its drugs in the future. Attorney General Tim Fox said in his statement announcing the settlement:

  - This settlement is not only significant in terms of the amount of money Montana will receive, but also in that it protects our citizens from being prescribed Risperdal based on the types of false statements Janssen previously made to our health care providers.

If you or a loved one has suffered an injury as a result of taking Risperdal, and you need more information, contact James Lampkin, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at James.Lampkin@beasleyallen.com.

Source: Law360.com

**Judge Issues New Sanctions Against Boehringer In Pradaxa MDL**

An Illinois federal judge ordered Boehringer Ingelheim International GmbH (BII) last month to reimburse Plaintiffs for the offices they rent for European depositions in the multidistrict litigation (MDL) over the blood thinner Pradaxa. This was a discovery-related sanction that comes in addition to last year’s nearly $1 million fine. When U.S. District Judge David Herndon imposed sanctions against BII and U.S. unit Boehringer Ingelheim Pharmaceuticals Inc. (BIPI) in December, he instructed the companies to make European employees available for depositions in the U.S. Judge Herndon said that order, along with the $931,500 fine, was punishment for the companies’ failure to timely enact a litigation hold.

But in January, the Seventh Circuit ruled that Judge Herndon had overstepped his authority by requiring the foreign employees to be deposed in the U.S. Judge Herndon subsequently rescinded that portion of his order. But on March 12, he directed the Plaintiffs to rent office space in Amsterdam through August for use in connection with the European depositions. Judge Herndon ordered BII and BIPI to pay for the office space, including any space used by the Plaintiffs since the December sanction order. In addition, BII and BIPI must reimburse the Plaintiffs for the court reporters, videographers and interpreters they use in Europe, as well as the travel expenses for the special masters.

Judge Herndon also said he was in the process of restructuring the December sanctions order in part because it left some issues unresolved. A revamped order “will be docketed shortly,” he said. Even though the Seventh Circuit did not vacate the $931,000 fine, Judge Herndon saw fit to reiterate his rationale for the penalty. A week after he imposed the fine in December, Judge Herndon ruled that the companies could well be hit with even more sanctions. After discovery is completed for the bellwether cases, Judge Herndon said he may issue an adverse jury instruction related to the misconduct or impose another nonmonetary penalty, such as striking certain affirmative defenses or barring the companies from making certain arguments at trial. It is very clear that Judge Herndon will not tolerate discovery abuses or failures to comply with court orders.

The first bellwether trial in the MDL is scheduled to begin in September. The suits contend that Pradaxa causes severe bleeding and other injuries. This case is most significant and it will be watched closely.

Source: Law360.com

**XIII. AN UPDATE ON SECURITIES LITIGATION**

**The Haliburton Case Is Before The U.S. Supreme Court**

The United States Supreme Court heard oral argument on March 5th in a case that could overturn one of the most Basic rules in securities litigation—the “efficient capital markets hypothesis,”—better known as the “fraud-on-the-market” presumption. This rule of law comes from the high court in an previously decided case, Basic Inc. v. Levinson. The current case, Halliburton Co. v. Erica P. John Fund Inc., has the potential to overturn the “fraud-on-the-market” presumption of reliance in securities cases.

The fraud-on-the-market presumption is based on the concept that the “market price” of a security trading in an efficient market is determined from all material public information concerning the company and its stock. It allows a Plaintiff to proceed without having to demonstrate individual reliance. Under that rule, any allegedly material public misstatement by a company about itself, or its stock, operates as a “fraud on the market” that distorts the market price of the stock at issue. It also presumes that stock sale prices are always affected by these misrepresentations. Although it is a rebuttable presumption, the rule from the Basic case is that any stock purchaser or seller relies on the integrity of the market pricing process and the “truth” of its underlying information.

In Haliburton, the Plaintiff invoked the fraud-on-the-market presumption in her class certification to demonstrate class-wide reliance on Halliburton’s financial statements and projections. According to the Plaintiff, from June 3, 1999, through December 7, 2001, Halliburton made misrepresentations concerning three aspects of its operations:

- it understated its projected liability for asbestos claims;
- it overstated its revenues by including billings whose collections were unlikely; and
it exaggerated the cost savings and efficiencies Halliburton would derive from a 1998 merger.

Boiled down to the most basic terms, Halliburton did not have enough assets or revenues to cover its expected losses due to ongoing asbestos litigation. Halliburton knew this, but publicly misrepresented its financial position. Because of this misrepresentation, Halliburton’s stock prices remained high. Of course, while Halliburton insiders were aware that these statements were false, outside investors had no way of determining the truth or falsity of the statements. Neither could the outsiders assess whether Halliburton’s stock prices were based on accurate information.

The federal district court prevented Halliburton from presenting evidence to rebut the presumption and certified the class. On appeal to the Fifth Circuit Court of Appeals, the court held that evidence to rebut the Basic presumption could not be presented until the trial on the merits and affirmed the district court. On appeal to the U.S. Supreme Court, Halliburton is hoping to replace the presumption with a requirement that Plaintiffs prove that the misrepresentations actually did distort the market price for the stock, or at least be allowed to rebut the presumption at the class certification stage.

There are several options available to the high court for dealing with Basic at this juncture. The Court can either:

- completely overturn Basic and require individualized reliance (a result that most academics do not recommend and legal scholars do not foresee);
- alter the Basic presumption to require Plaintiffs to demonstrate that the misrepresentations actually did affect the market (the favored approach of the academic world);
- allow Defendants to rebut the presumption during the class-certification stage (Justices Breyer and Kagan, at least, seem opposed to this proposition); or
- leave Basic alone and affirm the Fifth Circuit.

In all but the last option, the world of securities litigation would be drastically changed. Class certification would be much more difficult to achieve, making any litigation much more expensive and much less likely to be pursued. If the Supreme Court changes the rules, and most scholars expect at least some alteration, the case will be another big win for corporations.

The market is complex, fluctuates by the minute, and is controlled by hidden mechanisms that set stock prices. Investors are at the mercy of the market in the sense that they have no access to the type of inside information that Halliburton and its corporate insiders have before deciding whether or not to purchase stock. Investors must rely on the accuracy of corporate representations and the resulting stock valuation. Requiring Plaintiffs to demonstrate actual affect in the market:

- would severely inhibit the ability of individual stock purchasers to bring suit;
- class certification would be nearly impossible because of the need to demonstrate reliance on an individual basis; and
- without class certification, the costs of litigation would be prohibitive.

Overturning or altering Basic would not only harm the market by causing investors to hesitate before purchasing stock, but would leave investors with little to no chance of recovering for their losses once corporate misrepresentations come to light. In short, that result would grant corporations immunity to misrepresent their finances and operations at the expense of individual investors. Hopefully, the court will do the right thing and affirm the appeals court and keep the rule from Basic in effect.


XIV. INSURANCE AND FINANCE UPDATE

FORCE-PLACED INSURANCE SETTLEMENTS

There has been lots of litigation around the country involving what is referred to as force-placed insurance. There have been several settlements in this litigation. Force-placed insurance is taken out on homes by banks or mortgage servicers when, for example, a homeowner’s policy lapses or when the bank decides the borrower doesn’t have enough coverage. Most of the litigation over this type insurance is in the form of class actions. Homeowners have alleged in the class-action lawsuits that the banks received a financial windfall by making deals with insurance companies and over-charging borrowers for the coverage. The following are settlements that have been reached in some of these cases.

$300 MILLION SETTLEMENT BY JPMORGAN APPROVAL

A federal judge in Miami has approved the settlement of the class-action lawsuit against JPMorgan Chase for its force-placed insurance practices. The settlement agreement could pay out more than $300 million to about 750,000 mortgage borrowers. The national settlement prohibits the bank for six years from getting commissions, kickbacks or reinsurance from the insurance, which it obtains when a homeowner’s policy lapses.

Under the order issued by U.S. District Judge Federico Moreno, class members will have to file claim forms to recover 12.5 percent of the net premiums they were charged between Jan. 1, 2008, and Oct. 4, 2013. Judge Moreno also barred JPMorgan Chase and Assurant and its insurance subsidiaries “from inflating premiums” for six years. New York-based JPMorgan Chase announced that the court’s decision formalizes a tentative agreement reached months ago about practices they claim to have stopped before that.

Premiers for force-placed insurance, which were deducted from a homeowner’s escrow account or added to the mortgage loan balance, were often much higher than the homeowners’ initial premiums. Many of those covered by the lawsuit lost their homes to foreclosure. The lawsuit estimated the value of injunctive relief from the bank changing its practices at $690 million. Judge Moreno wrote in his order:

During those six years, Chase will accept no financial interest in the placement of force-placed hazard insurance policies outside of the premium itself and the protection of the policy. Assurant defendants
said an American International Group subsidiary had a duty to defend Titeflex in the remaining portions of the underlying lawsuits. NUFIC appealed. Titeflex initially argued that the Superior Court disagreed, concluding that the only thing left for the trial court to decide was “the amount of indemnification,” which could not be resolved until “the resolution of the underlying lawsuits.”

The Superior Court, in dealing with the substance of the appeal, said that NUFIC had asserted a false conflict between Pennsylvania and New York law in the case. The court concluded that both state’s laws would treat the accident as one occurrence, thereby triggering the excess policy. Judge Strassburger wrote in his order:

*Because the instant case does not concern a toxic tort, but instead emanates from injuries alleged to have occurred as a result of one specific event, a gasoline leak, we conclude that NUFIC’s argument is without merit.*

This was a most interesting case and the conclusions reached by both the trial and appellate courts appear to be factually and legally sound. Insurance Companies continue to find ways to attempt to avoid covering claims under their policies.

Sources: Law360.com

**AIG Unit Must Cover Titeflex In Gas Spill**

The Pennsylvania Superior Court on March 4 affirmed a trial court ruling that said an American International Group subsidiary had a duty to defend Titeflex Corp. in the remaining litigation over a connector device that was implicated in a 1998 gas leak. The three-judge panel concluded that National Union Fire Insurance Co. (NUFIC), as Titeflex’s excess liability insurer, was obligated to defend the manufacturer because, under Pennsylvania law, the company had exhausted coverage under its primary insurer.

The court said that Pennsylvania law, rather than New York law, applies to the case, and emphasized the state does not recognize the “multiple-trigger theory” for this type case. That theory is used in asbestos cases to apportion liability across multiple coverage periods. Instead, the court said the incident in this case just triggered one policy year for the primary insurer, Kemper Corp., and as a result the $1 million limit on that policy was depleted. Senior Judge Eugene Strassburger wrote in the opinion:

>The 1997-1998 policy covered any “occurrence” that happened during that time period. Thus, even though some alleged injuries did not manifest until years later ... only the policy of the year of the occurrence is implicated.

The litigation stems from a leak at a gas station in Montgomery County owned by Thomas Wagner, which led to leakage on a number of neighboring properties. Wagner and Titeflex, which made a flexible connector used at the site, along with other manufacturers and installers, were sued in a series of lawsuits. Wagner, the owner, filed cross claims against Titeflex. According to the court’s opinion, Titeflex held a primary insurance policy with Kemper, which had a limit of $1 million per occurrence and an aggregate limit of $2 million. NUFIC provided an umbrella policy with limits of $50 million per occurrence with a $100 million aggregate.

The court’s opinion says that Titeflex and Kemper together paid $1 million to settle some of the claims in 2007, while NUFIC paid another $9 million in the settlement under its umbrella coverage. That same year, Titeflex filed a declaratory judgment suit against NUFIC in a Philadelphia court, seeking to hold the insurer responsible for coverage. That suit also included claims of bad faith and breach of contract.

In June 2012, the trial court ruled in favor of Titeflex in multiple motions for summary judgment, concluding that the insurer was obligated to defend the company against Wagner in the remaining portions of the underlying lawsuits. NUFIC appealed. Titeflex initially argued that the Superior Court did not have jurisdiction over the case, contending that no final orders had been entered by the trial court. But the appeals court disagreed, concluding that the only thing left for the trial court to decide was “the amount of indemnification,” which could not be resolved until “the resolution of the underlying lawsuits.”

**HSBC And Wells Fargo Settlement**

In another forced insurance settlement, HSBC Holdings Plc and Wells Fargo & Co. have agreed to settle lawsuits filed by mortgage holders who alleged they were forced to pay for property insurance at inflated rates. HSBC will pay as much as $32 million to resolve the claims, according to the proposed settlement agreement, which was filed in federal court in Miami. The Wells Fargo settlement agreement didn’t specify the total amount the lender will pay.

**Citi Group Settlement**

As we previously reported, Citigroup, Inc. reached a $110 million settlement in cases that involved force-placed insurance. The case was in a New York federal court. One of Citigroup’s units had received a 15 percent commission on hazard insurance premiums.

**Bank Of America Settlement**

Bank of America Corp. has also reached an agreement in principle to settle a class-action by lenders over force-placed insurance. Similar settlements are expected to follow in lawsuits against some other major banks.

Hopefully, the banks that have taken unfair advantage of folks in this area of concern will clean up their act. Fortunately, the litigation, in addition to the settlements, has caused Congress and a number of government agencies to take a look at this practice.

Sources: Claims Journal and Insurance Journal

**Bank of America reaches $70 million settlement with mortgage holders**

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have the required license or permission to maintain that amount of flammable and explosive chemicals at the facility. CAI made ink products with Ashland-supplied chemicals at the facility. The Plaintiffs distinguished their suit from an earlier class action against Ashland over the same explosion. In that case, Judge Casper had denied class certification just a week before this suit was filed. It was alleged that the named Plaintiffs in the second suit had different goals from most of the members of their proposed class.

Judge Casper ruled that those Plaintiffs—two residents and Sentry Insurance, who sued Ashland in 2009—would seek higher damages from Ashland than the rest of the Plaintiffs they were proposing to represent. Significantly, the other Plaintiffs had agreed to indemnify CAI, which Ashland had named as a third-party defendant in the initial suit. In the earlier litigation against facility operators CAI and Arnel Co. Inc., the two defendants agreed to pay $7 million—funded by their insurers—into a trust for residents affected by the explosion and to insurers who sought payback of property damage claims. In return, the residents and residential insurers who received payouts agreed to hold CAI and Arnel harmless and indemnify them from further damages related to the explosion.

According to Vigilant's complaint, Ashland failed to ensure the safety of the storage of chemicals and mixtures in the facility, which had been stored in unventilated tanks that had not been properly sealed, and did not ensure that the facility had adequate safety controls to prevent the accumulation of the solvent vapors that led to the explosion.

Source: Law360.com

**FOUR LOKO MAKER AND TWO LIBERTY MUTUAL UNITS SETTLE DEATH COVERAGE SUITS**

There was another significant case last month involving insurance coverage issues. In that case, two Liberty Mutual Insurance Co. units and the makers of caffeinated malt liquor beverage Four Loko have reached a settlement that will resolve ongoing litigation. This settlement, which is confidential, ends a second lawsuit over five deadly incidents. Netherlands Insurance Co. and Indiana Insurance Co., units of Liberty Mutual, were seeking the court’s approval for their refusal to represent Four Loko’s Phusion Projects Inc. in its defense in five underlying lawsuits.

The insurers were trying to avoid representing Phusion in these lawsuits, which involved deaths allegedly caused by the company’s product. Liberty Prudential had sued Phusion in early 2011 to avoid covering a different series of Four Loko-related fatalities. The company introduced Four Loko onto the market in 2005 in an attempt to capitalize on the popularity in college bars of mixing alcoholic beverages with energy drinks. It was alleged in one underlying complaint that the product’s combination of alcohol and stimulants could dangerously reduce a person’s ability to notice the symptoms of intoxication.

Four Loko, which is sold in cans, originally had 12 percent alcohol by volume, about as much as a medium-sized glass of wine, and as much caffeine as two cups of coffee. The company had announced in November 2010 that it would remove caffeine from the beverage in response to public outcry and pressure from regulators. The underlying lawsuits allege that the drink’s allegedly dangerous combination of alcohol and caffeine caused agitation and disorientation in those who consumed it and ultimately led to reckless behavior, which could result in deaths.

The Seventh Circuit in December said that a liquor liability exclusion applied and that the Liberty Mutual units had no obligation to defend the Four Loko maker in the pending lawsuits blaming the caffeinated alcoholic beverage for injury and death. In that ruling, the appeals court panel found that the underlying suits did not accuse Phusion of any “tortious conduct divorced from the act of furnishing alcohol and so fell squarely within the policy exclusion for lawsuits alleging injury from intoxication.” The settlement reached will resolve all of the claims and will end all of the pending litigation.

Source: Law360.com

**JUDGE ORDERS FARMERS INSURANCE TO PAY $15 MILLION TO OKLAHOMA PLAINTIFFS**

An Oklahoma judge has ordered Farmers Insurance and a subsidiary to pay a total of $15 million to three Plaintiffs who filed claims for damage to their homes caused by a deadly tornado that struck Woodward, Okla., in 2012. The Plaintiffs alleged that Farmers Insurance and Foremost Insurance Group underpaid claims and used adjusters that they knew would offer low estimates. District Judge Ray Dean Linder agreed with the Plaintiffs, and he said he “was shocked at the disservice that was rendered by the Defendants in each of the three cases.”

Judge Linder ordered the insurance companies to pay $2 million for bad faith and breach of duty and $3 million in punitive damages to each of the three Plaintiffs. The EF-3 tornado hit Woodward in April 2012, killing six people and injuring 29. The lawsuits were filed on behalf of homeowners Sterling Parks, Jeff and Mary Sharpe, and Kim and Linda Louthan. Jeff Marr, a lawyer from Oklahoma City, who represents the Plaintiffs, had this to say:

*For every one or two or three—in this case—who stand up and say they won’t take it, there are a thousand who take it, because in many cases the people don’t have a choice. They are often left in a situation where their house is unlivable and they can’t afford to foot the bill to stay somewhere else or fix the home themselves.*

According to allegations in the lawsuit, the insurance company’s adjuster determined that Parks’ home was not structurally damaged and could be repaired. But an engineer hired by Parks testified the home could not be fixed, should be torn down. Parks said his “life has been on hold basically for two years.” This case is typical of how insurance companies will all too often try to avoid paying a legitimate claim to an insured. Fortunately, Judge Linden recognized how this insurance company was operating and ruled for its insured. Jeff did a very good job for his clients in this case.

Source: Insurance Journal

**NTSB INVESTIGATING FATAL BUILDING EXPLOSION IN NEW YORK CITY**

The National Transportation Safety Board (NTSB) is investigating the fatal explosion that happened in New York City last month. Two residential buildings collapsed in the explosion, killing at least eight persons and injuring more than two dozen. The explosion followed a gas leak reported early on March 12 to Consolidated Edison Inc. (Con Ed). Robert Sumwalt, a NTSB board member, said the explosion is believed to have involved a cast iron distribution pipeline carrying natural gas at low pressure.

The NTSB’s investigation will determine the cause of the explosion and will focus on whether Con Ed played a role in the explosion. Its investigators will probe how the

Source: Insurance Journal

utility handled gas leak reports from residents of those buildings before the accident occurred. The investigation will also assess the safety of the pipeline involved. Although the NTSB is more frequently involved in airline safety investigations, “all modes of transportation” fall under the agency’s purview, and it has the statutory authority to oversee pipeline safety, according to Sumwalt.

The NTSB initially sent a team of four experts to the site to start the investigation. It’s expected that this will be a lengthy investigation. Pipeline investigator Ravi Chhatre will lead the investigation, and Sumwalt will serve with the team and be its spokesman while the team is on-site.

The explosion took place shortly after 9:30 a.m. on March 12 near Park Avenue and East 116th Street in New York City. Reportedly, the explosion took place within minutes of Con Ed receiving a report of a gas odor at one of the buildings. The NTSB’s investigation will scrutinize Con Ed’s call logs, and determine whether the utility needs more oversight from state and federal regulators, according to Sumwalt. The two collapsed buildings had a total of 15 residential apartments between them.

Source: Law360.com

**Two Women Files Lawsuit Against Wal-Mart**

Two women who were abducted at a Wal-Mart located in Aven, Minn., and later repeatedly raped have filed a lawsuit against the retail giant. It’s alleged that the company failed to intervene and call police after a man kidnapped the women at gunpoint. A number of criminal charges have been made against the suspect. Michael Parrish is accused of raping those two women and three others during a two-day period in early February. The boyfriend of one of the two women was beaten by Parrish.

According to the lawsuit, filed in Hendricks Superior Court, the women were loading groceries into their truck in the store’s parking lot when Parrish kidnapped them at gunpoint. Before that happened, according to the complaint, Parrish had been seen on Wal-Mart’s security cameras “acting suspiciously inside the store.” The security cameras captured the kidnapping. But no one from the store, the complaint alleges, called the police after the women were abducted about 11 p.m. It’s alleged in the complaint that Wal-Mart violated Indiana law by failing to protect its customers and by allowing Parrish to remain on its premises despite his suspicious behavior.

Kirk LeBlanc, a lawyer with LeBlanc, Nettles & Davis Law Group, a firm in Brownsburg, Minn., represents in the lawsuit the two women and the man who was beaten. The Plaintiffs are seeking damages for pain and suffering, psychological damage, medical expenses, mental and emotional distress and loss or theft of their property. They also are seeking to recover punitive damages.

Source: Indystar.com

**Lawsuit Filed Against Wesleyan Fraternity Alleges Rape At Party**

A Wesleyan University student has filed a lawsuit in federal court against the Psi Upsilon fraternity and its Wesleyan chapter. It’s alleged in the lawsuit that the Defendants’ negligent conduct allowed the student to be raped in the common room of the fraternity house during a party last May. The lawsuit names Psi Upsilon Fraternity Inc., its Xi Chapter, the former social chairman of the fraternity and the alleged assailant, as well as several unnamed fraternity members, as Defendants.

Wesleyan University, which expelled the alleged assailant after disciplinary proceedings, is not named as a defendant. The lawsuit claims that because the fraternity house is on campus and is qualified by the university as “program housing,” the organization is responsible for managing their activities to keep residents and guests safe. According to the complaint, under the university’s Community Standards and Residential Regulations, the host of a social event will be held liable for harm caused by its guests. Timothy O’Keefe, the lawyer who represents the Plaintiff, stated:

This fraternity and its members entered into a contract with Wesleyan University by which it agreed to take steps to ensure the safety of its social guests. The evidence we present in court will demonstrate that it failed to abide by the terms of that agreement. As a result, a young woman was sexually assaulted at its premises. This suit seeks just compensation and accountability for her harms.

According to the complaint, in May 2013 the student was in her freshman year at the university and attended a party at the Psi Upsilon fraternity house. It was alleged that the party was “wildly out of control,” fraternity pledges performed a “strip show” and many of the fraternity members and guests were “underage and extremely intoxicated.” It was further alleged in the complaint that when the student tried to leave the party, she was grabbed by a fraternity member and thrown onto a couch in the house’s common room. The fraternity member, who was naked, raped the student in the common room, according to the complaint, “in the presence of numerous others.” The student sought out medical assistance and contacted the university’s public safety department. She then brought disciplinary proceedings against her alleged assailant through the university. He was expelled from school.

In a written statement, university President Michael S. Roth said that Wesleyan’s internal investigation of the incident led to sanctions against the fraternity and some individual members. The alleged perpetrator was also kicked out of school. President Roth added:

On behalf of the university community, I want to express our horror at this shameful assault. Sexual violence on college campuses is a national problem, and it’s important to raise awareness about this issue.

President Roth said in an interview that the university has not previously spoken publicly about the assault out of concern for the victim’s privacy. He added that there are three residential fraternities on campus and while they enjoy some autonomy, all have seen increased scrutiny in the past few years. According to the complaint, the alleged victim placed herself on leave of absence status from the university and returned home. It’s alleged that she has received medical and psychological treatment for damage caused by her assault.

Source: Hartford Courant

**Students Injured In California High School Stage Collapse**

A stage at a Southern California high school collapsed during a student event. As a result, about 40 people were injured. Fortunately, most were minor injuries. Police, firefighters and medics responded to a call shortly before 11 p.m. on March 8 after the stage gave way at Servite High School.

Most of the injuries are minor and none is life threatening. The injuries included broken bones, bruises and scrapes. About 250 girls from sister Catholic school Rosary High School were on the stage at the time of the collapse. “Early investigations suggest the front of the stage gave out due to
weight,” according to an investigating officer.

According to reports, 300 to 400 students and parents were in the auditorium at the time of the collapse. The students were performing in an annual musical theatre performance at the time. Servite High School is an all-boys Catholic School in Anaheim. Rosary is an all-girls sister school in Fullerton. This is another example of what can happen when a structure that is not designed to handle so many persons is overloaded.

But the structures themselves must be properly designed and constructed if they are to be used at public places, including schools, where large number of persons will be present. It’s an absolute necessity that safety be a major consideration in both the design and construction of such facilities. Failures in either area can result in tragic incidents with tragic consequences. It’s not known at this juncture if the stage was defective in any respect. We do know, however, that the stage wouldn’t accommodate the number of students who were on it.

Source: Claims Journal

FARMERS AND HOMEOWNERS FILE SUIT AGAINST THE GOVERNMENT

More than 200 farmers and landowners in the Missouri River basin have filed suit against the federal government. The U.S. Army Corps of Engineers is accused in the lawsuit of improper decisions the Plaintiffs say led to the costly flooding. The landowners claim the corps de-emphasized flood control over the past decade in favor of protecting fish and wildlife along the waterway. That choice, according to the Plaintiffs, led to floods—and an unconstitutional taking of their land. Roger Ideker, a farmer from Holt County, Mo., is the lead Plaintiff in the lawsuit.

The management priorities of the Missouri River will be an issue in the case. Under federal law, the corps must manage the river by balancing eight authorized purposes: flood control, navigation, water supply, irrigation, power, recreation, water quality and wildlife preservation. It pursues that goal by managing discharges from six large upstream reservoirs, each designed to hold excess water during the spring and release it slowly during the rest of the year. When the system works as designed, water is available for boating, fishing, barge traffic, supporting wildlife and generating electricity—while minimizing flooding.

But the property owners from five Midwestern states who filed the suit claim the corps decided in the mid-2000s to focus on just one of the uses—protecting wildlife—at the expense of spring flood control. They allege that the corps changed its rules in order to return the river to a more natural state and provide additional spawning and breeding areas for threatened species. In 2011, they contended, that choice led to the worst flooding along the upper reaches of the basin in modern history.

Congress has struggled unsuccessfully for years to reach an agreement on how to manage the Missouri River. Upstream interests seek to keep the reservoirs as full as possible to provide recreation, power and water in upper Great Plains states. Some downstream interests work to keep water in the reservoirs in the spring so there will be enough to support shipping in the summer and fall. Keeping the reservoirs full in the spring, however, means less storage for runoff. When that runoff exceeds capacity—as it did in 2011—the corps has no choice but to release the water, contributing to downstream floods.

After the 2011 floods, several Missouri River working groups were assembled, with governors, senators and House members discussing new guidelines for the corps to more accurately address the competing concerns. To date, there has been no overall agreement. It will be most interesting to see how this lawsuit works out.

Source: Kansas City Star

ST. LOUIS TENT COLLAPSE WRONGFUL DEATH CLAIM SETTLED FOR $548,000

The family of a 58-year-old man killed in 2013 when a tent collapsed at a St. Louis, Mo., bar has reached a $548,000 settlement. The St. Louis Post-Dispatch reports that Alfred Goodman suffered fatal head and neck injuries when wind lifted the tent at a downtown sports bar from its moorings on April 28, 2012. Goodman was the only person killed, but about 100 people were injured.

Goodman’s family has reached a $548,000 settlement with the company that leased and provided the tent. Goodman’s family said the rental company did not install the tent properly. The rental company has agreed to pay the settlement.

Source: The St. Louis Post-Dispatch; stltoday.com

XVI. WORKPLACE HAZARDS

A Look At Construction Scaffold Hazards

The use of scaffolds in construction is quite common and with the use comes certain safety problems. According to reports, about 65 percent of all construction workers use scaffolding in their daily work. The use involves a variety of hazards because of the nature of the work. It’s estimated by safety experts that adequate protections for workers would prevent an estimated 4,500 injuries and 50 fatalities each year from scaffold-related accidents. Workplace accidents involving scaffolds can include:

• falls from heights,
• slip and fall incidents,
• collapses of scaffolds,
• electrocutions of workers, and
• falling objects hitting workers.

The Occupational Safety and Health Administration (OSHA) Construction Regulations—found in Subpart L and ANSI/ASSE A10.8-2011—apply to workers who are required to work using scaffolds. Hazards can be controlled—if not eliminated altogether—when compliance with these regulations is achieved. A discussion of some of the situations giving rise to accidents is set out below:

Falls from Heights

• Scaffold must be equipped with a guardrail system including top rails, mid rails, and toe boards when more than 10’ high, unless other fall protection method is used. Cross braces may be an adequate substitute for either top rails or mid rails but not both.
• Scaffold platforms must be tightly planked with scaffold plank grade material or equivalent.
• Scaffold can be accessed by using ladders and stairwells but not by climbing the braces.

Slip and Fall Incidents

• Employees shall be prohibited from working on scaffolds covered with
• Where the scaffold platform is sloped greater than 1 in 8, cleats are required to provide footing.
• Scaffold stairways shall have slip-resistant treads and landings.

**Collapses of Scaffolds**
• Base plates must be used and must be placed on solid footing. The scaffold is to be leveled and plumbed.
• A scaffold must be sound, rigid and sufficient to carry its own weight plus four times the maximum intended load without settling or displacement.
• A scaffold must not be erected, moved, dismantled or altered except under the supervision of a competent person.
• Scaffold accessories, such as braces, brackets, trusses, screw legs or ladders, that are damaged or weakened from any cause must be immediately repaired or replaced.
• A competent person must inspect the scaffolding and, at designated intervals, re-inspect it.
• Scaffolds need to be tied to the adjacent structure at appropriate intervals.
• Synthetic and natural rope used in suspension scaffolding must be protected from heat-producing sources.
• Rigging on suspension scaffolds must be inspected by a competent person before each shift and after any occurrence that could affect structural integrity to ensure that all connections are tight and that no damage to the rigging has occurred since its last use.

**Electrocutions**
• Scaffolds generally must be at least 10 feet from electric power lines. Higher voltages require greater distances.
• Special attention must be paid to overhead power lines when erecting or relocating scaffolds.

**Workers Struck by Falling Objects**
• The area below scaffold work should be barricaded unless a protective canopy is installed.
• Toeboards are to be used along the edges of platforms.
• Paneling or screening may be required to contain larger objects from falling.

**The Definition of a “Competent Person”**
OSHA defines a “competent person” as “one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees.” A competent person also is “one and who has the authorization to take prompt corrective measures to eliminate the hazards.” The competent person’s responsibilities pursuant to the OSHA regulations are:
- Selecting trained scaffold installers to perform the work.
- Inspection of scaffolding before each work shift and after any occurrence that could affect a scaffold’s structural integrity.
- Supervising the erection, alteration and dismantlement of scaffolds.
- Assessing the need for fall protection during erection and dismantlement.

You can get more information relating to scaffold hazards and safety requirements by going to robsonforensic.com. If you would like to discuss a potential claim relating to an accident involving a scaffold, contact Evan Allen, a lawyer in our Personal Injury/Products Liability Section, at 800-898-2034 or by email at Evan.Allen@beasleyallen.com.

**Judge Approves Settlement in Deadly Plant Explosion in West Virginia**
A judge has approved a settlement that resolves federal workplace and environmental civil charges at a plant in Hancock County, W. Va. An explosion at the plant in 2010 killed three workers. Under the settlement, AL Solutions, a metal recycler located in New Cumberland, W. Va., agreed to pay a $100,000 civil penalty to the Environmental Protection Agency (EPA) and a $97,000 civil penalty to the U.S. Department of Labor.
AL Solutions also agreed to process or dispose of 2.4 million pounds of titanium and zirconium stored at its facilities in New Cumberland and Weirton by December. It also agreed to implement safety procedures at the New Cumberland plant. The safety procedures include hydrogen monitoring and forward-looking infrared heat detection to identify volatile drums and prevent fires and explosions. Two brothers, James Eugene Fish and Jeffrey Scott Fish, and a third worker, Steven Swain, were killed when an explosion occurred at the New Cumberland plant in December 2010. The explosion occurred when titanium and/or zirconium powder reacted with moisture, causing the release of hydrogen gas. The gas ignited and caused titanium and zirconium particulates and filings to explode, according to the federal civil lawsuit. AL Solutions recycles titanium and zirconium raw materials for use as alloying additives by aluminum producers. EPA Regional Administrator Shawn M. Garvin observed:

> **Our combined efforts have resulted in settlements that provide a comprehensive framework for the company to build cutting-edge safeguards into its processes in order to protect people and the environment.**

Charges of storage violations by the West Virginia Department of Environmental Protection (DEP) also will be resolved in this settlement. A DEP spokesman, Tom Aluise, stated:

There was a disagreement over the question of whether the materials were hazardous waste; however, it was resolved because (AL Solutions) agreed to remove all wastes by December 2014.

Civil lawsuits filed by the victims’ families against AL Solutions are pending in Hancock County Circuit Court. Mark Colantonio and Robert Fitzsimmons represent the Fish family in the lawsuit and Eric Frankovitch represents the Scott family.

**Family of Construction Worker Files Lawsuit In Fatal Industrial Accident**
The family of a construction worker who was killed in January while working on Baylor University’s new on-campus football stadium has filed a wrongful death lawsuit against the university and several construction and equipment companies. The family members of Jose Dario Suarez filed their lawsuit in Harris County, Texas. One of the defendants, Flexifloat Construction Systems, is located in Houston.
Baylor, Flexifloat Construction Systems, Austin Commercial Inc., Austin Bridge and
The worker drowned after a hydraulic lift he and another construction worker were strapped to slipped or rolled from a modular barge into the Brazos River. Suarez and another man were working on the pedestrian bridge over the river behind Baylor Law School. The other man was able to untether himself after the lift went into the river, but Suarez was unable to do so. Divers found Suarez’s body in the water, still strapped to the lift about four hours later.

The Occupational Safety and Health Administration (OSHA) is investigating the accident, but has not released its report. Flexifloat is identified in the lawsuit as the designer, manufacturer and marketer of the barge on which Suarez and others were working. The lawsuit alleges the barge was defectively designed, manufactured and marketed, a “producing cause” of the incident. The lawsuit identifies Genie Industries as a company that designed, manufactured and marketed the boom lift to which Suarez was harnessed. It also alleges faulty design with the lift. Vuk Vujašinovíc, a Houston lawyer, represents the Suarez family in the lawsuit.

Source: wacotrib.com

AN UPDATE ON THE CLAIMS AGAINST NEW YORK CRANE COMPANY

A New York judge has dismissed all but one labor claim against New York Crane & Equipment Corp., the owner of a crane that collapsed on the Upper East Side of Manhattan in 2008. But Judge Manuel J. Mendez allowed other allegations and claims for punitive damages to move forward against the company and its affiliates. Under the applicable laws, New York Crane’s President James Lomma and affiliated companies J.F. Lomma Inc. and TES Inc. could not be found liable for labor law claims relating to the 2008 accident that killed four people. That was because the crane was leased to Sorbara Construction Corp.

But the group of defendants will still have to face claims under Section 200 of New York Labor Law, which requires that a property owner or contractor maintain a safe construction site when it has authority over the equipment or activity that causes an accident. Judge Mendez’s order stated:

"This court recognizes that there is more than one theory as to what caused the crane collapse. There remain issues of fact regarding the proximate cause of the accident and the New York Crane defendants’ liability. The plaintiffs has sufficiently raised issues of fact with respect to the alleged gross negligence of the New York Crane defendants in relation to the punitive damages claim.

In the same motion for summary judgment, Lomma contended that the claims lacked the basis to pierce the corporate veil and find him personally liable because he only acted in his capacity as president of New York Crane. J.F. Lomma Inc. and TES Inc. also argued in the motion for summary judgment that the companies had no parent or subsidiary relationship with New York Crane and therefore could not be found liable for the accident.

Judge Mendez rejected each of those arguments, ruling that there were enough questions of fact surrounding the relationships and actions of all three parties for the remaining claims to move forward to trial. In February, Judge Mendez refused to grant summary judgment for Sorbara Construction and a welding company, Brady Marine Repair Co. Inc. in separate actions involving labor and other claims relating to the same crane accident. Sorbara Construction argued that, as a subcontractor, it could not be liable for negligence and labor law claims. Judge Mendez rejected that argument, but he did dismiss one labor law claim made by the Plaintiffs related to the alleged failure to provide “exceptional protection” to workers on the ground.

Judge Mendez noted that he could not imagine any safety device that could protect the workers from a crane “crashing to the ground from such a great height.” The judge also denied a motion for summary judgment filed by Brady Marine, a company that completed welding work on the crane. That company argued that it had never worked on the weld that failed and caused the crane to crash. In his ruling, Judge Mendez referred to an inspection report provided by the Plaintiffs that ostensibly proves that a company hired to test Brady’s welds informed it that the weld in question had not been properly completed.

The Plaintiffs in this matter are represented by Susan Karten with Susan M. Karten & Associates, a New York City firm. It will be interesting to see how this case, based on New York law, turns out. It involves a number of claims involving a number of related Defendants.

Source: Law360.com

GEORGIA PLANT GETS 32 HEALTH AND SAFETY CITATIONS

Schwan’s Global Supply Chain Inc., the Atlanta branch of a Minnesota-based food production company, has received 32 health and safety violations. The Occupational Safety and Health Administration (OSHA) describes the citations for the company as “serious safety and health violations.” The Atlanta facility employs nearly 500 workers and produces dough, cookies and pie crusts.

Two other companies providing maintenance and staffing services for Schwan’s were cited for 18 safety and health violations. Federal regulators have recommended the company pay $185,700 in fines. They said the inspection of the facility in September of 2013 came as the result of a worker complaint. The employers failed to provide adequate training for employees to work safely with ammonia, according to OSHA. Other citations involved machines and protective equipment deemed unsafe; training issues; blocked and mismarked exits in hazardous areas; and other problems. A separate set of fines has been recommended for the contracting agencies.

The companies involved had 15 business days after being notified of the violations to either bring the facilities into compliance, request a conference with an OSHA area director or contest the finding before the OSHA Review Commission.

Source: Claims Journal

XVII. TRANSPORTATION

THE ROLE OF ELECTRONIC LOGGING DEVICES IN COMMERCIAL TRUCK & BUS SAFETY

The U.S. Department of Transportation’s Federal Motor Carrier Safety Administration (FMCSA) made a proposal last month that would require commercial truck and bus companies to use Electronic Logging Devices (ELDs) in their vehicles. The proposal is made in an effort to improve compliance with the safety rules that dictate the number of hours a driver can work.

In interstate truck and bus crashes, the drivers often exceed the limits on work hours. According to FMCSA analysis, driver
impairment, which includes fatigue, was a factor in more than 12 percent of the 129,120 total crashes that involved large trucks or buses in 2012. The proposed rule is expected to prevent approximately 20 fatalities and 454 injuries each year for an annual safety benefit of $594.8 million.

Sometimes it’s the practice of drivers or their employers to alter paper logbooks or keep a separate set of books, thereby concealing their driving practices from inspectors. The use of ELDs would make it increasingly difficult for drivers to misrepresent their hours and would help reduce crashes by fatigued drivers.

Safety advocates have been pushing the use of ELDs for some time, and although it can take months or even years before proposed regulations such as this are made final, it is a virtuous step toward safety advancement. We support any proposal that saves lives. The use of these electronic logging devices should reduce the number of fatigued truck drivers on the roadway. That will go a long way in protecting our roadways.

Chris Glover, a lawyer in our firm’s Personal Injury/Products Liability Section, has handled a large number of lawsuits involving commercial trucks. If you need more information on this subject, contact him at 800-898-2034 or by email at Chris.Glover@beasleyallen.com.

**Duane Reade Agrees To Settle Lawsuit For $22 Million**

Duane Reade Inc., the drugstore chain, has agreed to pay $22 million to Dr. Shirley Miller, a veterinarian who was severely injured when she was run over by one of its trucks. The settlement came near the end of a second jury trial in the case. The settlement will be paid by ACE America Insurance Co. and the Hartford, two insurers for Duane Reade. As a side note, Duane Reade was purchased for more than $1 billion in 2010 by Walgreen Co.

In September, the trial judge sanctioned Ace American $10,000 for violating rules against contacting litigants. The incident that gave rise to the lawsuit happened in 2008. Dr. Miller was hit by a driver for Duane Reade on her birthday while she was crossing a Manhattan street. Dr. Miller and had the right-of-way was lawfully crossing the street when the Duane Reade driver ran a red light and hit her. Partially paralyzed in the incident, Dr. Miller can now walk with a walker. She is blind and requires constant care. Dr. Miller is represented by Evan Torgan of Torgan & Cooper, a New York City firm. He did a very good job in her case.

Source: Law360.com

**FMCSA Proposes National Drug And Alcohol Testing Clearinghouse For Commercial Truck And Bus Drivers**

Federal safety regulations require employers to randomly test drivers for drugs and alcohol and to test all new hires, drivers involved in significant crashes, and drivers suspected of using drugs or alcohol while at work. But under the current regulations, there is no way to track these positive drug and alcohol tests on a national basis. A new rule proposed by the Federal Motor Carrier Safety Administration (FMCSA) will create a repository for positive drug and alcohol tests by commercial driver license (CDL) holders and will require employers to conduct pre-employment searches and annual searches on CDL drivers. FMCSA Administrator Anne Ferro believes this will create “a one-stop verification point to help companies hire drug- and alcohol-free drivers,” which will improve “safety for truck and bus companies, commercial drivers and the motoring public everywhere.”

Under the proposed rule, FMCSA-regulated truck and bus companies, Medical Review Officers, Substance Abuse Professionals, and private, third-party U.S. Department of Transportation (DOT) drug and alcohol testing laboratories would be required to record information about a driver who:

- Fails a drug and/or alcohol test;
- Refuses to submit to a drug and/or alcohol test; and
- Successfully completes a substance abuse program and is legally qualified to return to duty.

Private, third-party U.S. DOT drug and alcohol testing laboratories also would be required to report summary information annually. This information would be used to help identify companies that do not have a testing program. Although an employer must obtain consent from the CDL holder to access the clearinghouse records, any CDL holder who refuses consent is banned from operating a commercial motor vehicle.

Even though it is currently a violation of federal regulations to drive a truck or bus while under the influence of drugs or alcohol, unannounced roadside inspections in 2013 revealed that 2,095 CDL drivers were consuming alcohol while driving and 1,240 drivers were using controlled substances. The American Trucking Association (ATA) says it is in favor of the FMCSA’s proposed rule. ATA President and CEO Bill Graves stated:

> ATA has been a strong advocate for the creation of this process to help protect motorists since 1999. It is unfortunate that it took so long for the Federal Motor Carrier Safety Administration to act on this common safety solution, but we are pleased the agency has finally taken the first step toward creation of this clearinghouse.

If you have any questions regarding this proposed rule or relating to incidents involving violations of federal trucking regulations, contact Cole Portis, who heads up our firm’s Personal Injury/Products Liability Section, at 800-898-2034 or by email at Cole.Portis@beasleyallen.com.

**U.S. Supreme Court Refuses To Hear Citgo Appeal**

The U.S. Supreme Court has refused to hear the appeal by Citgo Petroleum Co. in the oil spill suit against the company. The high court denied Citgo’s petition for writ of certiorari without comment. Citgo argued that its responsibility for ensuring a safe berth was limited to the immediate entrance of its Philadelphia-area port. Citgo was attempting to overturn a ruling by the Third Circuit Court of Appeal, which had revived the case. The federal government and a pair of shipping companies filed suit against the oil company. Citgo argued that the appeals court misinterpreted the contractual safe berth warranty that Citgo company provided to Frescati Shipping Co. Ltd. and its M/V Athos I vessel.

Citgo claimed in its petition that it had no control over the federal waters where Athos I collided with an abandoned ship anchor. The company asked the Supreme Court to consider whether a wharf owner’s duty to provide a safe approach for a vessel extended to federal waters and whether a safe berth provision in a voyage contract is a guarantee of safety. The suit arose out of a 2004 incident in which the Athos I struck a submerged anchor in the Delaware River near Citgo’s terminal, spilling 265,000 gallons of crude oil into the river. Frescati said it spent more than $180 million to clean up the spill, $88 million of which was covered by the federal government under the Oil Pollution Act. In the suit, both Fres-
Although injuries from car accidents involving texting are often more severe, Dr. Jehle says that physical harm resulting from texting and walking occurs more frequently. Dr. Jehle explains that pedestrians face three types of distraction:

• manual, in which they are doing something else;
• visual, where they see something else; and
• cognitive, in which their mind is somewhere else.

Dr. Jehle says he has seen first-hand in his practice the rise of cell phone-related injuries. Tens of thousands of pedestrians are treated in emergency rooms across the nation each year. Dr. Jehle believes as many as 10 percent of those visits result from accidents involving cell phones. He says the number of mishaps involving texting and walking is likely higher than official statistics suggest. That’s because patients tend to underreport information about themselves when it involves a behavior that is somewhat embarrassing. An injury occurring while a person is walking down a street and texting would certainly fall into that category. Source: Claims Journal

XVIII. THE CONSUMER CORNER

TOYOTA, FORD AND OTHERS FACE NHTSA ELECTRONIC KEY PROBE

The National Highway Traffic Safety Administration (NHTSA) is investigating whether the electronic key systems on vehicles made by Toyota Motor Corp., Ford Motor Co., General Motors LLC, Hyundai Motor Co., Kia Motor Co., Nissan North America Inc. and Subaru of America Inc. meet federal safety standards. NHTSA has sent letters to the automakers requesting more information about the performance of electronic key systems in their newer push-button vehicles. Safety & Research Strategies Inc., a consumer group, obtained these letters through a Freedom of Information Act request and published the documents.

NHTSA is examining whether any of the automakers have violated the federal motor vehicle safety standard for theft protection and rollaway prevention. NHTSA performed tests on the companies’ push-button vehicles from model years 2013 and 2014. The agency is attempting to determine if any audible or visual alerts would occur when investigators performed several activities using an electronic key.

NHTSA has asked the companies to explain in detail how their electronic key systems work. Specifically, this agency wants to know how the systems justified in the investigators’ tests. The agency is also seeking consumer complaints and other claims that the companies have received relating to their vehicles’ starting systems. Safety & Research Strategies criticized the vehicles’ electronic key systems in a recent blog post:

While you can’t remove a traditional key from the ignition without moving the automatic transmission into “park,” and turning off the engine, you can leave a keyless ignition vehicle, key fob in hand, with the engine off and the transmission in neutral or drive, or with the transmission in “park,” but with today’s quiet engines still purring away.

Reportedly, there have been at least eight carbon monoxide deaths linked to electronic key systems since 2010. Ford, GM, Hyundai, Kia, Nissan, Subaru and Toyota all had vehicles cited for violations. Nissan has faced litigation in federal court alleging that the electronic key system on its vehicles violated federal safety laws. Source: Law360.com

INCREASE IN AUTOMOBILE RECALLS LINKED TO NEW MODELS AND TECHNOLOGIES

A recent study says that a surge in new car models, increasingly complex technology and heightened regulatory scrutiny have led to more automobile recalls, particularly for safety concerns. According to the findings of the study, more than 10 million vehicles were recalled last year because of safety-related issues, the most since 2009. The study of automaker and National Highway Traffic Safety Administration (NHTSA) recall data was done by Stout Risius Ross Inc., a financial advisory firm.

Ford Motor Co. and General Motors Co. together are introducing 30 new or revamped models in North America this year. As the number increases, the chance for increased quality issues also rises. Automakers on average order recalls on 54 percent of their models in the vehicle’s first year of production, according to the study. When you consider that recalls generally
Hyundai Motor Co. ranked highest with 67 percent affected by recalls in the first year; Toyota Motor Corp. was lowest at 42 percent, the study shows. NHTSA’s definition of safety-related vehicle components includes air bags, child seat parts, seat belts, brakes, steering, visibility, acceleration, and wheels.

Source: Claims Journal

NHTSA CLOSES THE JEEP LIBERTY FIRE PROBE

The National Highway Traffic Safety Administration (NHTSA) has closed an investigation into driver’s side door fires in Jeep Liberty SUVs without requiring a recall. NHTSA investigated complaints of fires in the power window switches on 2012 Liberties. But according to the agency, they found that the failure rate for the switches was low, and the rate of fires even lower. Initially NHTSA said it had two complaints about fires in the driver’s side window switch. But investigators found that one fire didn’t start in the switch. The agency said in documents posted on March 13 that it found no indication of a trend, so it closed the probe. According to NHTSA, the investigation covered 104,593 Liberties.

Toyota Acceleration Settlement In Canada Is Approved

Toyota Motor Corp.’s settlement of Canadian economic loss claims in litigation for sudden acceleration issues that forced the recall of millions of its vehicles worldwide has been approved by courts in Ontario, Quebec, Nova Scotia and Saskatchewan. The settlement resolves claims for economic loss from the unintended acceleration brought by owners and lessees of Toyota and Lexus vehicles with electronic throttle control systems. Steven Hamilton, a Toyota owner, filed the lawsuit action on behalf of hundreds of Canadian Toyota consumers in the Ontario Superior Court of Justice in 2010. He alleged that Toyota and CTS Corp., an auto parts supplier, should have known of the defect in the throttling system in models manufactured since 2001.

The settlement, which was first reached in August, provides class members a “customer support program” that for three to 10 years will cover all parts and labor costs for certain components related to the electronic throttle control system. Under the agreement, Toyota class members may also have their vehicles equipped with a “brake override system” free of charge, or they can receive cash payments if their vehicles are not eligible for the upgrade.

The Japanese automotive giant and its affiliates have also agreed to fund scholarships at five Canadian engineering schools totaling $600,000. The company has additionally provided funding for claims administration, notice costs, honoraria for the representative Plaintiffs, legal fees, disbursements and taxes. The final approval of the economic loss settlement doesn’t impact ongoing litigation of personal injury or wrongful death claims.

Toyota issued recalls of millions of its car and trucks in 2009 and 2010 after reports that several vehicles had experienced unintended acceleration. The economic loss cases in America were coordinated for pretrial purposes in California. As you will recall, in July of 2011 a $1.1 billion settlement with a proposed class of roughly 23 million customers in that case was approved. In January, two settlement objectors dropped their opposition to the American economic loss deal in exchange for $1.5 million that will go to auto safety groups.

Source: Law360.com

MEDICAL DEVICE RECALLS DOUBLED IN PAST DECADE

The yearly number of medical device recalls doubled in the past decade, the U.S. Food and Drug Administration (FDA) said in a report released on March 21. The increase in recalls was attributed to more vigilance surrounding radiological imaging and more responsiveness to agency inspections. The report showed that annual recalls surged to approximately 1,200 in 2012 from about 600 in 2003. The report was prompted in part by a 2011 Government Accountability Office (GAO) report that called on the FDA to take a more aggressive role in overseeing recalls.

A big part of the rise was attributed to radiological devices—MRI and CT scanners and the like—that increasingly are viewed as overused because of their potential to register false positives and increase cancer risk, according to the FDA. The agency said about 250 recalls involved radiology equipment in 2012, compared with fewer than 50 such recalls in 2003. An especially large increase occurred in the months after an FDA hearing in 2010 on the subject of unnecessary radiation exposure. The report said that some companies conducting recalls during this time period acknowledged to the FDA that they had become more vigilant in reporting recalls.

Another key factor was increased recalls by companies that were cited by the FDA during inspections for violations of the regulatory section—21 CFR 806—that governs product removals. Only about 2 percent of manufacturers were found to have shortcomings with how they reported and documented recalls, but the report said those firms accounted for half the increase in the decade-long study period. The FDA said that without recalls related to radiology and 806 inspections, the increase would have been just 27 percent, instead of 97 percent.

The Advanced Medical Technology Association (AvaMed), the device industry’s top trade group, didn’t like the report. It complained that the report lacked complete context, noting that it did not include statistics to show how the amount of devices in the marketplace, as well as their sophistication, had changed from 2003 to 2012. Janet Trunzo, senior executive vice president at AvaMed, had this to say:

Over the period analyzed by FDA, the number and complexity of medical technologies on the market has grown significantly, but without a denominator, it is difficult to truly know the significance of the agency’s raw recall numbers.

The vast majority of recalls during each year of the time period were of the moderately risky Class II variety. Highly serious Class I events constituted just 5 percent of recalls in 2012, but that was a marked rise from just 1 percent of recalls in 2003. Class III recalls have steadily declined, both as a percentage of all recalls and in their sheer number, and in 2012 accounted for less than 10 percent of removals, according to the report. The top three reasons for recalls—all cited roughly the same number of times—were the presence of a nonconforming material or component, a software defect or a design defect, the report said.

Source: Law360.com

BABY DIED FROM SWALLOWING DETERGENT IN LAUNDRY PACKET

It was reported last month that a 7-month-old boy who swallowed a laundry packet died last year as a result of ingesting the soap. In August, the infant, Michael Williams, was at an Osceola County, Fla., battered women’s shelter when his mother said she stepped away from the bed where the baby was sleeping. She returned to find the boy had eaten a detergent pod that was inside a laundry basket on the bed. An
autopsy revealed that the soap caused the death.

This death is thought to be the first reported fatality in the nation tied to the popular detergent packets that consumer advocates and poison control centers warn are toxic. Since the packets were introduced to U.S. and European markets, thousands of children have fallen ill after ingesting the colorful, candy-like packets popularized as a more efficient tool for washing laundry. The Centers for Disease Control and Prevention started tracking detergent packet poisoning in 2012 because of the alarming number of exposures to children.

Reports came in across the country of children suffering extreme symptoms including lethargy, difficulty breathing and prolonged vomiting following an ingestion. The U.S. Consumer Product Safety Commission (CPSC) has said the products are poisonous and they are working with the industry to make them less attractive to children. Companies like Procter & Gamble have placed safety labels on the products and changed the packaging to discourage curious children from opening them. In Florida alone, more than 252 children 5 and younger were sickened after exposure to laundry detergent packets this year, according to the state poison control centers.

Source: Orlando Sentinel

CFPB SUES COLLEGE CHAIN ITT OVER LOANS

The Consumer Financial Protection Bureau (CFPB) has filed suit against ITT Educational Services (ITT), accusing the national college chain of predatory lending, and laying down a stern warning to other for-profit colleges. The lawsuit marks the Bureau’s first public enforcement action against a company in the for-profit college industry. Richard Cordray, director of the Bureau, had this to say:

ITT marketed itself as improving consumers’ lives but it was really just improving its bottom line. We believe ITT used high-pressure tactics to push many consumers into expensive loans destined to default. Today’s action should serve as a warning to the for-profit college industry that we will be vigilant about protecting students against predatory lending tactics.

ITT owns and operates more than 135 ITT Technical Institutes and Daniel Webster College. The company has more than 55,000 students at its campuses in 39 states and online. ITT’s tuition costs rank among the highest in the country in the for-profit industry, according to the Bureau. For example, earning an associate’s degree at ITT can cost more than $44,000 with bachelor’s degree programs costing up to $88,000. That is said by the Bureau to be significantly higher than the cost of similar degrees at a community college or a public four-year institution.

The Bureau’s complaint alleges that ITT encouraged new students to enroll at ITT by providing them so-called “tuition gap” funding with a zero-interest loan called “Temporary Credit.” This loan typically had to be paid in full at the end of the student’s first academic year. But the suit claims that ITT knew from the outset that many students would not be able to repay their balances or fund their next year’s tuition gap.

It’s alleged in the lawsuit that between July and December 2011, ITT pushed students into repaying their temporary credit and funding their second-year tuition by taking out high-cost private student loans. It appears that students were rushed through the loan-application process without getting a fair chance to understand the obligations they were taking on.

It’s further alleged in the complaint that borrowers with credit scores lower than 600—typical for many ITT students—paid 10 percent origination fees and interest rates as high as 16.25 percent. The complaint alleges further that ITT knew many loans would not be repaid, projecting a 64 percent default rate on its students’ private loans.

Source: USA Today

ONLINE FRAUD IN 2012 RESULTED IN $525 MILLION IN LOSSES

It was reported last month that online fraud has become big business for criminals. The Internet Crime Complaint Center, jointly run by the Federal Bureau of Investigation and the National White Collar Crime Center, reported receiving more than 289,000 complaints in 2012. These complaints resulted in more than $525 million dollars in losses. Many long-running telemarketing and mail fraud techniques are now being used on the Internet, with criminals preying on people’s trust to cheat Americans out of millions of dollars. In addition, some criminals target older Americans or small businesses with specific scams. Common online fraud scams include:

- People selling items, such as automobiles, that they do not own. These transactions can take place over sites like Craigslist or eBay, with the buyer transferring money electronically and receiving no product in return.
- Phishing and spoofing, where criminals pretend to represent a legitimate company or agency and request personal information from their targets. These attempts can include a legitimate-looking email or website. In these cases, the criminals have “spoofed” a real company’s site.
- The Nigerian letter scam, where folks are offered to share in a large sum of money if they can help place this money in overseas bank accounts. Victims give criminals their bank account information and send money to the criminals to help pay for bribes and taxes with the promise of repayment.

It’s quite obvious that online fraud is a most serious problem. People must be protected to the extent possible. But all of us must be extremely cautious when doing business online.

Sources: The Orlando Sentinel and U.S. Department of Homeland Security

TARGET MISSED EARLY ALERT OF CREDIT CARD DATA BREACH

A report from Bloomberg Businessweek reveals that Target received warnings from its own security specialists about last year’s massive security breach well before consumer data was stolen, but failed to act. A team of security specialists in Bangalore India, armed with a malware detection tool made by FireEye, Inc., flagged the malware uploaded by hackers as a high-priority problem on Nov. 30, 2013. This was after Target’s point-of-sale system had been infected, but before the data had been passed on to the hackers themselves. In fact, it’s reported that the Fire Eye tool could have deleted the malware automatically but that option was turned off.

The security team in India alerted Target officials in Minneapolis, Minn., about a possible data breach on the same date—Nov. 30, 2013. They also found more possible data breaches on December 2, when more malware surfaced. Such warnings, if responded to, could have shortened the massive data breach that affected millions of customers who shopped at Target between November 27 and December 18. Approximately 40 million customers who used their credit or debit cards at Target during the height of the U.S. holiday shopping season had their records/data stolen. Additionally, 70 million customers had their personal information stolen.

Sources: Bloomberg Businessweek

information such as names, addresses, telephone numbers email addresses stolen. Target issued the following statement on Thursday, March 13, 2014:

*Through our investigation, we learned that after these criminals entered our network, a small amount of their activity was logged and surfaced to our team. That activity was evaluated and acted upon. Based on their interpretation and evaluation of that activity, the team determined that it did not warrant immediate follow up. With the benefit of hindsight, we are investigating whether different judgments had been made the outcome may have been different.*

The company failed to respond to questions by media outlets regarding the timing of above referenced evaluation. Ironically, the day after releasing the above referenced statement, Target warned that the data breach might be more extensive than the 40 million and 70 million figures known to date. In its 10-k annual report filed with the Securities and Exchange Commission (SEC) on March 14, 2014, Target stated, "Our investigation of the matter is ongoing and it is possible that we will identify additional information that was accessed or stolen, which could materially worsen the losses and reputational damage we have experienced."

It will be interesting to see what develops as we go forward in the Target litigation. If you need further information on any aspect of the litigation, contact Larry Golston, a lawyer in our firm's Consumer Fraud Section, at 800-898-2034 or by email at Larry.Golston@beasleyallen.com.

Sources: www.nbcnews.com; and www.msn.com

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**CPSC Warns Consumers of The Dangers of Storage and Toy Chests**

The U.S. Consumer Product Safety Commission (CPSC) has renewed its warning to consumers about the dangers associated with storage, cedar, hope and toy chests. The warning comes after the deaths of two siblings in Massachusetts. Lids on millions of storage chests and trunks can automatically latch shut, locking children inside and suffocating them. In addition, the lid supports on older toy chests can fail, resulting in the lid closing suddenly. When that happens children can be entrapped or strangled.

It was reported that incidents involving storage and toy chests have occurred when children climbed into chests to hide or sleep. The children could not get out and suffocated in the enclosed space because these spaces are airtight with no ventilation. Other incidents occurred when children were strangled while reaching for items in a chest and the lid fell onto them or because their necks became entrapped between the chest's walls and its lid.

The CPSC has received reports of 34 deaths since 1996 involving children younger than 18. Tragically, in January 2014, a brother and sister in Franklin, Mass., suffocated to death after becoming trapped inside a 75-year-old Lane cedar chest that had been recalled in 1996. This led to the CPSC's warning. Types of chests with these hazards include toy chests, cedar chests, cedar trunks, cedar boxes, hope chests, blanket chests, storage benches, and storage trunks.

If you have any questions about any of the above, contact the CPSC at 800-638-2772, a toll-free number. You can also go to the commission's website, which is cpsc.gov.

Source: U.S. Consumer Product Safety Commission

**FDA Shuts Down Cheese Factory in Delaware After Listeria Outbreak**

The Food and Drug Administration (FDA) shut down production at a Delaware cheese factory last month in the wake of a Listeria outbreak in Maryland and a death in California. An investigation has linked both to the company’s Hispanic-style cheeses. Roos Foods Inc.—which recalled 16 varieties of its cheeses in February after a death in California and seven reported illnesses in Maryland—had the food facility registration for its Kenton, Del., plant suspended by the FDA.

A two-week inspection of the facility revealed numerous unsanitary conditions, leading the FDA to conclude that there was a "reasonable probability" that the company’s products could cause "serious adverse health consequences or death to humans." Inspectors found a massive roof leak that was dumping water into the plant’s cheese processing room; standing water on the floor of the cheese curd processing room; a rusted ceiling and supports that could not be properly sanitized; food residues left on equipment after cleaning had been performed; and milk storage tanks and transfer piping that were left uncapped, potentially allowing contaminants to enter, according to the FDA.

The FDA, which investigated the outbreak with the Centers for Disease Control and Prevention (CDC), said that it will vacate the suspension order and reinstate Roos Foods’ registration once it determines that foods produced at the facility no longer pose a health threat. On Feb. 23, Roos Foods issued the recall of its Mexicana, Amigo, Santa Rosa De Lima and Anita brands, which were distributed through retail stores in Maryland, Virginia, and Washington, D.C.

The recall came after two pairs of mothers and newborns and one additional newborn were reported ill and hospitalized in Maryland. The other three cases were all adults, including the lone fatality in California. All of them reported consuming soft or semisoft Hispanic-style cheese and all stopped at different locations of the same Hispanic food chain. The Virginia Department of Agriculture and Consumer Services collected samples of one of the brand’s fresh cheese curd and found that they contained *Listeria monocytogenes*. In February, the Department instructed people who purchased the product not to consume it. The Maryland Department of Health and Mental Hygiene also tested samples and issued a similar warning to consumers four days later. The District of Columbia followed with a warning on Feb. 20.

As we have mentioned in several prior issues, Listeria can cause serious and sometimes fatal infections in young children, frail or elderly people, and others with weakened immune systems, the CDC said. Listeria has also been linked to a variety of ready-to-eat foods, including unpasteurized milk and dairy products, Mexican-style or soft cheeses made with unpasteurized milk, processed deli meats, hot dogs, smoked seafood and store-prepared deli salads. Roos Foods produces a variety of handmade dairy products of Latin origin and makes them accessible to Hispanic families living in the U.S.

Source: Law360.com

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**XIX. 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 March. 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.
GM Recalls Millions of Vehicles

General Motors Co. has recalled 1.5 million vehicles for problems including engine compartment fires and airbag deployment failures. It says these recalls are unrelated to its ignition switch recall. GM will take a $300 million charge to cover recall-related expenses. The new recalls are the result of an internal safety review launched by GM following its recall of 1.6 million vehicles for the ignition switch defect, which can cause their engines to suddenly shut off and prevent their airbags from deploying.

The largest of the three separate recalls affects 1.18 million SUVs. The vehicles’ driver and passenger seat-mounted side airbags, front center airbags and seat belt pretensioners may not deploy in the event of a crash. According to GM, the vehicles’ “service airbag” warning light should alert drivers to the issue. This recall includes Buick Enclave and GMC Acadia vehicles from model years 2008 to 2013, Chevrolet Traverses from model years 2009 to 2013, and Saturn Outlooks from model years 2008 to 2010.

Nearly 64,000 Cadillac XTS sedans from model years 2013 and 2014 have been recalled in order to fix a brake booster pump problem that can lead to an engine compartment fire, overheating or the melting of plastic parts. The company said it was aware of two engine compartment fires in vehicles at dealerships and two cases of melted parts.

The third recall involves 303,000 Chevrolet Express and GMC Savana vans from model years 2009 to 2014 with gross vehicle weights under 10,000 pounds. The vehicles do not comply with a requirement designed to protect passengers in crashes in which they are not wearing or become unmoored from their seatbelt. The $300 million charge against first-quarter earnings is primarily to pay for the ignition switch recall and the three new recalls, the company said.

The ignition switch recall, which came in two parts, includes Chevrolet Cobalt, Chevrolet HHR, Pontiac G5, Pontiac Solstice, Saturn Ion and Saturn Sky vehicles of varying model years from 2003 to 2007. GM has said the defect may have contributed to 13 deaths, but the Center for Auto Safety said that more than 300 fatalities trace back to airbag failures in the recalled models. The Department of Justice (DOJ) has launched a criminal investigation into GM’s handling of the recall, and lawmakers in Congress have committed to holding hearings on the issue.

GM Recalls 355 More Vehicles for New Transmission Issue

General Motors has recalled another group of faulty vehicles for issues regarding a less-than adequate transmission shift cable adjuster. NHTSA issued a release on the recall. The recall applies to 355 vehicles. The 2014 model-year Chevrolet Impala, Malibu, Cruze, and Traverse and the Buick Enclave, Regal, Lacrosse, Verano and the GMC Acadia are involved.

In the vehicles involved in the recall, the adjuster for the transmission shift cable may come loose from the transmission shift lever itself, causing failure to disengage gears, and confusion as to which gear the vehicle is actually in at the moment. Such a failure may cause the vehicle to be removed from its stationary position, unsafely “rolling” without control, potentially causing harm to both drivers and pedestrians as well.

The recall was slated to begin in late March. Chevrolet, Buick and GMC dealerships were to execute the aforesaid replacements free of charge to the owners.

Honda Recalls 900,000 Odyssey Minivans

Honda has recalled 900,000 vehicles. The recall came after the manufacturer discovered a potential fire risk in its Odyssey minivans. Honda reported to NHTSA that there was a “potential defect” in the fuel pump of certain Odyssey models from 2005-2010. The automaker said that the fuel pump strainer cover in the cars is prone to premature deterioration that “can result in cracks in the material.”

The cracks could be caused by a number of factors, including acidic chemicals found in fertilizer, dust control and car wash products, or prolonged exposure to a “high temperature environment,” according to Honda. Possible fuel smells or leaks coming from the cracks could, in turn, increase the risk of fire. The owners of all 886,815 cars made in Honda’s Alabama factory affected by the recall will start to be notified on April 21. But necessary repair parts will not be available until this summer, according to Honda. Cars will be fitted with “interim” repairs until the parts become available. The manufacturer says it’s not aware of any fires or injuries that have occurred as a result of the defects.

You may recall that Honda previously recalled 344,000 Odyssey minivans last November because of computer problems that caused sudden and “unexpected braking,” while in September, 318,000 minivans were recalled after reports of airbags inflating unnecessarily.

FDA Announces Recalls of Trachea Tube and Catheter Devices

Two companies have recalled a series of tracheal tubes that may kink when inserted into a patient’s throat and a catheter guidewire with coating that may flake off in a patient’s blood vessels. The U.S. Food and Drug Administration (FDA) said Acme Monaco Corp. has recalled its .035x150 3MMJ TCFC guidewires, which are designed to fit inside a catheter for the purpose of directing the catheter through a blood vessel. The guidewire is used in various surgical convenience kits assembled and marketed by Medline Industries Inc., the FDA said.

There is a risk of the guidewire’s coating flaking off the wire, which according to the FDA could result in “serious adverse health consequences.” The recall is classified as the most serious “class I” variety, defined as “a situation in which there is a reasonable probability that the use of or exposure to a violative product will cause serious adverse health consequences or death.” The FDA said Teleflex Medical Inc. has voluntarily recalled an undisclosed number of the ISIS HVT Tracheal Tube Cuffed with Subglottic Secretion Suction devices. That recall is also of the class 1 variety.

The affected products were manufactured from December 2009 through November 2013 and distributed from March 2010 through December 2013, and are inserted into a patient’s windpipe
through the nose or mouth and used to maintain an open airway. “The affected tracheal tube may kink during patient use. If a tracheal tube kinks, it can deprive the patient of adequate ventilation, causing serious patient injury including hypoxic injury and/or anoxia, and death,” the FDA said. Acme Monaco and Teleflex did not immediately respond to requests for comment Tuesday.

In January, the FDA said Tandem Diabetes Care Inc. was recalling some insulin cartridges that were at risk for leaking. A cartridge leak could potentially result in the delivery of too much or too little insulin, which could lead to unexpected high or low blood glucose levels. Too much insulin can result in severe low blood sugar and too little insulin can lead to severe high blood sugar, both of which can lead to serious injury or death, the FDA said. And earlier that same month, Abbott Diabetes Care Inc. recalled some blood glucose tests that may have delivered erroneously low blood glucose results.

A false test result of low blood glucose result can lead to failure to diagnose and appropriately treat high blood sugar or inappropriate treatment, and treatment of an erroneously low glucose result may lead to too much carbohydrate intake or insulin under dose, and could result in hyperglycemia and other serious adverse health consequences, including death.

**Mammut Recalls Crevasse Rescue Devices**

Mammut Sports Group, Inc., of Wausau, Wis. The air mover/blower's thermal switch can fail and cause the motor to overheat, posing a fire hazard. This recall involves air movers/blowers that are used to dry floors in commercial and residential buildings. The air mover molded plastic housing measures about 18 inches high by 18 inches deep by 16.5 inches wide and has a 25-foot yellow electrical cord. They have an on/off switch located on the left side of the front of the unit. Models OPS-2500-CF and OPS-2500-CFR are black and model OPS-2200Y-CF is yellow. The model number is available on the sales invoice. The CleanFreak.com logo and phone number are printed on a white label with green lettering on the front of the unit and on a silver or yellow label on the back of the unit. Packaging Tape is aware of eight reports of incidents, including four reports of fire, one of which was associated with about $225,000 reported in property damage.


**STX Recalls Shield Throat Protector Due To Laceration Hazard**

About 4,000 STX Shield throat protectors have been recalled by STX, LLC of Baltimore, Md. The Shield Throat Protector can crack or break when struck by a lacrosse ball, posing a laceration hazard to the user. The throat protector is black and has the letters “STX” engraved on the outer surface of the protector. It has straps attached by silver screws on each side and bottom of the protector to attach it to a lacrosse goalie’s helmet below the helmet’s chin guard. STX says it has received one report of the Shield throat protector breaking, resulting in reported bruising and lacerations to the user’s neck.

The protectors were sold at specialty sporting goods stores such as Athlete’s Connection, Commonwealth Lacrosse, Lacrosse Unlimited, Play It Again Sports, Sport Stop USA and Universal Lacrosse and online at www.LAX.com from September 2013 through February 2014 for about $20 to $25. Consumers should stop using the Shield throat protector and return the product to STX for a full refund. Contact STX toll-free at 888-789-7894 from 8:30 a.m. to 5 p.m. ET Monday through Friday or online at www.stx.com and click on RECALL—Shield Throat Protector for more information. Photos available at [http://www.cpsc.gov/en/Recalls/2014/STX-Recalls-Shield-Throat-Protector/](http://www.cpsc.gov/en/Recalls/2014/STX-Recalls-Shield-Throat-Protector/).

**Cork Block Stacking Toys Recalled**

About 720 Cork Stacker block sets have been recalled by Harvest Company, of Huntley, Ill. Small pieces of cork can break off the blocks, posing a choking hazard to young children. This recall involves a three-piece cork block stacking toy. Each of the square cork blocks are a different size: 2 7/8-inch by 2 7/8-inch, 2 3/8-inch by 2 3/8-inch and 2-inch by 2-inch. All of the blocks are 1 ½ inches tall. The blocks have black dots on the top. The packaging is labeled “6mo+” for use by children 6 months and older. The company has received seven reports of cork pieces breaking off of the blocks, including two reports of children mouthing the
cork pieces. No injuries have been reported.

Consumers should immediately stop using the recalled cork block toys and contact A Harvest Company for instructions to return the block sets for a merchandise credit. Sold exclusively online by StorkStack.com during January 2014 as part of the January Stork Stack subscription for about $30 for a total of five products. Contact A Harvest Company toll-free at 877-594-7774 from 8 a.m. to 5 p.m. ET Monday through Friday, or visit the firm’s website at www.aharvestcompany.com and click Cork Stacker Blocker Sets Recall for more information. Photos available at http://www.cpsc.gov/en/Recalls/2014/Cork-Stacking-Toys-Recalled-by-A-Harvest-Company/.

**Design Ideas Recalls Magnets Due To Risk Of Ingestion**

Design Ideas and Neatli Rubber Ducky Magnets, and Design Ideas Blowfish and Splat Magnets have been recalled by Design Ideas Ltd., of Springfield, Ill. The small magnets can easily detach from the product. If swallowed, magnets can link together inside a child’s intestines and clamp onto body tissues, causing intestinal obstructions, perforations, sepsis and death. Internal injury from magnets can pose serious lifelong health effects. This recall involves miniature office and refrigerator magnets sold in the shape of a duck, blowfish and a splat. A small magnet is affixed to the underside of the brightly colored plastic objects, which were sold in sets of four or six. Model number 3205121 (duck), 993205114 (duck), 3205122 (blowfish) or 3205078 (splat) is printed on the bottom of the packaging. Magne and the Design Ideas logo are printed on the front of the package.

Rubber ducky magnets were sold at Nordstrom’s Rack stores, novelty and gift stores, book stores and art stores nationwide from March 2007 through September 2013 for about $10. Blowfish magnets were sold at novelty and gift stores, book stores and art stores nationwide from March 2007 through March 2011 for about $10. Splat magnets were sold at CB2 stores, novelty and gift stores, office supply stores and art stores nationwide from November 2012 to February 2014 for about $10. Consumers should immediately stop using the recalled magnets place them out of reach of children and contact Design Ideas for a refund. Contact Design Ideas at 800-426-6394 from 8 a.m. to 5 p.m. CT Monday through Friday or online at and www.designideas.net and click on Safety Notices and Patents for more information. Photos available at http://www.cpsc.gov/en/Recalls/2014/Design-Ideas-Recalls-Magnets/

**Listeria Death Prompts Cheese Recall**

Roos Foods, a Delaware food company, has recalled 16 varieties of cheese after many were linked to a Listeria monocytogenes outbreak that led to a death in California and seven illnesses reported in Maryland. Kenton, Del.-based Roos Foods issued the recall of its Mexicana, Amigo, Santa Rosa De Lima and Anita brands, which were distributed through retail stores in Maryland, Virginia and Washington, D.C. There is more on this recall in the Consumer Section.

**Arkansas Company Recalling 29,200 Pounds Of Chicken Product**

An Arkansas firm has recalled about 29,200 pounds of seasoned raw chicken breast strips due to misbranding and an undeclared allergen. The recall involves George’s Inc. of Springdale. The products were produced and packaged from Dec. 1 through Dec. 25 and were sold to distributors in Tennessee and Iowa for further distribution. The recalled products are formulated with soy protein, a known allergen, and monosodium glutamate. But they were released with a label for George’s boneless skinless breast pieces with rib meat, which does not declare soy or MSG on the label.

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The recalled products bear the establishment number “P-13584” below the U.S. Department of Agriculture (USDA) Mark of Inspection and “Packed on” date in the format of “month-day-year” on the carton label.

Once again, there have been a large number of recalls since the March issue. We haven’t included 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.

**XX. FIRM ACTIVITIES**

**Spotlighted Employees**

**MELISSA PRICKETT**

Melissa Prickett, a lawyer in our firm’s Mass Torts Section, serves as the Director of Operations for the Section. In that role, Melissa oversees its day-to-day operations. She also is currently involved in the firm’s hip replacement litigation. Previously, Melissa was involved in our firm’s hormone therapy litigation, Celebrex/Bextra litigation and Baycol litigation.

Melissa graduated from Jones School of Law in 2001. While at Jones, she served as a member of the Law Review Board and was recognized as Outstanding First Year Student. She was active in the Student Bar Association and held the positions of First-Year Senator and Vice-President. She also was selected Who’s Who Among Students in American Universities and Colleges. Melissa is a Martindale-Hubbell AV Preeminent Rated attorney, member of several associations and has served as a guest scoring judge in local moot court competitions.

Melissa is married to Michael Prickett and they have 13-year-old twin sons. The Pricketts are active members of Frazer United Methodist Church. In her free time, Melissa says she enjoys spending time with her family, especially attending her son’s sporting events, which include baseball, tennis, wrestling, football and just about any sport! Melissa also likes reading, photography and traveling. The family’s favorite travel destination is the beach. They also do volunteer work together. She is also an avid Auburn fan. We are blessed to have Melissa in the firm.

**PAULA SHANER**

Paula Shaner has been with the firm since September of 2003. She started with us as a Legal Secretary working in the Consumer Fraud Section. She now works as the Legal Secretary for Navan Ward. Paula is currently working on litigation involving both hip and knee revisions. Previously, she spent about 9½ years in the Consumer Fraud Section, where she worked on Predatory Lending and Mortgage Serving Fraud. Paula then moved to Toxic Torts and worked on the BP litigation.

Paula says she really enjoys working with the firm. She says it gives her the opportunity to learn about how the firm helps people we represent. Paula says she really enjoys her work, knowing that she is helping people who need help. Paula has one daughter, Charli. She enjoys reading and some crafts. Paula is a good, hard-working employee. We are fortunate to have her with the firm.

KATIE TUCKER
Katie Tucker, who has been with the firm for a little more than 12 years, is a legal assistant, working with Ted Meadows in our Mass Torts Section. She currently is working on the talcum powder litigation. Katie says she really enjoys working alongside Becky Lamb, Melissa Gregoire and Fran Harris, her coworkers in the Section.

Katie says she was a very bored stay-at-home mom when she decided to get out and into the work force 12 years ago. At the time, Katie says she wasn’t looking for a job with lots of responsibility. But she heard that Beasley Allen was starting a new Section and was hiring for all positions. Katie interviewed for and was hired as a clerical assistant in Mass Torts. As the months went by, Katie saw what the firm was doing for clients and she says she was definitely “hooked.” She worked hard and was promoted to the role of a Legal Assistant. In time, Katie became Ted’s legal assistant. Katie says it’s “an honor to be part of such a great team and being able to see justice served for those who deserve it.”

Katie has a daughter, Georgia Tucker, who is 7 years old, and who currently attends Autauga Academy. Katie and Georgia attend services at Centerpoint in Prattville. Katie says they love just being “silly, dancing and singing.” Katie also enjoys going to the movies, scuba diving and playing in the water. Katie is also a hard worker and a good employee. We are fortunate to have Katie with us.

BETH WARREN
Beth Warren has been with the firm for almost 13 years. She is now a Legal Assistant, working with Roman Shaul in the Consumer Fraud Section. Currently, Beth is working on the Average Wholesale Pricing (AWP) litigation. In her position, Beth manages and reviews large volumes of documents, helps to draft motions and discovery requests, does research on legal and medical issues and assists in trial preparation. Beth initially worked in the Toxic Torts Section before moving to the Fraud Section.

Beth graduated from Faulkner University in May 2000 with a BS in Criminal Justice and in December 2002 with an Associate Degree in Legal Studies. In January 2003 she became a Certified Legal Assistant by completing and passing the National Association of Legal Assistants’ Certified Legal Assistant’s exam. Beth is currently on the Advisory Boards of both the Faulkner University’s Legal Studies Program and the Paralegal Program at the Judge Advocate General’s School on Maxwell Air Force Base.

Beth has an 8-year-old Dachshund named Missy who she says she “adores.” She also enjoys running and has completed eight half-marathons. Beth also plays in Montgomery’s kickball league for fun. Beth is a hard worker, a good employee, and we are fortunate to have her with us.

XXI.
SPECIAL RECOGNITIONS

DR. GWENDOLYN BOYD TAKES THE HELM AT ALABAMA STATE UNIVERSITY

Returning to her Alma Mater in February, Dr. Gwendolyn Boyd became the President of Alabama State University. Dr. Boyd was selected by the ASU board of trustees by a unanimous vote of 11-0. She is the first female president of the university and that’s a significant milestone.

Dr. Boyd takes the reins at a time of controversy and tumult at the university. She has already made a most favorable impression on both friends and critics of ASU. Dr. Boyd told the Tuscaloosa News that her first priority would be to bring stability to the university and it appears she is making progress toward that end. She has outlined goals that include adding a school of engineering, strengthening and rejuvenating the alumni association, adding additional scholarships to attract students, and new student recruitment.

Shortly after officially taking the helm at ASU, Dr. Boyd faced her first big challenge when the Alabama Senate’s education budget committee proposed a $10.8 million cut to the university’s funding, which would amount to 25 percent of its state appropriation. The committee chairman, Sen. Trip Pittman, said he thought the money could be used as leverage by Dr. Boyd to make changes at ASU. However, Dr. Boyd and Gov. Bentley were totally opposed to that approach. Rep. Bill Poole, the chairman of the Education Budget Committee in the House of Representatives, worked to restore the $10 million in the substitute budget.

Regardless of the motive behind the proposed cut, punishing ASU in such a manner was ill-advised and should never have been attempted. At press time, the education budget had passed both the House and Senate, but had not been signed by Governor Bentley. I am told that ASU was treated fairly and not punished in the budget.

It’s not an easy road set before Dr. Gwendolyn Boyd, but then from all accounts she has never been one to shy from a challenge. If her past accomplishments are any indication, she is the right person for the job. Dr. Boyd’s academic and professional career has demonstrated an outstanding record of achievement. She earned her Master’s Degree in mechanical engineering from Yale University, and a doctorate of divinity from Howard University. Prior to accepting the role as President of ASU, she was executive assistant to the chief of staff of the Applied Physics Lab at Johns Hopkins University, where she also served as chair of the Diversity Leadership Council.

Dr. Boyd also has long been dedicated to advancing education. In particular, she spearheaded efforts to help broaden the scope of science, technology, engineering and math (STEM) disciplines nationally and worldwide. As a result of this commitment to educational excellence, Dr. Boyd was nominated by President Barack Obama and received U.S. Senate confirmation to serve as a trustee to the Barry M. Goldwater Scholarship and Excellence in Education Foundation in 2009. On Jan. 16, 2014, President Obama announced his intent to appoint Boyd and 14 other individuals to the President’s Advisory Commission on Educational Excellence for African-Americans.

As she takes over as President of Alabama State University, an historically important institution in our state, we wish Dr. Boyd the very best. I am confident that she will do an outstanding job!
Sources: Montgomery Advertiser, Al.com and Tuscaloosa News

MONTGOMERY HONORED FOR ECONOMIC DEVELOPMENT ACHIEVEMENTS

Southern Business & Development magazine has named the City of Montgomery to its list of 10 shining examples of economic development that is working in the South. It’s highly significant that Montgomery is the only city in Alabama featured in the article. The city is cited as being home to Maxwell Air Force Base and the Air University, Hyundai Motor Manufacturing Alabama, the nation’s No. 1 magnet high school and one of
the top 10 largest Shakespeare theaters in the world. Each of these is very important to our city.

Additionally, Montgomery is recognized for its vast economic diversity, having in 2013 alone secured the headquarters of national pharmaceutical service company Mims Management Group, the first Alabama facility of global automotive supplier DENSO Corp., a Department of Defense Core Data Center, and a corporate and operation center of Hancock Bank. Montgomery Area Chamber of Commerce Chairman of the Board of Directors Leslie L. Sanders, observed:

Southern Business & Development recognizes that Montgomery is an exceptional place to do business. Not only is the River Region unique in what it has to offer, our city, county, state and chamber leadership also work together extraordinarily well to enhance our quality of life. The results of their efforts have made and will continue to make this community appealing to new and existing industries.

Southern Business & Development magazine and its website SB-D.com cover economic development in the American South. The City of Montgomery, being Alabama’s Capital City, should be a model of excellence and in my opinion that is what it has become. It’s good to see the City’s accomplishments being recognized for all to see.

**XXII. FAVORITE BIBLE VERSES**

Dr. Terry Stallings, a longtime friend who is now in Baldwin County, Ala., wrote and said he enjoys the Parting Words Section of the Report. Terry said the part about prayer in the March issue was very important to him. Terry says he prays daily and that when he gets anxious about something, he prays and a calmness comes over him. He says that if he wakes up at night and has trouble going back to sleep, he prays and then he quickly falls back to sleep. Terry says prayer works and that he wanted to share two of his favorite verses from his daily devotionals with our readers.

*Finally, brethren, whatever things are true, whatever things are noble, whatever things are just, whatever things are pure, whatever things are lovely, whatever things are of good report, if there is any virtue and if there is anything praiseworthy—meditate on these things. The things which you learned and received and heard and saw in me, these do, and the God of peace will be with you.*

Philippians 4:8-9

*And which of you by worrying can add one cubit to his stature? If you then are not able to do the least, why are you anxious for the rest?*

Luke 12:25-26

Dr. George Mathison, Senior Pastor at Auburn United Methodist Church, another friend of long-standing, has again furnished a timely verse for our readers.

*Do not be deceived, my beloved brethren. Every good gift and every perfect gift is from above, coming down from the Father of lights, with whom there is no variation or shadow of turning. Of His own will He brought us forth by the word of truth, that we might be a kind of firstfruits of His creatures.*

James 1:16-18

Tom Methvin, our firm’s Managing Shareholder, furnished two verses for this issue. Tom does a tremendous job for us and sets a good example for all of us at Beasley Allen.

*And we know that all things work together for good to those who love God, to those who are the called according to His purpose.*

Romans 8:28

_Elizabeth Royal, a legal secretary at Beasley Allen, furnished one of her favorite verses this month. Ellen says she has heard this verse her whole life from her grandmother and her parents._

*I have no greater joy than to hear that my children walk in truth.*

3 John 1:4

Bob Mount, a longtime friend from Montgomery, wrote me last month and said he really appreciates receiving the Report. Bob is greatly concerned about pollution problems in our state that are affecting Alabama rivers. He has asked us to look into this matter and write about it in a future issue. Bob also sent in his favorite verse for this issue:

*But ask the animals, and they will teach you, or the birds in the sky, and they will tell you; or speak to the earth and it will teach you, or let the fish in the sea inform you. Which of all those does not know that the hand of the Lord has done this? In his hand is life of every creature and the breath of all mankind.*

Job 12:7-10

John & Winnie Howard, who attend St. James United Methodist Church, and who are two of my most favorite people, sent in a verse for this issue.

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

1 Cor. 13:13

Scott Kramer, the Rabbi at Agudath Israel Etz Ahayem Synagogue in Montgomery, also furnished a verse for this issue. Rabbi Kramer said one of the most important lessons he and many Jews through the millennia have learned is to not be indifferent to the suffering of others. He says we all need to be cognizant that in the flash of an eye we could be the ones on the street begging for the barest necessity. Rabbi Kramer reminds us that this sobering one up to the way things are, not to the misguided belief that we all play on an even field, where everyone is equal and able to succeed simply on merit alone. He is absolutely correct in his assessment.

*You shall not wrong a stranger or oppress him, for you were strangers in the land of Egypt.*

Exodus 21:20
XXIII.
CLOSING OBSERVATIONS

**Beasley Allen Makes The NLJ Plaintiffs Hot List**

I am pleased to report that once again our firm has been recognized for the work done by Beasley Allen lawyers and support staff on behalf of our clients. *The National Law Journal*, a very well respected legal publication, has named our firm to the annual “Plaintiffs’ Hot List,” which identifies the most successful practices in the country. According to the publication, their readers are asked to nominate firms in the United States that have done “exemplary, cutting-edge work on the Plaintiffs’ side.”

Criteria for selection on the Hot List include “at least one significant Plaintiffs’ win between Feb. 1, 2013, and Jan. 21, 2014, and an impressive track record of wins in the past three to five years.” We met these requirements and the magazine chose to spotlight two of our firm’s cases in particular:

- **October 2013 Oklahoma City jury verdict and settlement against Toyota Motor Corporation and Toyota Motor Sales for litigation related to sudden unintended acceleration.** This case was handled by Cole Portis, Graham Esdale and Ben Baker from our Personal Injury and Products Liability Section, and this writer. The jury verdict in Oklahoma was a landmark and monumental verdict in the Toyota Sudden Unintended Acceleration Litigation. We were able to obtain for our clients the first and only jury verdict against Toyota Motor Corporation and Toyota Motor Sales for litigation related to sudden unintended acceleration. The Watson case was one of about 360 the firm has pursued nationwide involving allegations that drug companies manipulated prices and overcharged Medicaid programs. The firm, working with attorneys general in eight states, has recovered more than $1.3 billion for the states in the fraudulent pharmaceutical pricing scheme. Dee Miles, head of our Consumer Fraud Section, along with Clay Barnett, Chad Stewart and Ali Hawthorne, lawyers in the Section, handled the case against Watson in Mississippi.

The lawyers and support staff at the firm work hard to represent our clients to the best of our collective abilities. Obtaining justice for our clients has been our top priority and that will never change. We are honored to have our work recognized by the *National Law Journal* and to be included on the Plaintiffs’ Hot List. The good part of that recognition is that our clients have benefited by our work.

*Source: National Law Journal*

**Women Should Receive Equal Pay**

It was reported last month that women make less money than men in Alabama. Unfortunately, this story got very little media attention in Alabama. It was reported that while the median salary of a man in Alabama averages out at $44,567, a woman’s median salary is only $31,674. There are only five states that have no equal pay laws of any kind. Alabama, along with Mississippi, South Carolina, Utah and Wisconsin are the five. It was said in the report that myriad factors affect the amount of income folks earn. But even with those factored in, women still make a significant amount less than their male counterparts. The study was completed by the American Association of University Women and the results were released last month.

According to the study, the smallest pay gap is in Washington, D.C., where women get paid 90 percent of what men make. The widest pay gap was found in Wyoming, where women make 60 percent of what their male colleagues make. Some of the factors that play into the gap include job choice, with women more likely to be teachers. That’s another story, since we grossly underpay teachers in Alabama. Parenthood was also said to play a role.

The study found that 10 years after graduation, 23 percent of mothers were out of the workforce, and 17 percent worked part time. That contrasts fathers, with 1 percent out of the workforce, and only 2 percent working part time. Even with those factors, much of the gap is unexplained. American Progress says:

*This leaves us with possible explanations that range from overt sexism to unintentional gender-based discrimination to reluctance among women to negotiate for higher pay.*

In my opinion, there can be no valid excuse to pay a woman—with equal ability—doing the same job—with like tenures on that job—less money than a man would make doing the same work. A bright spot in the study found that gender segregation has decreased in the last 40 years, with women venturing into typically male-dominated professions more and more. To learn more information on Alabama and other states and to view the entire study results, you can go to [http://www.aauw.org/research/the-simple-truth-about-the-gender-pay-gap/](http://www.aauw.org/research/the-simple-truth-about-the-gender-pay-gap/)

**Monthly Reminders**

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

2 Chron 7:14

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

Edmund Burke

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

Isaiah 10:1-2

*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

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

XXIV.
PARTING WORDS

In the past 35 years, I have been blessed to work in a firm whose goal and mission is to help folks who badly need help. While their needs have varied, the fact remains that each of them needed our help. Many of our cases not only helped our clients, but also the results benefited others. The recent settlement by Toyota whereby the automaker pled guilty to a criminal offense and paid a fine of $1.2 billion dollars to the federal government, made me realize how important our verdict against Toyota in the Bookout case in Oklahoma really was.

That verdict came about because of the hard work and dedication of our lawyers and support staff and the courage of two families who were willing to take on a corporate giant. It turned the sudden acceleration litigation around and I am convinced that it made Toyota realize that they had to change their litigation strategy. While the criminal plea and fine are important, the most important result of the Bookout verdict was that Toyota’s safety culture, one that put profits over safety, was exposed for the world to see. Also, as a result, victims of Toyota’s wrongdoing are now able to settle their civil cases.

God has blessed our firm and has given us the collective ability to do what we do for others. I give Him all of the credit for the things that we have accomplished through the years. I pray that the New Covenant established by the blood of Jesus on the cross will continue to be the standard of truth and justice in this law firm. My prayer is also that we will keep our focus squarely on the teachings and example of Jesus in all of the work we do as we represent those who need help and come to us to get it. I will be eternally grateful for the opportunity given to me to help others in a most meaningful way. To God be the glory!

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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.