I. Capitol Observations

The Importance of The Judicial System

I wrote last month about the myth of strong federal regulation and we have had numerous comments on that part of the Report. Interestingly, a number of our readers were shocked to learn that our regulatory agencies do such a poor job of regulation. All who commented agreed, however, that strong federal regulation is critically important for the American people. Protecting consumers from hazards caused by dangerous product defects is the job required of federal regulators. Unfortunately, the various regulatory agencies, many of whom are underfunded and understaffed, fail in their responsibility to make sure that products are properly tested, evaluated and safe when put on the market. These agencies also have the job of promulgating strong safety standards. There also have been shortcomings in that area.

Our law firm has recently been involved in some major litigation involving first Toyota and now General Motors (GM) where cars with defects known to the automakers were put on the market. In each case, the defect was covered up by the companies for long periods of time. In each case, the National Highway Traffic Safety Administration (NHTSA) did a poor job of regulating the companies. In each case, the automaker was well aware of how understaffed NHTSA was, which hampered its ability to adequately regulate. In each case, folks were put at risk and many died in highway crashes.

The important role of litigation in preventing injuries from unsafe products has been disputed by corporate tort-reform groups. The very same tort-reform groups that have fought to restrict product liability lawsuits are the same ones who worked just as hard to keep safety standards weak and regulatory agencies underfunded and understaffed. As the public is now learning, it has taken product liability litigation to expose defects across a wide range of products. Unfortunately, the automobile industry is not the only industry where regulation is weak. The drug and oil industries are well aware of how ineffective regulation of their industries has been. They have taken full advantage of that weakness and the Vioxx and BP litigations are prime examples of that fact.

In an ideal world, safety regulators would be able to identify and deal with every product defect in a prompt and efficient manner. But the reality is that regulatory agencies are chronically underfunded, understaffed and oftentimes hindered by slow-moving bureaucratic processes and resistance from the very industries they regulate. The bottom line is that product liability litigation will continue to make a decisive contribution in an area where the public’s interest must be protected. The American people have a vested interest in good and effective regulation. Safety must be a top priority with manufacturers and unfortunately self-regulation and weak regulation simply don’t get the job done.

The Summer Months Can Be Deadly On Our Highways

Most of us look forward to the summer months for a number of reasons. For young parents these months bring more time for family activities. Then there are vacations and backyard cookouts for all and these are more frequent during the summer. Personally, it’s the time when my favorite sport—baseball—takes center stage. But sadly, if past history is any indication of things to come, for thousands of people this summer will bring devastating losses to households across the country. Because of drunk-driving crashes, the summer months, on average, have many more deaths than the rest of the year. Memorial Day was the kickoff of this harrowing time for deaths caused by drunk driving.

Sadly, a day of celebrating, the Fourth of July is always among the most deadly days of the year when it comes to deaths and serious injuries caused by drunk-driving. Available data shows that more folks are killed on our highways each year during the month of August than in any other month. The grief and hurt caused to families of both the victims and the drunk drivers by these alcohol-related crashes on our highways are beyond my capacity to measure. Having represented the families of hundreds of such victims, I do know that the effect on those families was devastating. The National Highway Traffic Safety Administration (NHTSA) recently issued this statement in the nature of a warning:

Americans love to celebrate the Fourth of July with family, friends, food and fireworks, but all too often the festivities turn tragic on the nation’s roads. The fact is, this iconic American holiday is also one of the deadliest holidays of the year due to drunk-driving crashes.

We must all do whatever we can to reduce drunk driving throughout the year, but we must increase our efforts during the summer months. Prevention should really start in homes across America. Young people must be taught to realize that drinking and driving just don’t mix. Ideally, a no-drinking policy in the homes would be the best policy to institute. But activities outside the home involving youngsters are a part of life and peer pressure to conform to what others are doing is intense. Proper training at home, in our schools and in our churches will help to make sure that young people understand that no person should ever get behind the wheel of a motor vehicle after consuming alcoholic beverages of any kind.
There are groups in the U.S. working to combat drunk driving. I urge our readers to support these groups. One such organization—MADD—works hard in this area of concern. For example, MADD has lifesaving programs, including sobriety check points and victim support services, in place and they push hard for legislation designed to combat the evils of drunk driving. If you need more information on what MADD does contact them by phone at 1-877-ASK-MADD or by letter at 511 E. John Carpenter Freeway, Suite 700, Irving, Texas 75062.

II.
AN UPDATE ON THE GENERAL MOTORS LITIGATION

MELTON FAMILY REFILES LAWSUIT AGAINST GM

Ken and Beth Melton, parents of a 29-year-old Georgia woman who died in a 2010 crash linked to an ignition switch defect, have refiled their lawsuit against General Motors (GM). The reasons for this refiling are that GM fraudulently concealed critical evidence (GM). The reasons for this refiling are that GM fraudulently concealed critical evidence in the initial case and allowed one of its engineers to commit perjury by lying under oath during his deposition. GM also concealed documents and refused to produce them even after a court order. The Meltons have also asked in the new filing that the court sanction GM for its discovery abuses and spoliation of evidence.

The civil lawsuit, filed in the State Court of Cobb County, Ga., by Lance Cooper and our firm alleges that GM fraudulently concealed critical evidence in the initial case and allowed one of its engineers to commit perjury by lying under oath during his deposition. GM also concealed documents and refused to produce them even after a court order. The Meltons have also asked in the new filing that the court sanction GM for its discovery abuses and spoliation of evidence.

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The Melton case touched off a national controversy over both GM’s handling of the safety problem and NHTSA’s inadequate response. Both GM and NHTSA have been the subject of Congressional hearings. Both have helped form the basis for proposed amendments strengthening NHTSA’s enforcement powers and civil penalties in the Grow America Act, the new transportation bill before Congress.

On April 11, the Meltons asked GM to rescind the original settlement agreement, but the automaker refused. GM’s attorney, Robert Ellis, responded to the Meltons in this manner:

As an initial matter, General Motors LLC (“GM”) denies the assertion that GM fraudulently concealed relevant and critical facts in connection with the Melton matter. And GM denies it engaged in any improper behavior in that action.

If there was even any question about how bad GM’s conduct had been and its intentions, the response by its lawyers validated the decision by the Meltons. We are hopeful that this new lawsuit will uncover the names of all at GM who knew about the design change and also will find out why Brooke was never told. It will also find out exactly how many innocent victims, such as Brooke, have been killed. Our law firm was honored to be asked by Lance Cooper and the Melton family to assist them in the refiling and trial of the lawsuit against General Motors.

GM has betrayed the American people and must be held accountable for its wanton conduct in the cover-up for more than 10 years of a known safety defect. Ken and Beth Melton are very brave and courageous in their desire to make sure that the public learns how truly bad GM’s conduct was and how the automaker fraudulently dealt with the initial lawsuit they filed over the tragic death of their daughter. Lying under oath and committing perjury is about as low as it gets and GM must not be allowed to get away with this sort of conduct. The new lawsuit was filed on May 12 in Cobb County, Ga. A motion for sanctions against GM for committing perjury and other wrongful conduct was filed at the same time.

Our goal is for the Melton lawsuit to be a lasting memorial to Brooke Melton, a young nurse whose life—one with great promise—ended far too early because of the greed, arrogance and deceit of General Motors.

A SLAP ON THE CORPORATE WRIST OF GENERAL MOTORS

On May 16, the U.S. Department of Transportation (DOT), acting through the National Highway Traffic Safety Administration (NHTSA), announced that General Motors (GM) has agreed to pay a $35 million civil penalty and to take part in what the agency described as “unprecedented oversight requirements.” NHTSA says this comes...
as a result of findings from the agency’s timeliness investigation regarding the Chevrolet Cobalt and the automaker’s failure to report a safety defect in the vehicle to the federal government in a timely manner. As we all know, this defect, among other things, resulted in the non-deployment of airbags in certain Chevrolet Cobalt and other GM models.

While this action represents the single highest civil penalty amount ever paid as a result of a NHTSA investigation of violations stemming from a recall, it’s also the maximum amount allowed under current law. None of this would have happened had it not been for Lance Cooper’s excellent work in the Melton lawsuit mentioned above. His work discovered the defect and the cover-up by GM. The recalls and now this fine have come as a result of the Melton lawsuit. Based on what we have learned about GM’s conduct and the massive harm the automaker caused, we consider the fine to be no more than a slap on the corporate wrist of the company.

As part of the agreement, set forth in a Consent Order signed by GM with NHTSA, the agency did order GM to make significant and wide-ranging internal changes to its review of safety-related issues in the United States. GM was also ordered to improve its ability to take into account the possible consequences of potential safety-related defects. GM will also pay additional civil penalties for failing to respond on time to the agency’s document demands during NHTSA’s investigation.

U.S. Transportation Secretary Foxx had this to say:

_Safety is our top priority, and today’s announcement puts all manufacturers on notice that they will be held accountable if they fail to quickly report and address safety-related defects. While we will continue to aggressively monitor GM’s efforts in this case, we also urge Congress to support our GROW AMERICA Act, which would increase the penalties we could levy in cases like this from $35 million to $300 million, sending an even stronger message that delays will not be tolerated._

Federal law requires all auto manufacturers to notify NHTSA within five business days of determining that a safety-related defect exists or that a vehicle is not in compliance with federal motor vehicle safety standards and to promptly conduct a recall. GM admits in the Consent Order that it failed to do so. This admission will be most helpful in the massive civil litigation involving GM and the defect it covered up for more than a decade.

The provisions of the Consent Order will be immediately enforceable in federal court if GM does not fully comply. Hopefully, the Consent Order will hold GM accountable, push the automaker to make needed institutional change, and make sure that replacement parts are produced quickly and recalled vehicles are repaired promptly.

NHTSA Acting Administrator David Friedman added these comments:

_No excuse, process, or organizational structure will be allowed to stand in the way of any company meeting their obligation to quickly find and fix safety issues in a vehicle. It’s critical to the safety of the driving public that manufacturers promptly report and remedy safety-related defects that have the potential to lead to deaths or injuries on our nation’s highways._

GM agreed in the Consent Order to provide NHTSA with full access to the results of GM’s internal investigation into this recall, to take steps to ensure its employees report safety-related concerns to management, and to speed up the process for GM to decide whether to recall vehicles. The Consent Order also requires GM to notify NHTSA of changes to its schedule for completing production of repair parts by October 4. GM must also take steps to maximize the number of vehicle owners who bring in their vehicles for repair, including targeted outreach to non-English speakers, maintaining up-to-date information on its website, and engaging with vehicle owners through the media.

The Consent Order requires GM to submit reports and meet with NHTSA so that the agency may monitor the progress of GM’s recall and other actions required by the consent order.

Both in 2007 and again in 2010, NHTSA reviewed data related to the non-deployment of airbags in certain Chevy Cobalt models, but each time the agency determined that it lacked the data necessary to open a formal investigation. However, on Feb. 7, 2014, as a direct result of the Melton lawsuit mentioned above, GM announced it would recall certain model vehicles for a defect where the vehicle’s ignition switch may unintentionally move out of the “run” position that could result in the air bag not deploying in the event of a crash. GM had failed to advise NHTSA of this defect at the time of the agency’s earlier reviews.


Source: NHTSA News Release

_A LAWSUIT FILED IN TENNESSEE_

Our firm has filed a wrongful death lawsuit in Tennessee against General Motors (GM) on behalf of the family of Tyson Sumners. Ms. Sumners was killed and Grayson June Dickey seriously injured in an automobile crash caused by the defective General Motors ignition switch defect. We represent both parties in the lawsuit. The crash was caused when the ignition switch failed, which led to the car shutting off during highway operation. This resulted in Ms. Sumners losing control of her vehicle and crashing. The vehicle burned on impact, killing Ms. Sumners and seriously injuring Grayson Dickey.

As we have consistently stated, General Motors knew it had a serious defect in its vehicles. The automaker hid both the defect and the fact that hundreds of innocent victims were being killed from both the public and the federal government. Now the automaker must be held accountable for its wrongdoing. GM took billions of taxpayer dollars, betrayed the American people and caused countless deaths and serious injuries.

We will do our very best to let a Tennessee jury learn what GM knew, when they knew it, and then what GM did and failed to do. I am confident the jurors, once they hear the truth, will be outraged. Our mission in this case is to represent the two families to the best of our ability and to take care of them. We also want to send a strong message to the bosses at GM that the sort of conduct the juror will hear in this case won’t be tolerated.

Defendants named in the Tennessee lawsuit are General Motors LLC, Delphi Automotive Systems, LLC; Delphi Automotive PLC; Delphi Automotive LLC; and Auto-Fair Chevrolet. The lawsuit was filed in state court in Pulaski, Tenn., on May 8, 2014. Our firm, along with Lance Cooper of The Cooper Firm from Atlanta and Blair Durham from the Durham & Dread Firm in Nashville, Tenn., represent the Plaintiffs in this case.

_GM RECALLED CARS CAN STAY ON ROADS FOR NOW_

The U.S. Department of Transportation (DOT) last month rejected a request by two U.S. Senators to advise owners of 2.6 million
recalled General Motors cars to stop driving them until they are repaired. In letters sent on May 6 to Senators Edward Markey of Massachusetts and Richard Blumenthal of Connecticut, Transportation Secretary Anthony Foxx wrote that "such an action is not necessary at this time." It could take months for GM to replace faulty ignition switches in Chevrolet Cobalts, Saturn Ions and other models that have been linked to as many as 303 deaths. Realizing how unsafe and dangerous the safety defect is—and the risks involved—I find it most difficult to comprehend this move by the government. Leaving vehicles on the road with a known safety defect—one that has caused the deaths of hundreds of innocent victims—makes no sense.

But Secretary Foxx said the National Highway Traffic Safety Administration (NHTSA) "is satisfied that for now," until the repairs are made, that the safety risk posed by the ignition switch defect is "mitigated" by GM's recommendation that the cars be operated with only the key in the ignition switch and no other keys or fobs attached. That statement tells me that NHTSA still doesn't fully understand the magnitude of the safety issues caused by the defective ignition switch. We have learned during the early stages of litigation that even a bump in the road can cause the ignition switch to fail just like it would if the key fob was the culprit. Hopefully, the ongoing civil litigation and the congressional investigation will open the eyes of the top folks at NHTSA. Interestingly, on May 27, David Friedman, Acting Administrator, said that the number of deaths caused by the ignition switch defect was more than the 13 GM has admitted to. I believe he will find out the number is vastly more.

Source: Claims Journal

**The Government Should Be Tougher On GM After Toyota**

I am reasonably sure the criminal investigation involving Toyota Motor Corp. for its sudden acceleration problems, which led to a $1.2 billion fine, has gotten the attention of the bosses and several engineers at General Motors (GM). Many believe the Toyota case will be a model for prosecutors scrutinizing GM's recall of more than 2.6 million cars with the faulty ignition switches. Experts believe the government will take a more aggressive stance against GM to encourage greater disclosure of safety problems from the auto industry. Based on what we have learned, both in the Toyota and GM litigation, I share that belief. It's high time to start getting tougher with wrongdoers.

As has been widely reported, GM is facing a U.S. Department of Justice criminal investigation into whether the automaker waited too long to recall 2.6 million vehicles for the ignition switch problem linked to as many as 303 deaths. GM also has been the subject of inquiries from the U.S. Attorney's Office for the Southern District of New York. Additionally, several other agencies are also looking into GM's safety problems and cover-ups of known defects.

It has been revealed that General Motors instructed engineers to avoid using terms such as "defect" and "safety-related." The National Highway Traffic Safety Administration (NHTSA), in the consent order, required GM to retrain their employees. NHTSA specifically took aim at General Motors' process of training employees to avoid using "judgmental" language when discussing safety issues. Terms such as "death-trap," "defective" and "fail," among dozens of others, were not to be used by GM's employees. The regulatory agency's consent order requires GM to implement training policies that "express the disavow statements diluting the safety message" in internal communications. It is incomprehensible that an automaker would not only hide known defects, but make sure that its employees wouldn't use any language that would tip off either the public or NHTSA about the defect the hazard it created for owners and passengers in GM vehicles.

Because both the Toyota and GM situations involve claims of improperly reporting safety information to the NHTSA and failing to take appropriate actions to address safety problems, Toyota's criminal case is a template for prosecutors investigating GM's recall. It was reported that a team of lawyers and investigators in the Southern District of New York involved in the Toyota case is looking into the GM matter. That is most significant according to Carl Tobias, a professor at University of Richmond School of Law, who told Law360:

"Prosecutors are going to build on the past work they did with Toyota in going forward with the GM investigation. I think GM has to be concerned with what might come from the investigation, given the scrutiny and quality of work by the Southern District of New York in the Toyota case and the substantial settlement that Toyota reached."

The GM litigation is just another example of an automaker putting the public at risk by selling vehicles to be put on the road with a known defect and then engaging in a massive and lengthy cover-up. Because of Toyota, I believe the Justice Department will have to take a much more forceful stance in the GM case. Prosecutors may be interested in reaching a deferred prosecution agreement similar to the one entered in the Toyota case, according to Professor Tobias. Under that agreement, Toyota admitted to making misleading statements about the safety issues.

The prosecutors in that case agreed to drop the wire fraud charge after three years if Toyota complies with all of the terms of the settlement, including appointing an independent monitor. Since GM is not the first company to engage in outright fraud and cover-up, the company may be hit much harder than Toyota was. A number of individuals may have plenty to worry about and I suspect some will have secured their own individual lawyers to represent them. The admissions made by GM to NHTSA resulting in the $35 million civil fine have to be considered in the criminal investigation.

The government, in the GM matter, has an opportunity to send an even more powerful message to the entire automobile industry. There will be more information developed in the GM defect inquiry, through discovery in filed civil cases and in the congressional investigations. Prosecutors and other federal agencies are still looking into GM's massive recall. The carmaker is also conducting what it calls its own "internal review." Of course, NHTSA is still involved even though the agency was very late in joining the fray.

Many experts believe the Toyota settlement and the ongoing investigation into GM are already causing other car companies to change their ways. Hopefully that will mean the companies will conduct thorough examinations of their manufacturing processes and make determinations about whether they need to notify the NHTSA about safety issues or consider recalls. Safety may even become a real top priority in the automobile industry and if that happens the public will have been well-served by all of the activities surrounding the wrongdoing of GM.

Source: Law360.com
III.

A REPORT ON THE GULF COAST DISASTER

FIFTH CIRCUIT DEALS MAJOR BLOW TO BP’s EFFORTS TO RENEGE ON SETTLEMENT AGREEMENT

BP’s unprecedented efforts to torpedo the settlement it negotiated, agreed to and defended in open court hit a major snag last month in the Fifth Circuit Court of Appeals. After a Fifth Circuit panel of three judges rejected BP’s arguments to create a new causation standard in the business economic loss settlement, the oil giant sought en banc review by the entire Fifth Circuit with the hope that someone on the court would listen to and be influenced by its intense media campaign. But in an 8-5 decision, the Fifth Circuit rejected BP’s causation arguments and upheld the previous panel ruling by the court. The en banc order—a major blow—sets up a potential showdown in the United States Supreme Court between thousands of businesses and the oil titan.

In the Fifth Circuit order, Judge Leslie Southwick wrote that a 2012 policy statement, issued by the court-appointed claims administrator and developed with “input and assent from BP,” spelled out the criteria for business claims. Judge Southwick wrote further:

Instead of direct evidence of a causal connection between the Deepwater Horizon disaster and the claimant’s business losses, the Exhibit described four geographic zones, several types of businesses, formulae for presenting economic losses, and various presumptions regarding causation that apply to specific combinations of those criteria.

Judge Southwick was absolutely correct when he wrote that all parties agreed to the criteria prior to final court approval of the 2012 settlement. The majority of the Fifth Circuit said the causation formula “was the compromise reached by the parties on how an extremely difficult part of the claims process was to be handled.” The majority ruling stated further that Claim Administrator Pat Juneau’s interpretation “simply states that the compromise still controls even when its accuracy as a substitute for direct evidence of causation as to a particular claim is questionable.”

The Fifth Circuit’s ruling is another in a long line of defeats for BP. But the company’s efforts to rewrite the settlement agreement is a masterful public relations effort designed to save the company money. How BP can take the position it’s now taking is impossible to justify when you consider the following:

• BP emphatically supported the business loss framework in its briefing before Judge Barbier during the preliminary and final class certification approval stages;

• BP’s lawyers supported the business framework in oral argument before Judge Barbier, and noted that the settlement would be generous to businesses;

• When questioned by the Claims Administrator as to whether a business need only meet the causation formulas in the settlement to establish causation, counsel for BP agreed;

• When questioned by Judge Barbier in open court as to whether a business need only meet the causation formulas to establish causation in the settlement, again counsel for BP agreed.

• When questioned during oral argument before the Fifth Circuit about the causation framework, BP lawyer Ted Olson admitted that the causation framework was “part of a compromise,” as any settlement is. His statements supported testimony from a BP expert that such “false positives” should be paid.

• When confronted by BP’s reversal of its position, Judge Barbier stated “when it talks about causation, if anyone is attempting to rewrite or disregard the unambiguous terms of the Settlement Agreement, it is counsel for BP.”

• BP has never, to my knowledge, been able to state what the causation standard they now so eagerly want actually is and how it would be defined or implemented.

In reality, before the settlement was reached, BP desperately wanted a release of civil punitive liability from private claimants and a resolution of the criminal charges it was facing. With the economic settlement in place in 2012, BP had a master release of private punitive liability and a key negotiating tool to then work toward resolving the federal criminal charges against it. Now, with the private punitive damages and criminal issues under control, the company is going on the offensive to completely torpedo the settlement it agreed to or, at the very least, delay its implementation as long as possible.

The company has spent millions upon millions on lawyers fighting what the company itself agreed to and on ads in the media contradicting its own statements in court. In the coming months, we should expect many more millions going to the BP lawyers and ad companies instead of businesses along the coast—many of which have waited months, if not years, to be compensated. Shame on BP!

The Fifth Circuit refusal BP’s request to keep the current injunction on claim determinations and payments in effect, and as this article was going to print, Judge Barbier had just entered an order formally lifting the injunction on claim payments. Claims with signed releases on hand were to start being paid by the Claims Administrator again on June 2. But BP has filed an emergency motion with the Supreme Court of the United States to enjoin any further payments pending certiorari review. Hopefully, that motion will be denied. Claims (some of which have been waiting for 1 ½ years) can finally be paid unless the Supreme Court places yet another hold on payments. While BP promptly filed its petition for writ of certiorari on May 21, I do not believe the High Court should accept this case based on the record in both the trial court and the Fifth Circuit. But we will have to wait to see what happens there.

Source: WWLTV.com

IV.

DRUG MANUFACTURERS FRAUD LITIGATION

ALASKA ENDS MEDICAID FRAUD LITIGATION WITH JUSTICE FOR ITS CITIZENS

In May 2013 Alaska’s attorney general announced an end to Average Wholesale Price (AWP) / Medicaid Fraud litigation. Alaska recovered more than $45 million for the State on behalf of its citizens and programs defrauded by pharmaceutical companies. The Attorney General’s Office filed the complaint against more than two dozen prescription drug manufacturers accused of overcharging the Alaska Medicaid program for medications. Our law firm was retained by Alaska’s attorney general to assist in representing the state in the litigation.

Our law firm has represented eight other states in AWP Medicaid Fraud litigation, and
has settled claims in excess of $1.3 billion. These AWP cases have had a tremendous positive impact on Medicaid agencies throughout the country. As a result of AWP litigation, the federal government and state Medicaid programs have recognized the gross abuse of price-reporting by pharmaceutical manufacturers in the marketplace.

In addition to helping states recoup financial losses as a result of this fraud, the effect of this litigation is even more significant. These cases have caused a tremendous change in the way the Medicaid program operates. According to Dee Miles, who heads up the firm’s Consumer Fraud Section, the federal government has actually revamped its pricing formula going forward, and that came about as a direct result of this litigation. Dee and the lawyers and staff in his section have done a tremendous job in this litigation. The state attorneys general and their staffs should be commended for taking on the powerful drug industry and working for the taxpayers in their respective states.

V.

PURELY POLITICAL NEWS & VIEWS

THE PRIMARIES IN ALABAMA HAVE HEATED UP

The races in the Republican primary had been pretty dull, but then the TV commercials in the legislative races really heated up. These TV ads may be among the worst, and also the most misleading, that I have seen in years. Apparently, those candidates running these ads don’t remember the “11th Commandment” coined by none other than Ronald Reagan. The “Gipper” would be shocked at the behavior of this crop of Republican candidates.

As June 3 approached, I kept looking for the name Obama to show up as a candidate in the Republican primary. But I was never able to find a person by this name in either the legislative or congressional races. But the ads by the candidates in the primary—with very few exceptions—ran directly against President Obama and anything associated with him. That’s really a sad commentary on Alabama politics. I would think the voters would want to know more about the actual qualifications of the candidates. Many of the ads were grossly misleading and took unfair credit for things totally beyond the candidate’s capacity to do. If a candidate ran a positive message in an ad it might just work. Thus far Gov. Bentley has taken the high road in his campaign and he should be commended for that.

But it just may be this is the sort of negative and ugly campaigning that wins elections in Alabama. Through the years, I have always felt that most folks voted against something or against somebody rather than voting for candidates with positive messages. Personally, I will be glad when the GOP primary races are over. But if the Republican candidates run against each other in the Fall in this manner, the general election may be worse. If so, heaven help us!

WHERE WERE THE CANDIDATES ON JUNE 3 IN THE ALABAMA SENATE RACES?

All 35 seats in the Alabama Senate are up for grabs this election year. But, as our Alabama readers know, for some reason there were relatively few candidates in these races on June 3. There were no contested races in 20 of the 35 districts in the June 3 primary, which will be over when you read this report. In fact, 14 senators—eight Republicans and six Democrats—will coast to new four-year terms with no opposition in either party. Fortunately, my brother Billy is one of them.

Dr. William Stewart, professor emeritus of political science at the University of Alabama, says there are multiple reasons for the scarcity of candidates. He had this to say:

People are generally apathetic about government and politics today. They don’t expect much to be accomplished in a positive way. Running to win is pricey. I have often heard that the man or woman who really aspires to be successful will have to spend most of his or her time raising money—and lots of it.

Dr. Stewart, who is highly regarded and well respected, said Alabama is traditionally dominated by interest groups and that potential candidates who can’t get support from powerful groups might have been smart to simply opt out of running. Republicans took control of the Legislature in 2010 and hold 23 seats in the Senate. Democrats now hold only 11. Sen. HarriAnne Smith of Slocomb, a Democrat, is the sole independent. The Republicans enjoy a “super majority” because it takes 21 votes to end filibusters. Democratic Party Chairman Nancy Worley believes that despite the lack of candidates in almost half the Republican-held districts, the Democrats could achieve their goal of breaking the super majority. While that appears to be wishful thinking, maybe Nancy knows something. But if she does, it’s certainly very well-hidden. Nancy explained the party’s strategy:

We tried to put people in seats that were winnable seats and I think we’ve done a good job of having really super candidates that qualified.

Dr. Stewart apparently believes Democrats may have a chance to break the super majority, partly because they would need a gain of only three seats. Things can happen between now and the general election that could change the outcome of races. For example, according to Dr. Stewart, the special grand jury investigating possible State House corruption could “come out with something that would be a game changer.” I am not sure what else will come from the grand jury, but I suspect there are some nervous folks waiting on the final results. So far, one Republican House member has pleaded guilty to a misdemeanor ethics charge and resigned, while a second has been charged with perjury, but has denied any wrongdoing.

As far as the number of Senate candidates goes, Republicans have almost twice as many as the Democrats, 53 to 27. The following are some more primary numbers:

- 20 of 23 Republicans are seeking re-election.
- 11 of those 20 are unopposed in the Republican primary.
- 9 of 11 Democrats are seeking re-election.
- 8 of those 9 are unopposed in the Democratic primary.
- 12 of 23 Republican-held districts have Democratic candidates in November.
- 4 of 11 Democratic-held districts have Republican candidates in November.

I predicted a very low turnout for June 3, but hope I was wrong. I will be greatly surprised if very many folks voted. Most of the folks I talked with before June 3 were turned off by the nasty television ads in the GOP primary. It will be interesting to see if that type campaigning affected their voting.

Source: AL.com

**VI. LEGISLATIVE UPDATE**

**JUDGE RULES ALABAMA ACCOUNTABILITY ACT UNCONSTITUTIONAL**

In a very important lawsuit, Montgomery County Circuit Judge Gene Reese ruled on May 28 that the Alabama Accountability Act, the so-called school “choice law,” is unconstitutional. The decision will be appealed. Judge Reese, an experienced and highly respected jurist, issued his ruling in the lawsuit filed in August 2013 by state Sen. Quinton Ross, Alabama Education Association President Anita Gibson and Lowndes County School Superintendent Daniel Boyd.

This Act was passed by the Alabama Legislature last year. Judge Reese ruled that the Legislature violated the single-subject rule in Sections 45 and 71 of the state Constitution, the original purpose doctrine in Section 61 and the three-readings requirement in Section 63. An injunction was issued by Judge Reese blocking implementation of the law prospectively.

The accountability act (House Bill 84) was originally called the school flexibility bill. After passing both the House and Senate with some differences, a conference committee on Feb. 28 tripled the size of the bill. The Legislature quickly approved the brand new bill that night. The expanded bill, renamed the Alabama Accountability Act, added provisions that created a program to allow parents of students in public schools designated as failing to receive an income tax credit to help pay the costs of transferring to a private school or a better public school. A second new section added by the conference committee created a program to offer scholarships for private school tuition.

Judge Reese agreed with the Plaintiffs’ contention that the law violates the “single subject” rule in the state Constitution. It certainly appears that it does violate that rule. The original bill allowed local school systems to enter flexibility contracts with the state to obtain waivers from some policies and laws so that local systems could better meet their own needs. Judge Reese ruled that the tax credit and scholarship provisions added by the conference committee broke the single subject rule. He wrote:

> The tax-credit programs have no relation to the flexibility-contract provisions, and these sections do not interact with each other.

Judge Reese ruled that the Act also violated Section 45 because it repeals an earmark of state sales tax dollars to public education and instead appropriates it to be used to reimburse parents for the cost of enrolling their children in public schools. “This constitutes two subjects in violation of Section 45,” Judge Reese wrote. He ruled that the tax credit and scholarship program violated the constitutional provision that “no bill shall be so altered or amended on its passage through either house as to change its original purpose.” Again, that ruling appears to be correct.

Section 65 of the state Constitution requires bills to be read on three different days in each house. Judge Reese said in his order that there was no dispute the tax-credit legislation was not read on three different days. He wrote: “to the contrary, it was introduced, adopted by the conference committee, and passed by both Houses in a single afternoon.” Based on what I have read, I don’t believe this Act met constitutional requirements. But more importantly, it further undermines public education, which has been sorely neglected for years. It makes no sense to pull students out of a school deemed to be failing and then leave that school to really fail.

Source: Associated Press

**VII. COURT WATCH**

**GM IGNITION SWITCH CONFIDENTIAL SETTLEMENTS PROMPT LEGISLATION**

Two U.S. senators introduced a bill on May 20 that would make it harder to seal court records in public safety cases. This bill was prompted by settlements of several lawsuits over defective ignition switches in General Motors (GM) vehicles. In those cases certain details pertaining to the defects were kept confidential. U.S. Sens. Richard Blumenthal, D-Conn., and Lindsey Graham, R-S.C., proposed the “Sunshine in Litigation Act of 2014.” If passed, federal judges would be compelled to weigh the public’s interest before sealing court records in cases involving public health and safety. These Senators should be commended for taking this action.

As our firm knows, GM reached “secret settlements” of lawsuits over defective ignition switches in its cars going back to 2005. As a result of “confidentiality agreements,” GM was able to conceal knowledge from the public about the dangers they posed. The ignition switches, which were recalled in February, have according to the Center for Auto Safety caused at least 300 deaths to date. Sen. Graham had this to say:

> As the federal investigation narrows in on whether GM deliberately concealed its knowledge of the defect, it is important to note that bad this legislation been passed a decade earlier, more people would have been aware of the threats to safety posed by the recalled GM vehicles, and deaths could have been prevented.

Current federal court rules allow the use of protective orders in lawsuits to shield large amounts of health and safety information from the public. That definitely needs to be changed by legislation. Victims’ families, in most cases, can’t afford to lose the opportunity for a settlement and have to agree to confidentiality. Sen. Blumenthal was correct when he said:

> The courts must be stopped from complicity in hiding lifesaving information. By sealing court records of lawsuit settlements that show serious safety defects, judges are aiding and abetting more deaths, injuries and danger. Too often in product liability cases, victims are pressured to pay for a settlement with their silence, even when public interest outweighs corporate confidentiality.

The proposed bill would create a presumption against protective orders unless a party requests that a judge make a finding of fact that the public interest in health and safety is outweighed by a specific and substantial interest in maintaining secrecy. The legislation would also bar a court from approving or enforcing any provision that restricts a party to a lawsuit from disclosing public health or safety information relevant to the lawsuit to any government agency with authority to enforce laws regulating related activity. Information disclosed through the legislation would be shared with other courts handling similar cases to avoid covering the same ground in discovery.

It should be noted that the Sunshine in Litigation Act was introduced in 2011 and passed by the Senate Judiciary Committee, but failed to reach the Senate floor.

Source: Law360.com

**THE U.S. SUPREME COURT APPEARS TO HAVE MOVED MUCH TOO FAR TO THE RIGHT**

Business interests have done very well in the U.S. Supreme Court, prevailing more often than not since John Roberts took over...
as Chief Justice almost a decade ago. Needless to say, the U.S. Chamber of Commerce has been very active with this court. The Roberts court sided with the Chamber 71 percent of the time when the powerful business lobby formally involved itself in a case. This is according to a tally kept by the Constitutional Accountability Center (CAC). Tom Donnelly, counsel for the center, observed:

Businesses tend to do very well, and that’s especially true in the closer cases. They find a very receptive ear at the Roberts court.

I was not surprised to learn that the Chamber of Commerce doesn’t dispute its success with the court. But the Chamber attributes its winning record to consensus on the court in business cases. It denies that there is than any deference to corporations themselves. The CAC numbers include 115 cases in which the Chamber was party to a case, filed an amicus brief or represented a party. These cases were since January of 2006 and after Chief Justice Roberts and Justice Samuel Alito joined the court. By comparison to the 71 percent mark under the current Chief Justice, the Chamber’s view prevailed only 43 percent of the time under former Chief Justice Warren E. Burger between 1981 and 1986 and in 56 percent of cases decided during William Rehnquist’s tenure as chief. Regardless of one’s political leanings, it’s quite apparent that at least five of the justices tend to look with favor on corporate defendants when their cases are before the court.

Source: Thehill.com

**Judge Upholds $11 Million Jury Verdict in Topamax Case**

A Pennsylvania judge has denied a motion for a new trial filed by Janssen Pharmaceuticals Inc. in a suit involving a child’s birth defects. The jury had awarded $11 million to the parents on behalf of their child who the jury found to have suffered birth defects due to the company’s epilepsy drug Topamax. Philadelphia Court of Common Pleas Judge George Overton addressed a wide range of concerns raised by the Johnson & Johnson unit following the November jury verdict. He concluded that the jury was properly instructed and had reached a fair conclusion. In the case, the Plaintiffs’ 5-year-old child developed a cleft palate and other defects after being exposed to Topamax during his mother’s pregnancy. Judge Overton said in his order:

This verdict does not shock this court’s sense of justice nor does it demonstrate the jury was influenced by partiality, prejudice, mistake or corruption. Rather, this verdict shows the jury made an informed and educated finding based on the facts and evidence presented at trial.

In April, Janssen settled 76 Philadelphia cases in which Plaintiffs alleged that the anti-epilepsy and migraine drug led to birth defects. There are 58 Topamax cases still active in the Philadelphia mass tort docket, with one trial currently scheduled this month. Janssen appealed the November ruling in the immediate case to the Pennsylvania Superior Court in January.

The motion filed in the current case included Janssen’s concerns that the Plaintiffs’ negligent-failure-to-warn claims should have been preempted by federal law. The company also said the testimony at the trial did not properly establish causation between the drug and the child’s injuries. There were also statute-of-limitations arguments. But the judge rejected all of these arguments. He said that U.S. Food and Drug Administration (FDA) approval of a drug did not preempt state-law failure-to-warn claims should have been preempted by federal law. The company also said the testimony at the trial did not properly establish causation between the drug and the child’s injuries. There were also statute-of-limitations arguments. But the judge rejected all of these arguments. He said that U.S. Food and Drug Administration (FDA) approval of a drug did not preempt state-law failure-to-warn claims should have been preempted by federal law.

The judge Overton also found that the testimony of the prescribing physician in the case was sufficient to demonstrate causation and that the jury had been properly instructed on the subject. In addition, he rejected Janssen’s arguments that the claims should have been barred by Pennsylvania’s two-year statute of limitations, finding that there was legitimate uncertainty about when the Plaintiffs became aware of the child’s injuries.

As a consequence, the jury verdict, which was initially $10.95 million before being increased by another $700,000 for delay damages, will stand, until the Superior Court takes up the case. The verdict is the largest of several costly awards absorbed by Janssen in the last year over Topamax—it was hit with a $3 million verdict in March and a $4 million verdict in October of last year.


Source: Law360.com

**Appeals Court Affirms $10 Million Verdict in Truck Case**

A Pennsylvania appeals court last month affirmed a $10.1 million jury verdict after finding that bifurcated compensatory and punitive damage proceedings in the case arising out of a serious trucking accident did not prejudice a Defendant who claimed the approach resulted in an inflated award. A three-judge Superior Court panel rejected arguments from Valvano Construction Inc. that the trial court’s decision to bifurcate proceedings in the case had essentially given a jury two opportunities to award punitive damages against the company.

The case involved a 2010 incident in which failed brakes on one of the company’s trucks caused a serious accident involving two other cars. The appeals court’s decision found that a $9.1 million award handed down by a jury in the compensatory damage phase of the trial in September 2012 was lower than estimates offered by experts for future medical expenses and lost wages. The court’s opinion said:

In light of the fact that the jury’s compensatory damages award was more modest than the estimates of appellants’ experts, we may presume that the jury did not inflate the award with punitive damages after being instructed on the specific nature of what their award should consider. Thus, the record does not support appellant’s contention that it was prejudiced by the decision to bifurcate.

Holly and Robert Kuchwara filed suit against Valvano and driver Theodus Williams in 2010, after they were involved in a rear-end collision when a brake failure sent a Valvano truck careening down a hill at more than 45 miles per hour. Holly Kuchwara sustained fractures to her leg, ankle and back and has had to endure multiple surgeries since the accident. In addition to lax maintenance and inspection records for the Valvano truck, Williams was operating the vehicle without a valid commercial driver’s license.

The Luzerne County trial court agreed to hold one proceeding to calculate compensatory damages. During that phase, the jury was to determine whether Williams and Valvano had acted with reckless indifference. After determining that the defendants had been recklessly indifferent, the trial court instructed the jury on calculating punitive damages in the case. The jury awarded punitive damage in an amount just more than $1 million. Delay damages totaling more than $386,000 were also added to the award.
Valvano claimed that a bifurcated approach that included a reckless indifference finding as part of the compensatory phase was highly prejudicial and created an inflated award that was tainted by punitive damages. Both Valvano and Williams, who launched a separate appeal of the damage award after he was found 20 percent liable for the incident, argued that witnesses had been impermissibly allowed to testify about a question of law regarding whether the Defendants’ conduct constituted reckless indifference.

But the appellate panel found that state rules of evidence allowed expert opinion testimony on the “ultimate issue” at the center of the proceeding. In the instant case, the court ruled that was the question put to the jury: whether the Defendants had acted with reckless indifference. The court’s decision, addressing that issue, said:

*Here, the trial court determined that because this case involved the operation of [the truck], opinion testimony was probative in determining the ultimate issue of whether the condition of Valvano’s truck and appellant’s conduct rose to the level of reckless indifference. In furtherance of this goal, the court required the witnesses to develop the factual bases for their opinions. Thus, the trial court did not abuse its discretion in permitting lay and expert witnesses … to opine on the ultimate issue.*

The Kuchwaras are represented by Joseph Quinn, Jr., of Hourigan Kluger & Quinn PC, a firm based in Scranton, Penn. He has done a very good job for his clients in this case.

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Of course the above language is the Preamble to the United States Constitution. It’s obvious that the writers of the document intended for “the people” to benefit in the future by what they had done. I don’t believe any of the authors of the Constitution intended for the document and the initial set of amendments to benefit only the powerful super-rich and not the people as a whole. In fact, I view the constitution as a protector of the rights of all people. The infamous Koch Brothers, as well as other plutocratic forces, are feverishly attempting to undermine our democracy under cover of supposed constitutional rights afforded them by the misguided rulings by the U.S. Supreme Court and specifically rulings like Citizens United and McCutcheon.

The group Public Citizen is working for passage of a constitutional amendment to overturn Citizens United and McCutcheon. It’s believed the U.S. Senate will likely vote on such an amendment later this term. Considering how folks around the U.S. questioned whether an amendment was even possible when Public Citizen first launched the campaign to win one just four years ago, this is a major milestone. Public Citizen says this is what it has to do in the weeks and months ahead:

- Massively scale up the nationwide grass-roots mobilization, which has already seen 16 states, 550 cities and towns, and 150 members of Congress join in calling for an amendment.
- Organize many more local and national groups to join the 120-plus that are already allied with public citizen in solving the problem of money in politics and in connecting that problem to other issues that impact people’s lives.
- Intensify its lobbying work in Washington D.C., so that the American people will know which senators are with them and which senators are with the dark money.
- Turn up the media outreach so that the public demand for an amendment will get more attention than it already has. This is very important.

The latest poll shows that eight out of 10 Americans oppose Citizens United. The American people want these anti-democratic Supreme Court rulings overturned. An opportunity exists in the U.S. Senate that hasn’t existed in a generation. If you agree that individual rights under the U.S. Constitution should override the power and influence of huge corporations and the super rich, join with Public Citizen in this fight. You can write the group at 1600 20th Street NW, Washington, D.C. 20009 or call them at 202-588-1000. Their email address is member@citizen.org. You can also tweet to @public_citizen.

**Climate Change Is Real And Will Continue To Affect American Lives**

It amazes me that a good number of intelligent people simply refuse to accept the reality of global warming or climate change. I don’t question the motives of most of them, but I do have to wonder what they base their opinions on. It’s very obvious that global warming is “rapidly turning America the beautiful into America the stormy, sneezy and dangerous.” According to a new federal scientific report, the assorted harms of climate change “are expected to become increasingly disruptive across the nation throughout this century and beyond.” The National Climate Assessment made this assessment in the report that was released last month. It’s emphasized in the report how warming and its all-too-wild weather are changing daily lives, even using the phrase “climate disruption” as another way of describing global warming. It’s rather shocking that more of our public officials haven’t become greatly concerned about what they have been seeing for the past several years.

Fortunately, the 840-page report says it’s not too late to prevent the worst of climate change. But further delays in taking the steps necessary to do this make the job much harder and eventually impossible. The White House is trying to educate the public as it tries to jump-start often stalled efforts to curb heat-trapping gases. However, if our nation and the world don’t change the way they use energy, “we’re still on the pathway to more damage and danger of the type that are described in great detail in the rest of this report,” said study co-author Henry Jacoby. This appears to be the most detailed and U.S.-focused scientific report on global warming.

Unfortunately, those in our society who rail against the reality of climate change will most likely not even take the time to read the report. Many of them will continue to take the “ostrich approach” and deny that climate change exists. Some will say that
even if it does exist, that it’s not affected by anything humans do. The report says:

Climate change, once considered an issue for a distant future, has moved firmly into the present. Corn producers in Iowa, oyster growers in Washington state and maple syrup producers in Vermont are all observing climate-related changes that are outside of recent experience.

The report looks at regional and state-level effects of global warming, compared with recent reports from the United Nations that lumped all of North America together. A draft of the report was released in January 2013. The final version was reviewed by more scientists, the National Academy of Science and 13 government agencies. It also had public comment. It’s written in a bit more simple language so people could realize “that there’s a new source of risk in their lives,” said study lead author Gary Yohe of Wesleyan University in Connecticut.

Even though the nation’s average temperature has risen by as much as 1.9 degrees since record keeping began in 1895, it’s in the big, wild weather where the average person feels climate change the most, said co-author Katharine Hayhoe, a Texas Tech University climate scientist. Dr. Hayhoe is correct when she says that extreme weather like droughts, storms and heat waves “hit us in the pocketbooks and can be seen by our own eyes.” If you have been around during the past few years, you know it’s happening a lot more often lately.

The report says the intensity, frequency and duration of the strongest Atlantic hurricanes have increased since the early 1980s, but it is still uncertain how much of that is from man-made warming. Winter storms have increased in frequency and intensity and shifted northward since the 1950s, it says. Also, heavy downpours are increasing—by 71 percent in the Northeast. Heat waves, such as those in Texas in 2011 and the Midwest in 2012, are projected to intensify nationwide. Droughts in the Southwest are expected to get stronger. Sea level has risen 8 inches since 1880 and is projected to rise between 1 foot and 4 feet by 2100.

Since January 2010, 43 of the lower 48 states have set at least one monthly record for heat. For example, California had its warmest January on record this year. In the past 51 months, states have set 80 monthly records for heat, 33 records for being too wet, 12 for lack of rain and just three for cold. This is according to an Associated Press analysis of federal weather records. Dr. Hayhoe, comparing America to a boxer, said, “We’re being hit hard. We’re holding steady, and we’re getting hit in the jaw. We’re starting to recover from one punch, and another punch comes.”

The report also says “climate change threatens human health and well-being in many ways.” Those include smoke-filled air from more wildfires, smoggy air from pollution, and more diseases from tainted food, water, mosquitoes and ticks. There is also more pollen because of warming weather and the effects of carbon dioxide on plants. Ragweed pollen season has lengthened by 24 days in the Minnesota-North Dakota region between 1995 and 2011, the report says. In other parts of the Midwest, the pollen season has gotten longer by anywhere from 11 days to 20 days.

The report points out that all this will come with a hefty cost. Flooding alone may cost $525 billion by the year 2100 in one of the worst-case scenarios, with $130 billion of that in Florida, according to the report. Already the droughts and heat waves of 2011 and 2012 added about $10 billion to farm costs, the report says. Billion-dollar weather disasters, according to the report, have hit everywhere across the nation. So this critically important question has to be asked: How much longer can we afford to ignore climate change? What do you say?

Source: thewire.al.com

**FEDERAL AGENCY FINDS PIPELINE SAFETY OVERSIGHT INADEQUATE**

The Transportation Department’s Office of Inspector General, a government watchdog, has found that the federal agency responsible for making sure states effectively oversee the safety of natural gas and other pipelines is failing to do its job. The report that contained this finding was released by the Inspector General on May 9. The report said that the federal effort is so riddled with weaknesses that it’s not possible to ensure states are enforcing pipeline safety. The federal Pipeline and Hazardous Materials Safety Administration (PHMSA), according to the report, isn’t making sure that key state inspectors are properly trained, that inspections are being conducted frequently enough and that inspections target the most risky pipelines.

Accident investigators had cited weak state and federal oversight as contributing factors in the gas pipeline explosion that killed eight people, injured 58 and destroyed a subdivision in a California suburb, south of San Francisco. The nation’s network of about 2.5 million miles of pipelines moves millions of gallons of hazardous liquids and 55 billion cubic feet of natural gas every day. It should be noted that 85 percent of these pipelines are under state authority. The report doesn’t address the safety administration’s oversight of interstate pipelines such as the proposed Keystone XL oil pipeline.

It appears from the report that, among the weaknesses, the safety administration is using an outdated formula to calculate the minimum number of inspectors states need. The report found that more inspectors may be needed to carry out new inspection methods and responsibilities since the formula was developed in the 1990s. More than 20 percent of the nation’s total gas distribution pipelines are more than 50 years old or composed of material such as cast iron or bare steel that are more susceptible to failure than newer pipelines made with more resilient materials.

The safety administration’s staffing formula also doesn’t take into account whether more personnel are needed to inspect these riskier pipelines, the report said. The agency also hasn’t set minimum qualifications for state inspectors who lead inspection teams, according to the report. In one state, for example, the report said an inspector with less than one year’s experience was allowed to lead inspections. Assistant Inspector General Jeffrey Guzzetti said in the report:

*Because it has not set minimum qualifications for state inspectors to lead standard inspections, PHMSA cannot be sure that state inspections cover all federal requirements and ensure pipeline operators maintain safety.*

The safety administration requires states to use 14 risk factors when deciding how to prioritize pipeline inspections, but the report says the PHMSA isn’t explicit on how the risk factors are supposed to be weighed. As a result, four of five states examined by the Inspector General’s office were simply scheduling inspections based on how long it had been since the previous inspection, ignoring other risk factors, the report said. The safety administration also doesn’t tell states how often pipelines must be inspected. Investigators found one state was allowing as long as eight years to lapse between reviews. It was pointed out by Mr. Guzzetti that, “Because of these oversight gaps, PHMSA cannot be sure that states detect and mitigate safety risks.”

PHMSA has six evaluators who annually certify 48 state agencies and conduct in-depth reviews every three years to ensure states are following federal guidelines, the report said. That is a recipe for disaster and, unfortunately, PHMSA provides about 80 percent of the funds states spend on pipeline safety, according to the report. It’s quite
obvious that some major changes need to be made in this important area of concern. That’s especially true because of the renewed interest in building more pipeline.

Common sense tells us that safety must be a top priority in the design, construction and operation of a pipeline. We can ill afford to fail to properly fund and staff PHMSA. Such a failure would be a tremendous mistake and also very costly.

Source: Claims Journal

**COMPANY DATA BREACH SAID TO NOW COST $3.5 MILLION ON AVERAGE**

The average cost of a corporate data breach increased 15 percent in the last year to $3.5 million, according to a recently released study. The study by the Ponemon Institute, which is located in Michigan, also found that the cost incurred for each lost or stolen record containing sensitive and confidential information increased more than nine percent to a consolidated average of $145.

Companies in the U.S. and Germany paid the most at $246 and $215 per compromised record, respectively. The study indicates that companies having a strong security posture were able to reduce the cost by as much as $14 per record. Consistent with Ponemon’s previous studies, the most common cause of a data breach is a malicious insider or criminal attack. The causes of data breaches vary by country. Human error and system failures can also cause data breaches.

The Ponemon Institute’s ninth annual *Cost of Data Breach Study: Global Analysis* tallied responses from 314 companies spanning 10 countries. The study is sponsored by IBM. Dr. Larry Ponemon, chairman and founder of Ponemon Institute, explaining the research’s goal, said:

*The goal of this research is to not just help companies understand the types of data breaches that could impact their business, but also the potential costs and how best to allocate resources to the prevention, detection and resolution of such an incident.*

This year’s Cost of Data Breach Study also provides guidance on the likelihood an organization will have a data breach. The following are among the study’s other key findings:

- **Root causes of data breaches differ among countries.** Countries in the Arabian region and Germany had more data breaches caused by malicious or criminal attacks. India had the most data breaches caused by a system glitch or business process failure. Human error was most often the cause in the UK and Brazil.
- **The appointment of a Chief Information Security Officer to lead the data breach incident response team reduced the cost of a breach by more than $6.**
- **The involvement of business continuity management reduced the cost of data breach by an average of almost $9 per record, the study found.**
- **The consequences of a data breach for a company can be very serious.** Kris Lovejoy, general manager, IBM Security Services Division, observed:

  Clearly, malicious insiders and criminal attacks are a growing concern for businesses, especially when we consider how persistent data has become in the age of cloud and mobility. A data breach can result in enormous damage to a business that goes way beyond the financials. At stake is customer loyalty and brand reputation.

  Companies in the study said that the greatest threats are malicious code and sustained probes. Companies estimate that they will be dealing with an average of 17 malicious codes each month and 12 sustained probes each month. Unauthorized access incidents have mainly stayed the same and companies estimate they will be dealing with an average of 10 such incidents each month. Only 38 percent of companies have a security strategy to protect their IT infrastructure. A higher percentage (45 percent) has a strategy to protect their information assets.

Source: Ponemon Institute

**LAWSUIT SAYS THAT THE NFL MASKED INJURIES WITH PAINKILLERS**

Retired players, including two former Chicago Bears star players Jim McMahon and Richard Dent, have filed suit accusing the National Football League (NFL) of using painkillers to mask injuries in a “culture of drug misuse.” This filing expands the litigation over the damage former athletes suffered during their playing days. While thousands of former NFL players have sued over concussions and other head injuries sustained on the field, this case filed May 20 in federal court in San Francisco represents a new strategy to seek damages for old injuries. Mark Conrad, director of the sports business program at Fordham University’s Gabelli School of Business, made that assessment. He added:

*It’s in one sense an injury-based lawsuit, but the theories behind it are quite different than the concussion lawsuits. Potentially you could have a lot of players in this case.*

The eight former players who brought the suit claim the NFL administered “cocktails of medications, including opioids, local anesthetics and anti-inflammatory drugs, with little regard for drug interactions or medical histories.” As has been widely reported, the NFL already faces lawsuits over head injuries. Claims by more than 5,000 ex-players that the league hid the link between traumatic head impacts and long-term brain injuries have been consolidated in federal court in Philadelphia. A judge in January refused to approve a $914 million settlement in those cases, saying not all players would be paid. More than 500 players have signed on to the painkiller suit, including some who are also suing over concussions.

The number of players covered by the complaint if it’s approved as a group lawsuit could be much more than 500 because the majority of NFL players are medicated while playing. The complaint seeks a court order blocking the NFL from medicating players so they can play with injuries, and requiring medical testing and monitoring of players with latent injuries and additions, as well as unspecified compensatory and punitive damages.

Mel Owens, who played for the Los Angeles Rams and is now a lawyer with Namanny Byrne & Owens, a firm located in Lake Forest, Calif., represents the Plaintiffs in this latest suit. Mel’s practice is focused on sports law for professional athletes.

Source: Claims Journal

**IX. THE CORPORATE WORLD**

**TAX HAVEN ABUSE COSTS THE AMERICAN PEOPLE BILLIONS**

I have believed for a long time that our federal tax code is badly in need of reform and revision. There are far too many ways for the rich and powerful to avoid paying their fair share of taxes and that must change. U.S. taxpayers would need to pay an average of $1,259 more a year to make up the
federal and state taxes lost to corporations and individuals sheltering money in overseas tax havens, according to a recent report. U.S. Public Interest Research Group (PIRG) said in the report released last month:

"Tax haven abusers benefit from America's markets, public infrastructure, educated workforce, security and rule of law—all supported in one way or another by tax dollars—but they avoid paying for these benefits. Instead, ordinary taxpayers end up picking up the tab, either in the form of higher taxes, cuts to public spending priorities, or increases to the federal debt."

All told, the U.S. loses $150 billion in federal revenue and another $34 billion in state revenue annually because of money parked away in tax havens, the Boston-based consumer advocacy group concluded. It should be noted that’s almost 5 percent of total federal revenue. The U.S. is projected to raise $3.032 trillion this year, up from $2.775 trillion for fiscal year 2013, according to the Congressional Budget Office. U.S. PIRG released the report as it tries to increase public awareness of offshore tax havens, according to a recent report. U.S. PIRG CEO Mike Durkin said:

"This is an important step toward increasing transparency over tax haven abuses. By shedding light on the realities of tax haven abuses, we hope to spark a national debate on how we can best protect the American public from the negative impact of these abuse."

In addition, the report notes that tax haven abuses are not only costly, but also illegal. Tax haven abusers are often subject to fines and penalties for their activities, which can amount to billions of dollars. For example, in 2012, the Internal Revenue Service (IRS) announced that it had reached a settlement with the Swiss bank UBS AG, which had helped U.S. taxpayers hide assets in tax havens. The settlement required UBS to pay $780 million in fines and penalties, and to cooperate with the IRS in identifying and recovering offshore accounts.

The report also highlights the role of multinational corporations in tax haven abuses. These companies often use tax havens to reduce their tax liability, sometimes by shifting profits to low-tax jurisdictions. The report notes that this behavior is not only unfair, but also harmful to the U.S. economy. By shifting profits offshore, these companies are able to avoid paying their fair share of taxes, which means that others must pick up the tab. For example, a study by the Economic Policy Institute found that multinational corporations avoided $102 billion in U.S. corporate income taxes in 2010, thanks in part to their use of tax havens.

The report also notes that tax haven abuses are not only a problem for the U.S., but also for other countries around the world. By leaking assets to tax havens, multinationals are able to avoid paying taxes in other countries as well, which can harm the global economy. For example, a report by the Organisation for Economic Co-operation and Development (OECD) found that multinational firms were able to use tax havens to reduce their tax liabilities in other countries by as much as 30 percent.

The report concludes with a call to action, urging policymakers to take steps to address tax haven abuses. This includes increasing transparency, strengthening tax laws, and enforcing them more effectively. The report also calls for increased international cooperation in the fight against tax haven abuses, which can help to ensure that these practices are not able to thrive.

"We need a comprehensive approach to tackle tax haven abuses, one that addresses the root causes of this problem," Durkin said. "This includes strengthening laws, increasing transparency, and enforcing these laws more effectively. We also need increased international cooperation to ensure that tax haven abuses are not able to thrive in other countries as well."
Frank Act whistleblower provisions also prohibit retaliation by employers against employees who provide the CFTC with information about possible violations, or who assist in any investigation or proceeding based on such information. To learn more about the CFTC’s Whistleblower Program and how to provide a tip, visit Consumer Protection at CFTC.gov.

Source: CFTC.gov

WHISTLEBLOWER SUITS TARGET FOR-PROFIT COLLEGES

According to recent reports, for-profit college operators continue to run afoul of federal regulations related to student recruitment, admission, retention and job placement. In May, for example, Pittsburgh based Education Management Corp. (EDMC) lost its bid to have claims dismissed that alleged the company obtained more than $1 billion in federal student aid since July 2003 under the false pretense that it was complying with the Higher Education Act of 1965’s ban on paying admissions personnel incentives to recruit new students. U.S. District Judge Terrence McVerry, in the Western District of Pennsylvania, denied EDMC’s motion for summary judgment, finding that while the defendant’s plan was compliant with federal regulations “as written,” it was not “as implemented.”

The federal government, 11 states, and the District of Columbia have intervened in the litigation, filed by a former admissions worker. The whistleblower alleges EDMC increased student enrollment from 4,500 in 2006 to 50,000 in 2011 by accepting all potential students who completed an application, regardless of high school grades or the quality of their written essay. EDMC’s receipt of federal funds increased from $656 million in 2003-04 to $2.578 billion in 2010-11. EDMC operates approximately 70 schools nationwide, including The Art Institutes, Agrosy University, Brown Mackie College, and South University. In 2006, EDMC was acquired by Goldman Sachs and Providence Equity Partners for $3.4 billion.

Lawyers in the Consumer Fraud Section at Beasley Allen continue to investigate whistleblower claims involving the misuse of federal funds in the for-profit education industry. We have learned that recruiters, admissions counselors and career services personnel are often in the best position to uncover such fraud. As pointed out above, successful whistleblowers are rewarded with a percentage of the recovery obtained on behalf of the government. For further information on this type litigation, contact Archie Grubb or Andrew Brashier, lawyers in the Consumer Fraud Section, at 800-898-2034 or by email at Archie.Grubb@beasleyallen.com, or Andrew.Brashier@beasleyallen.com.

Source: www.courthousenews.com

XI. PRODUCT LIABILITY UPDATE

A LOOK AT THE DANGERS OF VENT-FREE HEATERS

Vent-free heaters have grown in popularity over the years. This is primarily due to the ease of installation and because their designs offer freedom in home placement. That’s because no chimney, flue or hearth is needed. As a result, these units can be installed in any room in a home. Vent-free heaters also allow the homeowner to use natural gas or propane as an energy source resulting in savings in energy costs. But vent-free heaters do pose hazards such as carbon monoxide poisoning, burn injuries and home fires. When properly designed, these units can function as intended and not pose significant hazards to their owners and users. But when they aren’t properly designed, bad things can happen.

Most vent-free heater manufacturers design their products so that users, especially children, are not exposed to burn or fire hazards. Some vent-free manufacturers use glass fronts for their units without taking into account the hazards associated with the use of glass fronts. Glass, like any other material, can become extremely hot when in such close proximity to flames. These manufacturers failed to take this burn hazard into account and, as a result, many children have sustained serious burn injuries from touching the glass.

Even adults are exposed to burn hazards when the manufacturer fails to identify and eliminate burn hazards. Kendall Dunson, a lawyer at Beasley Allen, is investigating a case involving a vent-free unit that was professionally installed in a home. An adult renter sustained serious burn injuries when her nightgown was pulled into the flames. The woman suffered severe burns from her mid torso up to her head. Her head injuries resulted from her hair catching fire from her night gown. The woman’s home, and furniture inside the home, were also damaged by the fire.

Our client’s gown was pulled into the flames because of the inadequate guarding. Even though approximately 90 percent of the flame was properly guarded, this particular manufacturer decided not to guard the entire opening. Preliminary reports indicate 100 percent of the exposed flames could have been easily guarded by simply extending the existing mesh guard on the unit. The cost of extending the existing mesh guard would have been minimal. Since this particular manufacturer sold other vent-free heaters with complete flame guarding, the decision not to guard 100 percent of the flame on this particular unit is irresponsible and could not have been the result of a reasonable analysis to identify and eliminate a clear hazard.

While these units are appealing in terms of appearance and cost-savings benefits, be sure any unit purchased completely guards the flames and if glass is used to guard the flames ensure that the manufacturer has incorporated technology that prevents the glass from overheating to the point where it can burn a child or ignite furniture close by. Sensors are available to shut down the flame if unsafe levels are detected. This manufacturer had everything it needed to prevent a foreseeable injury but failed meet reasonable design standards. We will keep you updated on the progress of this litigation. If you need more information on this subject, contact Kendall Dunson, a lawyer in our firm’s Personal Injury/Products Liability Section, at 800-898-2034 or by email at Kendall.Dunson@beasleyallen.com.

NATIONAL TRAFFIC SAFETY BOARD TAKES A CLOSER LOOK AT TIRE SAFETY

The National Traffic Safety Board (NTSB) announced last month that it was going to begin a special investigation focused on tire safety. The NTSB claims it was prompted to investigate certain tire safety “issues” after learning of two tire failure-related wrecks in February of this year. One of the wrecks occurred in Centerville, La., when the left rear tire of a SUV failed causing a rollover wreck taking the lives of a mother and her three children. When the tire failed in that case, it was 10 years old.

One of the areas the NTSB is going to investigate deals with the effect of aging on tire durability and failure. According to The National Highway Traffic Safety Administration (NHTSA), more than 400 people are killed every year due to tire failures. Safety Research & Strategies, a well-respected consumer safety group, has determined that more than half of these fatalities result from age-related failures.

The dangers associated with aged tires have been recognized within the tire industry for almost 40 years. In fact, the tire indus-
try has known of the dangers posed by aged tires since the 1980s, when research groups from Europe documented an increase of tire failures after time. In this country, automobile and tire makers began warning of the dangers of aged tires in 2005 and distributed service bulletins to their dealers and tire service center networks recommending inspection and replacement at six and 10 years.

Nevertheless, in the last four to five years, tire companies have lobbied to defeat proposed legislation in eight states that would require inspection of tires at six years for “aging.” The primary driving force behind efforts to defeat aging legislation is the Rubber Manufacturers Association (RMA). The Association’s position is that a six-year limit for inspection is “an arbitrary date” not supported by any evidence. That is absolutely amazing when you consider that most of the tire makers making up the RMA, such as Bridgestone, Michelin and others, caution their own dealers to inspect tires after six years for safety, including signs of age.

Hopefully, the NTSB investigation will help unite the tire manufacturers and lead to an industry-supported tire service life. Only time will tell. In the meanwhile, lawyers in our firm continue to see cases involving deaths and serious injuries caused by “aged tires” causing rollover crashes. If you need more information on this subject, contact Rick Morrison, a lawyer in our firm’s Personal Injury/Products Liability Section, at 800-898-2034 or by email at Rick.Morrison@beasleyallen.com. Rick has successfully handled a number of cases involving aged tires.

**Hyundai America to Appeal $248 Million Verdict in Fatal Crash**

Hyundai Motor America says it will appeal a $248 million verdict awarded to the families of two boys killed in 2011 in a crash involving a 2005 Hyundai Tiburon the Plaintiffs contended was defective. Jurors in Lake County, Mont., returned the verdict on May 13, following a two-week trial. Tanner Olson, 14, and his 19-year-old cousin, Trevor Olson, were killed when the Tiburon they were riding in was involved in a crash. The car was being driven by Trevor Olson.

The jurors awarded the families of the two boys a total of approximately $8 million in damages for their losses. The jury found that Hyundai Motor Co., and its U.S. subsidiary, Hyundai Motor America, had acted with “actual malice.” The jurors then ordered Hyundai and its U.S. unit to pay an additional $240 million in punitive damages. The families alleged that a component of the Hyundai known as the steering knuckle was defective, and blamed it for causing the crash that killed both boys. It was alleged that the part spontaneously cracked, causing the Hyundai to swerve into another car. Hyundai maintained that it was not to blame. A woman in the other car involved in the crash died as well, but her death was not involved in the lawsuit.

A Hyundai spokesman, Chris Hosford, said the company will appeal the verdict. The case is Olson v. Hyundai Motor Co., Montana Twentieth Judicial District Court - Lake County. John E. Boyer and Mark S. Williams, both lawyers from Montana, represented the Plaintiffs in the case and they did a very good job.

Source: Reuters

**Hazards Relating to Zero-Turn Lawn Mowers**

The beginning of summer marks the start of many outdoor activities. Some that come to mind involve water, sun and fun. However, along with all the fun that summer brings with it, many outdoor chores must also not be forgotten. The smell of fresh cut lawns in the summer is almost as prevalent as the smell of outdoor grills. Unfortunately, the increased use of lawn mowers inevitably increases the number of accidents associated with the machines. Lawn mowers are powerful machines capable of severely injuring users and bystanders alike. There is no way to completely eliminate the hazards associated with a lawn mower. Even though many advances have made lawn mowers safer, there is still much more that can be done.

In 2010, 253,000 people were injured and treated for lawn mower related injuries. That is large number, but what is more alarming is that lawn mower injuries are not decreasing, but tend to show signs of increasing in recent years. Common injuries include cuts, amputations, impalement, burns, eye injuries, and countless other forms of traumatic injuries. Advances in mower safety technology have undoubtedly saved lives and prevented injuries. Many of these advances can be attributed to litigation.

Lawyers in our firm have handled cases involving mowers that lacked “kill switches” and “mow-in-reverse” functions. Riding mowers now come standard with both functions, largely due to successful litigation in the area. One safety concern that manufacturers continue to ignore in the riding lawn-mower section is loss of steering control rollover hazards. Successful litigation in the area by Plaintiff’s lawyers will likely be the catalyst for remedying this largely ignored hazard.

According to the Consumer Products Safety Commission (CPSC), an average of 90 deaths per year can be attributed to riding mowers during 2007-2009. According to the CPSC, the common pattern amongst these reported fatalities is loss of steering control of the mower, bucking the occupant off the machine, and rollover. Many of these injuries and deaths could have been prevented if the lawn tractor was equipped with proper rollover protective structures (ROPS). As you may know, ROPS systems are little more than roll bars and seatbelts.

The ROPS systems keep the occupant secured if a machine rolls over and protects against being trapped under the weight of the machine, or run over by the rotating blades. ROPS is standard on larger agricultural and industrial tractors, and has been for years. The standardization of ROPS on larger tractors has decreased the amount of rollover deaths amongst operators. Our firm’s case of Spivey vs. Kubato was directly responsible for that development. However, this necessary safety equipment is not mandatory on smaller riding lawn mowers.

A rollover can occur on any riding lawn mower, but these accidents are particularly prevalent amongst the popular “zero-turn” category of riding mowers. Most of the zero-turn riding mowers are driven and steered by large rear tires. The front tires are typically smaller, and serve no more function than acting as a pivoting caster. Zero turn mowers are wildly popular due to the efficiency, speed, and precision with which they can turn and maneuver. However, like most things in life, these positive qualities come with certain drawbacks. One such drawback that these mowers suffer from is lack of steering on inclines. Due to the design of the rear tire steering system, if a turn is attempted while either going up or down an incline, the machines tend to slide uncontrollably.

Alarming, it does not take a steep incline for the machines to exhibit this behavior. In fact, slopes as slight as 10 to 15 degrees have been shown to cause operators to lose most steering control. Rollovers are just one of many hazards that may come into play as a lawn mower slides uncontrollably. Many injuries and deaths are a result of occupants losing steering control of the zero-turn mowers and sliding into water and drowning.

Lawn mowers are dangerous machines and must be used with caution. Safety advances have certainly made most lawn mowers safer today than ever before; however, more safety features are necessary. The statistics are clear that nearly all lawn mower deaths are attributable to riding lawn mower rollovers. Unfortunately, statistics...
alone rarely yield results or change. With zero-turn mowers gaining popularity, a growing trend of riding-lawnmower deaths is likely, if not probable. ROPS must become standard equipment on all riding lawnmowers to slow this probable trend. If you need more information on this subject, contact Evan Allen, a lawyer in our firm's Personal Injury/Product Liability Section, at 800-898-2034 or by email at Evan.Allen@beasleyallen.com.

Sources: www.consumerreports.org; cpsc.gov; and orthoinfo.aaos.org

XII. MASS TORTS UPDATE

BABY POWDER CLASS ACTIONS FILED AGAINST JOHNSON & JOHNSON

Last month we reported on the lack of governmental oversight of the cosmetic industry and the intense efforts by those companies to keep it that way. I also pondered whether this played a role in talcum powder causing ovarian cancer. As stated, our law firm has been investigating and filing lawsuits on behalf of women who have been diagnosed with ovarian cancer following the use of talcum powder on the genital area.

Since last month our firm has also filed consumer class actions in California and Missouri against Johnson & Johnson alleging that its baby powder products significantly increase the risk of ovarian cancer and that the company continues to fail in disclosing this to the public, all the while making money off of an unknowing public. Indeed, we have found that many women have bought and used talcum powder for decades and believed it to be safe.

But the fact is that studies have shown talcum powder increases the risk of ovarian cancer for those women who use it on the genital area, and the only warnings provided on the label tell consumers to keep the powder away from eyes, avoid inhalation and only use it externally. As a result of these misrepresentations and omissions, many have purchased a product that is potentially lethal.

These particular class actions are not filed on behalf of anyone who suffered personal injury as a result of the use of talcum powder; however, we are also investigating many individual cases of personal injury. We have found that many women have taken the advice of the company to use their talcum products on a daily basis. While the label says it is safe for use on women as well as babies, the fact is that Johnson & Johnson has known since at least 1982 of studies showing that women who used talcum powder on the genital area had a higher risk of ovarian cancer. In fact, a Harvard doctor, Daniel Cramer, M.D., Sc.D., authored one such study and was contacted by a Johnson & Johnson doctor in 1982. At that time, Dr. Cramer told the company that it should add a warning label to the bottle.

So far, only one personal injury case has gone to trial. The jury in that case found that talcum powder caused Deane Berg's ovarian cancer and that Johnson & Johnson failed to warn of the risk. Allen Smith, Tim Porter and Patrick Malouf, lawyers from Jackson, Miss., did an excellent job of working up and trying that case. They have been working for the past six years to bring this hazard to the attention of the public. We at Beasley Allen were honored when these lawyers reached out to us after the Berg trial and invited our firm to join them in prosecuting these cases. We are glad to be able to help in the quest to expose this public hazard and the Johnson & Johnson cover-up.

If you have any questions regarding the personal injury cases our firm is handling, contact Ted Meadows, a lawyer in the firm's Mass Torts Section, at Ted.Meadows@beasleyallen.com. Ted is the lead lawyer in this litigation for our firm. If you would like further information about the class action cases on this subject we are handling, contact Dee Miles, who heads up the firm's Consumer Fraud Section, at Dee.Miles@beasleyallen.com. You may also reach these lawyers by phone at 800-898-2034.

HUNDREDS OF CASES BEING PREPARED FOR TRIAL IN THE TRANSVAGINAL MESH LITIGATION

In recent weeks, U.S. District Judge Joseph Goodwin has ordered discovery to get started in hundreds of cases involving transvaginal mesh products. Judge Goodwin presides over federal multidistrict litigations (MDLs) against Johnson & Johnson, C.R. Bard, Inc., Boston Scientific Corporation, American Medical Systems, Coloplast Corporation, Cook Medical, Inc., and Neomedic International. Judge Goodwin ordered that discovery commence in 200 cases pending against C.R. Bard, Inc. and another 200 cases pending against Boston Scientific Corporation. These cases involve claims related to transvaginal mesh products used in the treatment of both pelvic organ prolapse and stress urinary incontinence.

Judge Goodwin has also ordered trials this fall in cases involving claims against Boston Scientific Corporation. In September, the claims of several Plaintiffs involving the Pinnacle, a pelvic organ prolapse product, will be tried in a consolidated proceeding. Similarly, in October, several cases involving the Obtryx, a stress urinary incontinence product, will be tried. Both of these trials will take place in the Southern District of Florida. A trial involving Johnson and Johnson's TVT-O product is set to be tried before Judge Goodwin in August of this year. The TVT-O trial will take place in the Southern District of West Virginia. In addition to cases set for trial in federal court before Judge Goodwin, numerous cases are set for trial in state courts around the country.

In another significant development, medical device manufacturer Endo International PLC agreed to an $830 million settlement to resolve legal claims from women injured by the company's transvaginal mesh devices. The settlement is subject to several conditions. But, if approved, it will resolve about 20,000 legal claims. Endo International is the parent company of American Medical Systems. American Medical Systems manufactured and marketed numerous transvaginal mesh devices used in the treatment of pelvic organ prolapse and stress urinary incontinence, including the Apogee and Perigee products, which were used to treat prolapse and are no longer being marketed. It should be noted that American Medical Systems' stress urinary incontinence devices, Monarc and Sparc, remain on the market.

Thousands of women have experienced life-altering injuries as a result of these defec-tively designed mesh implants. It's good to see that Endo is beginning to accept responsibility for harm done by its products. Hopefully, other manufacturers will take similar steps soon but, until that day, lawyers in our firm remain resolute in their commitment to prosecute the claims of thousands of women who have been needlessly injured by these products.

It should be noted that transvaginal mesh devices were not tested in patients prior to their being approved for use. Instead, they were fast-tracked using a process whereby approval for new devices deemed “moderate risk” is granted if similar products are already on the market. However, in the face of rising reports of serious injuries linked to the devices, the FDA in late April proposed stricter regulation for the surgical mesh. The FDA proposed upgrading the mesh to a “high risk” status, which would require further pre-market testing for future transvaginal mesh products to prove safety and efficacy before approval is granted.

Thousands of women have filed claims alleging they suffered injuries after being implanted with transvaginal mesh. Transvag-
inal mesh is used to repair conditions such as pelvic organ prolapse (POP) and stress urinary incontinence (SUI). The mesh is implanted through the vagina and is used to shore up pelvic organs that have become displaced due to age, childbirth, hysterectomy or obesity. The most common problems with transvaginal mesh include erosion into surrounding tissue, chronic pain, painful intercourse, and infection. It can take numerous surgeries to remove the mesh and, even then, a full recovery may not be possible.

If you need more information on this litigation, contact Leigh O’Dell, a lawyer in our firm’s Mass Torts Section, at 800-898-2034 or by email at Leigh.Odell@beasleyallen.com. Leigh is serving on the Plaintiffs Steering Committee for the multidistrict litigations and she is the lead lawyer at Beasley Allen for these cases.

J&J UNIT FACES FIRST MORCELLATOR SUIT SINCE FDA WARNING

A lawsuit was filed last month in a New York federal court against Ethicon Endo-Surgery Inc., a Johnson & Johnson unit, over its morcellator product. This was the first suit involving this product, which is used in a now controversial uterine fibroid removal procedure. The U.S. Food and Drug Administration (FDA) has warned that use of this product could spread cancerous tissue outside of the uterus. The suit, filed in New York federal court, claimed the company did not adequately test its Morcelex product for potentially dangerous side effects. Plaintiffs Brenda Leuzzi and George Leuzzi, who filed the suit, claim that Brenda was diagnosed with cancer after undergoing a robot-assisted hysterectomy with morcellation in 2012.

For those who don’t already know, Laparoscopic power morcellation is a technique used to treat mostly non-cancerous fibroids.

The Plaintiff claims were based on negligence, strict product liability and breach of express warranty. Ethicon made a decision after the FDA warning to suspend sales of its morcellation devices around the world, saying it was awaiting more guidance from the agency. The Plaintiffs are represented by David B. Krangle and Andres F. Alonso, who are with Alonso Krangle, a firm with offices in both New York and New Jersey. They did a very good job for the Plaintiffs.

Source: Law360.com

FDA ANNOUNCES NEW FAST-TRACK APPROVAL FOR MEDICAL DEVICES

The U.S. Food and Drug Administration (FDA) recently announced a new program to speed up development and approval of medical devices. In the early 1990s, Congress passed the Prescription Drug User Fee Act (PDUFA) intending to speed up the approval of Pharmaceutical drugs. Then in the late 1990s, we began to see the fast-tracked drugs pulled from the market and previously unreported adverse events from taking the drugs. Many patients were injured when adverse events were discovered after marketing began to the general public.

The new device program will be known as Expedited Access PMA (EAP)—the acronym refers to premarket approval. To be eligible, devices will have to be for the treatment or diagnosis of a serious condition and address some sort of unmet medical need. The same “serious” definition was used in the early 1990s PDUFA legislation, adding to the existing “life threatening” definition. Thus, all drugs treating any so-called “serious” condition were entitled to be fast tracked. That proved to be a big mistake by Congress—opening the flood gates for new drugs—and Big Pharma took full advantage of it.

As part of the EAP, a device manufacturer would be expected to create a so-called data development plan that outlines all the types of testing to be performed and whether the tests will take place before or after approval. A key factor in getting the medical device to market sooner is allowing clearance based on a “reasonable assurance” of safety and effectiveness, and then relying on post-approval testing to confirm those positive attributes. It sounds like the public will be used as Guinea pigs in the post-approval process described.

When a medical device is approved through the older FDA process referred to as “PMA,” the manufacturer is given immunity from lawsuits if the product injures or kills someone. A manufacturer of a medical device may decide to manufacture and sell an already approved product. This device may follow a less restrictive process called the 510(k) procedure. If a product obtains FDA clearance through a 510(k) process, lawsuits against manufacturers are not preempted.

Approval through this new EAP process should not preempt lawsuits when members of the unsuspecting and innocent public are injured or killed. Hopefully, from a safety and public policy perspective, there will be no preemption allowed. If post-approval adverse events or studies call safety or effectiveness into question, the FDA is empowered to withdraw a product’s clearance. It’s likely we will see devices approved through the EAP process harm patients who may then have no legal recourse. Let’s hope this new approval method does not lead to either of those outcomes. If you need more information on the subject, contact Frank Woodson, a lawyer in our firm’s Mass Torts Section, at 800-898-2034 or by email at Frank.Woodson@beasleyallen.com.

Source: Law 360

MEDTRONIC TO PAY $22 MILLION TO SETTLE SOME BONE GRAFT SUITS

Medtronic Inc. has agreed to pay $22 million to settle some product liability suits over its Infuse product. Infuse is a bone graft substitute that Medtronic promoted for off-label uses that caused the Plaintiffs’ injuries. The Minneapolis-based company said the settlement will resolve the claims of roughly 950 individual Plaintiffs. There are about 750 cases brought by more than 1,000 Plaintiffs parties. Most of these cases are still in their early stages.

The California Supreme Court last week granted Medtronic’s petition for review in a personal injury suit over Infuse after a state appeals court revived the suit by finding it was not preempted by the federal Food, Drug and Cosmetic Act. The California state case was brought by John Coleman. He targeted Infuse, an implantable device that is used to strengthen vertebral disks. Infuse is only approved by the U.S. Food and Drug Administration (FDA) to be inserted by way of a surgical incision on the patient’s abdomen. The Coleman suit is not covered by the recent settlement announced last month.

Source: Law360.com
The trustee of bankrupt New England Compounding Pharmacy Inc. (NECC) and others have concluded the $100 million settlement with victims of contaminated steroid injections that led to a fatal 2012 meningitis outbreak. This settlement resolves class claims filed against the products’ compounder. Lawyers representing the committee said the victims could be receiving compensation as early as next year. More compensation will also come from other companies that contributed to the victims’ losses. The settlement will require court approval.

This settlement had to overcome a number of obstacles. Lots of folks were hurt by the conduct of the compounding pharmacy. Kimberly Dougherty of Janet Jenner & Suggs, counsel to the Plaintiffs steering committee, had this to say about the settlement:

“There are hundreds of victims and their families feeling some relief today, even though grief for many is still fresh. This tragedy claimed the lives of mothers, fathers, spouses, grandparents; no amount of money is going to make these losses easier to bear.”

The $100 million settlement is the most recent development in the multidistrict litigation concerning the tainted injections that ultimately killed 64 people and injured more than 750 in 20 states. Under the terms of the settlement, the New England Compounding Center owners will contribute more than $60 million to the settlement. Insurance companies representing the NECC will pay more than $25 million. An additional $9 million will be paid when the sale of a related company is completed. All of the lawyers who worked for the victims in this litigation did very good work for their clients.

Source: Law360.com

**JURY SAYS SAMSUNG AND APPLE INFRINGED ON SMARTPHONE PATENTS**

A jury ruled last month that Samsung infringed Apple smartphone patents and awarded $120 million in damages. The verdict in the latest lawsuit involving the two tech giants came in federal court in San Jose. The jury also ruled that Apple infringed Samsung patents and awarded $158,000 in damages. Apple Inc. had sought $2.2 billion after accusing Samsung Electronics Co. of infringing five of its patents covering functions such as slide-to-lock, universal searching, quick linking, automatic word correction and background syncing. Samsung had sought $6 million claiming that Apple had infringed two of its smartphone patents related to camera use and video transmission.

The verdict marked the latest intellectual property battle between the world’s top two smartphone makers. It appears that Apple and Samsung have sued each other in courts and trade offices around the world. Two years ago, a separate jury ordered Samsung to pay Apple $930 million after finding it had used Apple technology to create older generation devices. Samsung is appealing that order.

The lawsuits were filed as Apple and Samsung are locked in a bitter struggle for dominance of the $330 billion worldwide smartphone market. Samsung has become the leader of the sector with a 31 percent share after being an also-ran with just 5 percent in 2007. Apple, meanwhile, has seen its market share slip to about 15 percent from a high of 27 percent three years ago.

During the lengthy trial that ended with the verdict, Apple argued that many of the key functions and vital features of Samsung phones were invented by Apple. Samsung countered that its phones operate on the Google Android software system and that any legal complaint Apple has is not with them, but with the search giant. For that reason, much of the testimony focused on Google. Even though the search giant wasn’t a party to the case, Samsung argued in court that Google and its Android software were the real targets of Apple.

It was reported that more than 70 percent of smartphones run on Android, a mobile operating system that Google Inc. has given out for free to Samsung and other phone makers. Google entered the smartphone market while its then-CEO Eric Schmidt was on Apple’s board. Obviously, that move didn’t sit well with Apple co-founder Steve Jobs. He was said to consider Android to be a blatant rip-off of iPhone innovations. After removing Schmidt from Apple’s board, reportedly, Jobs vowed that Apple would resort to “thermonuclear war” to destroy Android and its allies. During the recent trial, lawyers for Samsung produced an email from Jobs sent to executives in 2010 urging them to wage a “holy war” against Android in 2011.

Source: Claims Journal

**HONEYWELL FILES $20 MILLION LAWSUIT OVER SHODDY ENGINE PARTS**

Honeywell International Inc. has filed a suit against aerospace contractor Moog Inc. The suit seeks $20 million in damages for repair and replacement costs for providing aircraft engine parts that did not perform as promised. Honeywell’s suit accuses Moog of breaking a supply contract by providing defective inlet guide vane actuators, or IGVs, that contained unapproved seal materials. The parts were then used by Honeywell as a component for engines called auxiliary power units, or APUs, that were installed into aircraft to provide power while they are on the ground, according to the Arizona federal suit. It was alleged in the complaint:

Moog has breached, and continues to breach, its contractual obligation to meet specified requirements. To date, Honeywell has incurred significant damages in payments to Moog for repairs and replacements that Moog is contractually obligated to make.

Honeywell, which contracted with Moog to obtain IGVs that met certain specifications, claims that Moog failed to inform Honeywell that its parts supplier changed materials for manufacturing seals that Moog later used to manufacture the IGVs.

Under the terms of the contract, Moog was precluded from substituting new materials or making any design or configuration changes to the IGVs without Honeywell’s knowledge and approval. Any such changes by Moog, including the use of different seal material, constituted a breach of the agreement, Honeywell says. After delivery, the IGVs supplied by Moog for Honeywell’s APUs began failing, the suit claims. An investigation as to the cause of the failures revealed that the unapproved seal material was the root cause, according to the complaint.

The problems with the seal material, according to Honeywell, were not apparent during the initial testing phase of the IGVs because the unapproved seal material had not yet been substituted in place of the original material, which met the contract’s procurement specifications. Specifications for the IGVs included requirements that they perform within several specified temperature ranges, according to the complaint.

Honeywell returned the faulty IGVs to Moog for repair or replacement as specified in their contract. But Moog allegedly ignored this contractual obligation and tried to force Honeywell to pay for the repairs. Through December 2013, Honeywell has incurred approximately $21.4 million in payments to
Moog to conduct repairs and overhauls that Moog is contractually required to cover, including about $910,000 in costs associated with investigating and mitigating the failures, the suit says.

Additionally, Honeywell alleges that Moog has flouted agreed-upon turnaround times that the company has to make repairs to defective IGVAs—delays that Honeywell said harms the integrity of the engine components and forces Honeywell to perform more expensive overhauls of the entire APU. At $4,400 per overhaul, Honeywell claims that delays have cost it $4.6 million in excess fees for work not associated with the defective seal modifications “that should have been repairs but for Moog’s failure to comply with repair turnaround times.”

Some repairs and overhauls that were covered by two-year warranties provided by Moog were also charged to Honeywell without Moog providing warranty credits, which would amount to an additional $3 million in costs incurred, Honeywell says. Under the terms of the contract, Moog guaranteed IGV reliability of 60,000 hours mean time between failures, but the units haven’t met that threshold, according to the complaint. The suit also names subsidiary Moog Inc. Aircraft Group as a defendant.

Honeywell wants a jury trial for its case. The company is seeking damages, pre- and post-judgment interest, and attorneys’ fees. Honeywell is represented by Dawn L. Dauphine and David B. Rosenbaum, who are with the Phoenix, Ariz.-based firm Osborn Maledon. The case was filed in the U.S. District Court for the District of Arizona.

Source: Law360.com

XIV.
AN UPDATE ON SECURITIES LITIGATION

CAN THE GOVERNMENT KEEP UP WITH HIGH-FREQUENCY TRADING?

As concern over High-Frequency Trading (HFT) increased internationally, the European Union (EU) voted to approve new trading regulations on April 15, 2014, that are intended to target HFT. “With these rules,” according to the EU financial services chief Michel Barnier, “the EU is putting in place one of the strictest set of regulations for high-frequency trading in the world.” Although he acknowledged that HFT may bring some benefits, Mr. Barnier expressed concern that “we need to make sure [HFT] doesn’t cause instability, and isn’t a source of market abuse.” In the United States, however, KBW, the financial services boutique, predicts that Congress is not likely to take any legislative action to curb HFTs. Instead, the Securities and Exchange Commission (SEC) is expected to deliberately and methodically review HFT and could introduce pilot programs and increased disclosure requirements.

Unlike KBW, Scott O’Malia, a Republican commissioner, is not so optimistic about the SEC and the U.S. Commodities Futures Trading Commission (CFTC) abilities. He says that the CFTC is not keeping up with high-speed derivatives trading and needs to invest in tools to detect manipulative and disruptive practices. In 2012, the SEC spent $2.5 million on a surveillance system named Midas (Market Information Data Analytics System) that collects information from the 13 public exchanges in the United States. Essentially, the SEC has the same view of the market that speed traders have. Around 30 percent of trades, however, do not occur on the public exchanges, meaning the SEC does not view them. Gregg Berman, one of the SEC’s top advisers on HFT and other elements of computerized markets, disagrees. His reasoning, however, is that Midas collects price data from all U.S. exchanges. Midas, then, at least means the SEC is not ignorant of the practices.

Along those same lines, when seeking confirmation as chair of the SEC in March 2013, Mary Jo White told lawmakers that understanding HFT’s impact on the stock market would be a “very, very high priority.” More than a year later and nothing has changed, leaving many to wonder when and if new regulations are forthcoming. The SEC states that it is looking into HFT to determine whether there are any insider trading violations, but has taken no steps to otherwise curb the practices. That is inexcusable.

Thus far, the closest the SEC has come has been a $4.5 million settlement with the New York Stock Exchange and two affiliated exchanges. That involved their failure to comply with the responsibilities of self-regulatory organizations (SROs) to conduct their business operations in accordance with Commission-approved exchange rules and the federal securities laws. Notably, however, the charges dealt mostly with technicalities (reporting rule changes to the SEC). On the bright side, one charge was for co-location fees (a practice discussed in an earlier article), but it again related to the absence of a rule on point, not that co-location was a fraudulent or unfair business activity.

Alternatively, and also according to the report issued by KBW mentioned above, “the most probable near-term action against HFT would come from the state Attorney General offices, most likely the NY AG, and would be targeted at specific market participants rather than the broader industry.” As we discussed in an earlier article, the NY Attorney General is already looking into HFT, as is the SEC and the FBI. Still, until there are some regulatory or legislative changes, it looks like the investing public is on its own. If you need more information on this subject contact Rebecca Gilliland, a lawyer in our firm’s Consumer Fraud Section, at 800-898-2034 or by email at Rebecca.Gilliland@beasleyallen.com.

Sources: www.businessweek.com and www.sec.gov

WELL-KNOWN SEASONED ISSUER DISQUALIFICATION DOES NOT APPLY TO BIG BANKS

In the securities world, being a Well-Known Seasoned Issuer (WKSI) clearly has certain advantages with the Securities and Exchange Commission (SEC). If a firm meets the requirements to gain WKSI status, one major benefit is reduced SEC oversight. For example, the company qualifies for automatic shelf registrations, which allow companies to raise money immediately from securities offerings without having to wait for the SEC to review the offering documents. WKSI status should be a reward. Only those meeting the requirements and that have “good behavior” are supposed to be able to avail themselves of the benefits. In fact, under federal securities laws and regulations, a felony criminal conviction or violation of civil anti-fraud laws results in an automatic loss of WKSI status. At least, that’s the way it’s supposed to work.

Many of our readers may recall the London Interbank Offered Rate (LIBOR) scandal in which numerous banks pleaded guilty to a scheme to manipulate interest rates. As part of that scandal, the Royal Bank of Scotland Group, plc (RBS) pleaded guilty to manipulating the LIBOR and felony wire fraud. RBS and its subsidiaries paid criminal penalties of approximately $612 million for the part it played in the scheme. Those criminal pleas should also result in an automatic denial of WKSI status, but as Commissioner Kara Stein noted in her dissent to a recent decision it has become commonplace for the SEC to grant waivers of the disqualification. That’s rather difficult to understand or justify.

In a 3-2 decision on April 25, 2014, the SEC granted RBS a waiver, allowing RBS to main-
tained WSKI status. According to Commissioner Stein, the decision to grant the waiver “rests largely upon the notion that the triggering conduct is insignificant when considered in the context of a large financial institution with global operations.” This reasoning ultimately led the Commissioner to note:

I fear that the Commission’s action to waive our own automatic disqualification provisions arising from RBS’s criminal misconduct may have enshrined our new police—that some firms are just too big to bar.

Commissioner Stein backed up her fear by providing some very surprising statistics:

• Some large firms have received more than a dozen waivers of some sort or another;
• One large firm has received 22 different waivers in 10 years and still makes the argument that it “has a strong record of compliance with federal securities laws;”
• In 2013 Congress adopted a “bad actor” provision for Rule 506, but the SEC has already granted five waivers—including one to RBS;
• Since 2010, the SEC has granted at least 30 WSKI waivers—to large financial institutions and broker-dealers. In many cases, the issuers are receiving their second, third, and even fourth WSKI waiver in less than four years.

It should be noted, however, that RBS is not the only large financial institution to be granted such a waiver. Others include Nomura Co., Fifth Third Bancorp, UBS AG, JP Morgan Chase & Co., Wells Fargo & Co., Morgan Stanley, and Credit Suisse AG. These appear on a list found on the SEC’s website. Why does all of this matter? In sum, and as Commissioner Stein concluded:

This should be simple. We have a rule that confers a special benefit to issuers that have a good track record. And we have a rule that calls for automatically rescinding that benefit when the issuer misbehaves.

Instead of following those simple rules, the SEC opened the door to make its own laws and regulations unenforceable. As Columbia Law Professor John Coffee observed:

At a time when the rest of the federal government is beginning to get tough on banks that commit crimes, the SEC is in effect saying that it will not let a little thing like a federal felony conviction inconvenience a major bank.

The waiver is tantamount to “two different systems of justice—one for everyone but banks and another for banks.” If you need more information on this subject contact Rebecca Gilliland, a lawyer in our firm’s Consumer Fraud Section, at 800-898-2034 or by email at Rebecca.Gilliland@beasleyallen.com.

Sources: Corporate Crime Reporter and www.sec.gov.

**XV. INSURANCE AND FINANCE UPDATE**

**REGIONS BANK WILL PAY ABOUT $10 MILLION FOR INTEREST RATE SWAP FRAUD**

An arbitration panel has ordered Regions Bank to pay nearly $10 million to the Baldwin County Sewer Service. The award was for Regions defrauding the company with an interest rate swap scheme. After a week-long trial in January, the arbitration panel found the Birmingham, Ala.,-based bank misrepresented the borrower’s obligations and failed to disclose risks related to a series of complex interest rate swaps.

The sewer company was advised by Regions Bank employees in 2005 and 2007 about purchasing interest rate swaps. Regions backed around $43 million in bonds sold by Baldwin County Sewer in 2002 and 2007, “swapping” variable rate loans for fixed rate loans. The arbitration panel determined that Regions misled the sewer company representatives into believing the interest rates on the bonds it bought were tied to LIBOR—the London Interbank Offered Rate—used to set a benchmark for variable rate loans. However, the loans were in fact tied to Regions’ guarantee of the bonds.

If the variable rate the sewer company paid bondholders and the variable rate it received based on LIBOR were equal, this would essentially give Baldwin County Sewer a fixed interest rate. But because the interest rates were instead tied directly to Regions’ guarantee, when the financial bubble burst in 2008 and Regions’ credit rating suffered, the interest rates “skewed far apart.” This left Baldwin County Sewer liable for the difference between what they paid and what they owed. In fact, the sewer company’s interest rate nearly doubled as a result of the financial collapse.

The arbitration panel ordered Regions to refund $7.4 million paid by Baldwin County Sewer Service as a result of the fraudulent agreement, and to terminate the agreements, which are worth about another $2.5 million. This brings the total of the decision to close to $10 million. The case is believed to be one of the first cases in the country where a bank has been held liable for fraud in connection with the sale of an interest rate swap.

Baldwin County Sewer Service was represented in the arbitration by Billy Bonner and Skip Pinkbokher, lawyers with the Mobile-based law firm of Cunningham Bounds. These lawyers did an excellent job for their client in this matter, getting a tremendous result.

Sources: al.com, MarketWatch

**TARGET CEO RESIGNS AS DATA BREACH FALLOUT CONTINUES**

Nearly five months after Target revealed a huge pre-Christmas security breach in which hackers stole millions of customers’ credit and debit card records, Target’s CEO has resigned. Greg Steinhaefel, who was also Target’s president and chairman, has become the first CEO of a major corporation to lose his job over the breach of customer data. Steinhaefel, a 35-year veteran of the company and chief executive since 2008, also resigned from Target’s board of directors on May 5. Hopefully, the departure of Steinhaefel means the company is trying to start with a clean slate as it wrestles with the fallout of the data breach. The company’s sales, profit and stock price have all suffered since the breach was disclosed.

Steinhaefel’s departure comes two months after Target announced the resignation of Chief Information Officer Beth Jacobs and outlined a series of changes it was making to overhaul its security systems and its security department. In late April, Target announced that next year Master Card Inc., will provide branded credit and debit cards with a more secure chip and PIN technology. It should be noted that chip and PIN technology has been used in Europe for more than a decade.

Target’s Chief Financial Officer John Mulligan has been named interim president and CEO. Steinhaefel faced increasing pressure since it was revealed on December 19 that the data breach had compromised 40 million credit and debit card accounts between November 27 and December 15, 2013. Then on January 10, 2014, Target announced that hackers also stole personal information—including names, phone numbers, email addresses and mailing addresses—belonging to nearly 70 million Target customers.

Sources: al.com, MarketWatch

**www.BeasleyAllen.com**
When the dust finally settles, Target’s breach may eclipse the largest known data theft at a U.S. retailer, one disclosed in 2007 at the parent company of TJ Maxx that affected 90 million records. Interestingly, the TJ Maxx data breach did not directly lead to the ouster of that company’s CEO. If you need more information on the Target 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. Larry, along with Dee Miles, the Section Head, are handling this litigation for the firm. Dee, as will be mentioned in another part of this issue, has received an important appointment in the Target litigation MDL.

Sources: www.huffingtonpost.com; www.ap.org.

XVI.
HEALTH ISSUES UPDATE

LIQUID NICOTINE FROM E-CIGARETTES LEADS TO POISONINGS WHILE FDA REGULATION REMAINS WEAK

The number of calls to poison centers regarding e-cigarette liquids containing nicotine has increased dramatically in recent years from just one a month in 2010 to 215 a month by April 2014, according to the Centers for Disease Control and Prevention (CDC). According to the CDC, more than 50 percent of calls to poison centers involved children younger than 6 years old; about 42 percent of the calls involved people 20 years of age and older. However, the CDC says the total number of cases is likely higher, as not all incidents of poisoning are reported.

E-cigarettes, or electronic cigarettes, are battery-operated devices designed to simulate cigarette smoking. Users suck on the device, which activates a heating element inside that vaporizes a liquid solution that users inhale. The liquids come in a variety of flavors, most of which contain nicotine. The devices have increased in popularity in recent years, particularly because they are considered by some proponents to be a safer alternative to cigarette smoking because they do not contain tar.

But a new report indicates that increasing numbers of U.S. teens may be using e-cigarettes for recreational purposes. The cigarettes are battery operated and are designed to mimic the look and feel of a real cigarette. Instead of tobacco smoke, however, e-cigarettes deliver a vapor containing nicotine, flavorings, and other chemicals.

The CDC noted E-cigarette use among U.S. middle- and high-school teens doubled in 2012 from the previous year, indicating that many young people could be getting set up for a lifelong addiction to nicotine. The CDC reports that 10 percent of the high school students and 2.7 percent of middle school students it surveyed used e-cigarettes in 2012, up from 4.7 percent and 1.4 percent, respectively, in 2011. The CDC estimated that nearly 1.8 million middle- and high-school students tried e-cigarettes for the first time in 2012. CDC Director Tom Frieden observed:

The increased use of e-cigarettes by teens is deeply troubling. Nicotine is a highly addictive drug. Many teens who start with e-cigarettes may be condemned to struggling with a lifelong addiction to nicotine and conventional cigarettes.

Currently, marketing campaigns by e-cigarette manufacturers such as Blu, which owns 40 percent of the market, show no signs of slowing down. Ad spending among e-cigarette makers grew 72 percent from 2011 to 2012, according to a Citibank marketing report. Aggressive marketing campaigns pitch e-cigarettes in flavors that taste like ice cream, such as “cherry crush” and “vivid vanilla.” Sales of e-cigarettes topped $1.5 billion in 2013. It’s quite obvious the “market” these ads are going after and that’s a very sad commentary.

Nicotine is a drug, and in its concentrated liquid form, poison experts warn it is also significantly toxic, even in small doses. E-cigarettes, which are not required to be childproof, feature flavors like spearmint, banana and bubble gum, making them appealing to small children. Gaylord Lopez, director of the Georgia poison center, had this to say:

What’s attractive to kids: It’s the smell. It’s the scent. It’s the color. A kid’s not going to know the difference between a poison and something they can drink.

Poisonings can occur when liquid nicotine is inhaled or absorbed through the skin or eyes. Poison control centers have even received calls from adults who spilled e-cigarette nicotine on themselves while filling up the devices. Others have been exposed to the liquid when the e-cigarette cartridge or refill bottles break. Adverse effect from e-cigarettes reported included vomiting, nausea and eye irritation. Lopez said:

You can start to feel sick in as little as four to five minutes. The fumes themselves can be poisonous, and if we inhale them for long enough we’re going to get a little sick to our stomach.

Under a 2009 law, the Food and Drug Administration (FDA) was given authority to oversee regulation of cigarettes, smokeless tobacco and roll-your-own tobacco. The agency was also given the authority to regulate other tobacco products, like e-cigarettes, but initially it did not propose any rule regarding these products. Finally, at the end of April, after months of wait and debate, the FDA presented a 240-page proposal to regulate e-cigarettes. Proposed oversight would include blocking the sale of e-cigarettes to minors and requiring e-cigarette makers to register with the FDA to disclose their products’ ingredients to the FDA.

Meanwhile, e-cigarette companies say they should not fall under the same regulations as tobacco-containing products because they offer what they consider to be a “safer” alternative. But those claims are now coming under fire. The new FDA proposal also will prevent e-cigarette makers from making claims that their products have lower health risks than other nicotine-containing products like traditional cigarettes, until they can show proof to back up those claims. The FDA also plans to require e-cigarette makers to obtain premarket approval for new tobacco products, which applies to other tobacco products manufacturers.

However, the proposal is currently up for review, with stakeholders having 75 days to provide feedback about the proposed regulations. This opens a window for the e-cigarette industry to request more time for research, delaying the stricter regulations.

Matthew Myers is the president of Campaign for Tobacco-Free Kids, a group that has worked very hard for children. This group does good work. He said in a statement:

Responsibly marketed and properly regulated, it is possible that e-cigarettes could benefit public health if they help significantly reduce the number of people who use conventional cigarettes and die of tobacco-related disease. But in the absence of FDA oversight, the easy availability of nicotine in uncontrolled quantities, packaging and flavors and marketing that appeals to youth raises serious concerns.

Common sense and logical thinking should tell us all that something that smells like candy—but really isn’t—and has the potential for great harm should be regulated and its use by children prohibited to the extent possible. Certainly strong warnings are required. FDA oversight of e-cigarettes is

morning. It’s unclear why she and another people who died in a small Pennsylvania cabin about 5 a.m. on that Saturday. The man who found the bodies had slept in his truck outside the cabin. He discovered the bodies later that day. This is a tragic occurrence and more information will be developed relating to the five deaths.

Source: The Skagit Valley Herald

WEST VIRGINIA COAL MINE COLLAPSE KILLS TWO MINERS

It was reported that the West Virginia coal mine where a collapse last month killed two workers had “chronic compliance issues” and received numerous citations from inspectors last year. The Patriot Coal Corp’s Brody Mine No. 1 collapsed about 8:30 p.m. on May 12, trapping two miners, the federal Mine Safety and Health Administration said in a statement. The miners, both from West Virginia, were identified as Eric Legg and Gary Hensley. These men were in their 40s.

The St. Louis-based company says it has been cooperating with state and federal regulators investigating the accident. The incident took place as workers were carrying out retreat mining, which involves mining coal and leaving pillars behind to support the mine roof. When the mining is completed, the pillars are collapsed and removed.

Federal authorities said there was a pattern of difficulties at the mine. Last October, the Patriot Coal Corp’s Brody Mine was placed on “pattern of violations” status, a scheme designed to bring “chronic violators” of federal mining standards into line, the U.S. Mine Safety and Health Administration (MSHA) said in a statement. In 2013, MSHA issued 514 citations, orders and safeguards against it. Asked for a response, a Patriot spokesman pointed to the company’s annual report, which notes that many of the Brody violations preceded Patriot’s acquisition of the mine and that the site’s performance had improved.

Mine Safety data for the Brody mine shows that the rate of days lost because of accidents there has been above the national average since 2006. The two deaths raised the number of U.S. coal mining fatalities this year to five, and there were 20 in 2013, according to Mine Safety data. West Virginia is one of the biggest U.S. producers of coal and leads states in coal-mining deaths, Mine Safety numbers show. Before last month’s accident, the state recorded 124 deaths since 2003, about 39 percent of the U.S. total.

Source: Claims Journal
Lawsuit Filed Over Arkansas Plant Blast

The operator of a south Arkansas chemical plant that exploded in 2012 has filed a federal lawsuit in Oklahoma against a French company that supplied industrial gas for the facility. It’s claimed in the suit that the supplier is responsible for more than $100 million in damages and losses. Air Liquide, which is part of Oklahoma City-based LSB Industries Inc., filed the lawsuit last month against Air Liquide. It’s alleged that Air Liquide was at fault for failing to adequately maintain oxygen pipes at the nitric acid plant in El Dorado, Ark.

Air Liquide supplied the plant with gaseous oxygen used to make nitric acid. The 2012 explosion at the chemical plant occurred when the facility was restarted after being shut down for more than two weeks for maintenance. Fortunately, no one was injured. The lawsuit contends that the explosion was caused by contaminants in pipes installed and maintained by Air Liquide. Contaminants in the pipes maintained by Air Liquide ignited a “violent oxygen fire” at the El Dorado plant “resulting in a catastrophic explosion,” the lawsuit said.

Last year, LSB Industries received a $113 million payment from its insurance company because of the blast. The company previously announced plans to build a $120 million replacement plant in El Dorado. It will be interesting to see how this lawsuit develops.

Sources: The Oklahoman, Miami Herald, and Associated Press

XIX.
TRANSPORTATION

The South Korea Ferry That Sank Was Routinely Overloaded

Folk's all over the world were shocked and saddened about the deaths of hundreds of people, mostly students, when a ferry overturned and sank in South Korean waters. It was reported last month that the doomed ferry Sewol exceeded its cargo limit on 246 trips—nearly every voyage it made in which it reported cargo—during the 13 months before it sank. Documents revealing the regulatory failures that allowed the passengers to set off on an unsafe vessel were released on May 5. Based on reports, the ferry may have been more overloaded than ever on this, its final journey. It’s time for South Korean leaders to make sure drastic changes are made on how they regulate the staffing of ships and shipping. This sad and tragic happening is a prime example of the consequences resulting from poor and inadequate regulation by a government of an industry. To amplify on that, the facts of this tragic event will be set out below.

The Sewol sank on April 16, leaving more than 300 people missing or dead, and exposing enormous safety gaps in South Korea’s monitoring of domestic passenger ships, which is in some ways less rigorous than its rules for ships that handle only cargo. The country’s regulators had more than enough information to conclude that the Sewol was routinely overloaded. But because the agencies did not share that data and were not required to do so, it was virtually useless.

The Sewol was redesigned and began operating again in March 2013. After that time, it was reported that it exceeded its 987-ton limit on at least 246 of its 394 individual voyages. More than 2,000 tons of cargo was reported on 136 of the Sewol’s trips, and it topped 3,000 tons 12 times.

Records indicate it never carried as much as it did on its final disastrous voyage: Moon Ki-han, a vice president at Union Transport Co., the company that loaded the ship, said it was carrying an estimated 3,608 tons of cargo.

But the port operator has no record of the cargo from the Sewol’s last voyage. It is not mandatory for passenger ferries to report cargo to the port operator. Ferry operators submit that information only after trips are completed, to compile statistics, not for safety purposes. In that respect, rules for domestic passenger ships are looser than those for cargo-only vessels, which must report cargo before they depart.

According to South Korean law, the shipping association may report violations to either the coast guard or the state-run port operator. Both entities said they were never told of excessive cargo on the Sewol. South Korea, unlike many other countries, relies on a private industry-affiliated body to determine whether a ship is safe to sail. That’s an obvious recipe for disaster.

Some experts contended that the Sewol never should have been cleared to operate after its redesign. They say the owner would not have been able to make money under the register’s new cargo limits. Experts have said if the ship was severely overloaded, even a small turn could cause it to lose its balance. Tracking data show the ship made a 45-degree turn around the time it began sinking. Crew members reportedly said something went wrong with the steering as they attempted a much less severe turn. At press time the cause of the sinking of the Sewol was still under investigation.

All 15 surviving crew members involved in the ferry’s navigation have been arrested and accused of negligence and failing to protect passengers. Prosecutors also detained three employees of the ferry owner who handled cargo, and have raided the offices of the ship owner, the shipping association and the register. Heads of the shipping association and the register have offered to resign in the wake of the disaster.

The shipping association, whose members are shipping companies and ship operators, took on that responsibility in 1973 after a 1970 sinking in which about 320 people died. It also oversees crew education and is partly government-funded, but its biggest business is selling insurance to its members. According to its website, about 75 percent of its 110 billion won ($107 million) budget for 2014 was allocated to its insurance department. The budget for the department dealing with domestic passenger ship safety was 7.4 billion won ($7.2 million). The association has 71 safety inspectors at 13 South Korean ports and its headquarters.

Many of the association’s high-level officials come from the Ministry of Ocean and Fisheries. Ministry officials may be reluctant to question association officials who are former senior public servants, or even their former bosses. The register, which made the cargo limit evaluation, also is a private entity.

In Europe, North America and Japan, regulation is generally done by public bodies such as the U.S. Coast Guard and the U.K.’s Maritime and Coastal Agency. In Japan, the government checks ships once a year, and conducts unannounced inspections of crew qualification and emergency training. At the same time, it’s common for governments to rely on ship captains to report their loads accurately. It would be virtually impossible to check every boat, experts say. Since the Sewol disaster, the oceans ministry has been considering reassigning the job of overseeing passenger-ship safety.

Source: Claims Journal

The Government Will Require Speed Limiters on Trucks

The Department of Transportation (DOT) is about to mandate the use of speed limiters—also known as Electronic Control Modules (ECM)—on certain trucks traveling on U.S. highways. This new rule is expected to go into effect as soon as October of this year. The rule would apply to trucks weighing more than 26,000 pounds and traveling on roads with a speed limit of at least 55 mph. Thus far the DOT has not commented on the speed to which the heavy trucks
would be limited. Previous proposals, however, had included a limit of 68 mph.

Safety advocates say the rule would eliminate approximately 1,115 fatal crashes and require minimal investment by carriers since most heavy trucks already have limiters on board. The American Trucking Association (ATA) has even asked for limiters on all new trucks. Road Safe America (RSA), a safety advocacy group, has proposed retrofitting all vehicles manufactured since 1990. From an overall safety perspective, the rule makes sense. In fact, many fleets already limit the speed of their trucks with electronic governors.

The first efforts for rulemaking on this subject came in 2006. Petitions were brought by the ATA and the RSA, joined by nine motor carriers. They said that a key strategy in preventing large truck fatal crashes is to reduce the top travel speed of the fleet. Studies were cited showing that large trucks moving at high speeds have much longer stopping distances than the same trucks operated at lower speeds. According to data, fatal crashes involving trucks are more prevalent on higher speed roadways. Also, 73 percent of traffic fatalities involving large trucks happened on roads with a posted speed limit of 55 mph or higher. The National Highway Traffic Safety Administration (NHTSA) has been looking at mandatory speed limiters on heavy-duty trucks since 2011.

According to reports issued by NHTSA, the Federal Motor Carrier Safety Administration (FMCSA), and the Insurance Institute for Highway Safety (IIHS), large trucks are involved in fewer accidents than other types of vehicles per 100 million miles driven. It should be noted, however, that these accidents, although fewer in number, do have a higher rate of fatalities. In 2010, there were 1.1 fatal crashes per 100 million truck miles.

Data show that truck crashes are rising and when they happen quite often a fatality is involved. The IIHS reports that 3,413 people died in accidents in 2010 involving large trucks. Seventy-two percent of the deaths were occupants in a different vehicle. According to the IIHS:

- Large trucks accounted for 4 percent of registered vehicles but 9 percent of motor vehicle crash deaths.
- Seventy-five percent of truck accidents involving fatalities were tractor-trailers and 25 percent were single large trucks.
- The report from the study showed that a number of events led to crashes, including among other things: traveling too fast for road conditions; another motor vehicle encroaching into the truck’s lane; shifting cargo; and driver fatigue.

Reports show that 61 percent of fatalities occur on major roads other than interstate highways. Because trucks often weigh as much as 30 times more than a passenger vehicle, the smaller vehicle’s passengers are more likely to die in a crash involving a large truck. Tractor-trailers also require more stopping distance, especially when loaded, and need a correspondingly increased amount of time to react in order to avoid a crash.

It’s not unexpected that lots of truck drivers are opposed to the new proposals. The Owner Operator Independent Drivers Association (OOIDA) has made some pretty good counter-arguments. For example, the OOIDA argues that studies show speed differentials lead to more collisions. They contend it’s safer to keep traffic moving at the same speed.

According to the DOT, the proposed speed limiter rule was slated to be sent to Secretary of Transportation Anthony Foxx for approval last month. If approved, it would then go to the White House’s Office of Management and Budget. That should happen this month. If the rule succeeds, it could be published as a Notice of Proposed Rulemaking in October. I understand from reports that fleets strongly approve the rules, but that drivers are just as strong in their opposition. But there is one thing for sure—the debate is not likely to end if the proposal is enacted. In fact, that may be when the real action begins.

Source: Claims Journal

**RECENT SAFETY ISSUES WITH RECREATIONAL VEHICLES**

One area of growing concern involves the safety of recreational vehicles (RVs). Industry experts classify RVs into two categories: motorhomes and towables. Motorhomes are typically classified as Class A, B or C units. Depending upon the size and variations of towables, these units are sometimes referred to as travel trailers, fifth wheels, bumper pulls, or by other similar descriptive terms. The sizes and weight of these vehicles vary greatly among the available styles and options, and with a tow vehicle can reach lengths of 50 feet or more.

While the size of these vehicles is comparable to commercial motor vehicles (and in some cases larger), private owners and operators are not required to obtain a commercial drivers license. There is also very little requirement of training to drive and/or operate an RV on the highways.

Recreational industry groups report that more people currently own and operate these large vehicles and trailers than ever in the history of RV ownership. Recent research done by Dr. Richard Curtin, an industry analyst at the University of Michigan, reveals that as many as 8.9 million households are owners of RVs. About 8.5 percent of all American households own an RV.

According to the National Highway Traffic Safety Administration (NHTSA), the following are some of the recalls and product failures that have recently been identified with RVs:

- 2013 and 2014 model Jayco Pinnacle and Seneca model motorhomes and fifth wheels have been recalled for microwaves that may start on their own, creating a risk of fire.
- 2014 Forest River travel trailers (164 units) have been recalled because of incorrect labeling that may result in the units being overloaded, resulting in tire failure.
- 2015 Crossroad travel trailers (certain models) have been recalled as a result of spring hangers that may fracture and result in loss of control of the trailer.
- 2014 Keystone travel trailers (32 units) have been recalled for the same reason.
- 2014 Forest River Crusader fifth wheel trailers (94 units) have been recalled for potential tire failure.
- 2014 Triple E motorhomes (28 units) have been recalled because of lower wattage light bulbs, which could increase the risk of nighttime collisions.
- 2013 and 2014 Keystone Montana and Big Sky model RVs (1,957 units) have been recalled as a result of a fire risk resulting from the microwaves starting on their own.
- 2014 Crosswoods Redwood trailers (181 units) have been recalled for the same reason.
- 2013 and 2014 Motor Coach RVs (241 units) have been recalled for the same microwave defects.
- 2014 and 2015 Winnebago motorhomes (198 units) have been recalled because of accelerators that have been reported getting stuck in the “wide open throttle position,” potentially resulting in uncontrolled acceleration and loss of control.
• 2014 Keystone RV trailers and fifth wheels (708 units) have been recalled because of inner wheel bearings that may become overheated and cause the wheel to seize or separate from the vehicle.

It should be noted that these recalls are only the April and May 2014 recalls by NHTSA. The number of RV recalls in the previous months is growing and somewhat disconcerting to folks driving on the nation’s highways and to those who use RVs for enjoyment and recreation.

One RV consumer group has cautioned potential purchasers about their purchase of certain class A motorhomes. The RV consumer group (www.rv.org) provides a valuable service to potential purchasers and current owners of motorhomes and other RVs. It describes a class A motorhome in this manner: “If you take a stripped truck chassis, put a trailer on it, and alter the front so you can drive it down the road, you’ll have a crude class A motor home. Another way of describing a class A motor home is that it’s like a bus with living accommodations.”

Most manufacturers of class A motor homes buy chassis with drive trains from an automobile manufacturer and then build the structure according to their design. The RVCG cautions that the operation of the longer class A motorhomes can be more problematic than the shorter units and can be more difficult to operate in certain driving and operating conditions. The group also notes that the “cockpit offers little protection to driver and passenger in accident situations.” This same group also cautioned:

Do not take for granted that a motor home built on a chassis by a reputable chassis manufacturer is a safe and efficient vehicle. Chassis manufacturers have very little control over RV manufacturers—many of whom are building poorly designed houses on reputable chassis. In one case we found evidence that an otherwise reputable motor home manufacturer underrated a chassis so they could promote a model with a higher-rated chassis. The problem here is that an underrated chassis has nowhere near the capacity to stop a motor home under normal loading and travel conditions. This is an unconscionable tactic, since it puts driver, passengers, and others on the highway in grave danger.

Although the class A’s biggest problems by far are payload and wheelbase, the issues of width, length, and structural integrity are not far behind. Another black mark against the class A, however, is the mounting of an overhead television in the cockpit. Because it poses a serious threat in an accident situation, it does not make sense for a manufacturer to mount a heavy appliance over the heads of driver and passenger. At RVCG, we attach a penalty to the safety rating of any motor home with an overhead TV in the cockpit.

These safety concerns and manufacturing restrictions are matters that should continue to be evaluated by legal, safety and governmental groups in order to improve the safety and durability of these products. If you need more information on this subject contact Ben Locklar, a lawyer in our Personal Injury/ Product Liability Section, at 800-898-2034 or by email at Ben.Locklar@beasleyallen.com.

Sources: www.nhtsa.dot.gov; www.rv.org; www.arf.org/rvs; and www.rvbusiness.com

CAR COMPANIES TESTING SELF-DRIVING CARS ON CITY STREETS

It’s being reported that self-driving cars may soon be coming to a street near each of us. Volvo Car Group and Google Inc. recently announced that, after several years of testing self-driving cars on freeways, they have now started to test the cars on city streets. Unlike a freeway where driving conditions are more predictable, a city street is full of unpredictable scenarios and hundreds of moving objects. A self-driving car relies on video cameras, radar sensors, lasers, and a database of information collected from manually driven cars to navigate down city streets. Chris Urmson, the director of Google’s self-driving car project, explained that its software “can detect hundreds of distinct objects simultaneously—pedestrians, buses, a stop sign held up by a crossing guard, or a cyclist making gestures that indicate a possible turn.” Even though Google’s test cars have logged more than 700,000 miles in self-driving mode since 2009, Google admits that its cars still have many problems that need to be resolved.

Some of those problems could be of a legal nature. A self-driving car is programmed to minimize harm to others. For example, if the car is faced with a choice between crashing into one of two objects, the car could swerve to avoid hitting a pedestrian, and then hit another vehicle. The car has to decide which of the two objects poses the most danger at the time. Who will be liable for the injuries sustained by the person or vehicle the car chooses to crash into? Would it be the software programmer or would it be the person who put the self-driving car in motion?

I suspect these questions are going to cause quite a bit of confusion in the product liability world in the future. Self-driving cars are sure to come with bugs and glitches that will need to be promptly remedied through a recall system. There will certainly be lawsuits filed in our civil justice system. Our firm has successfully handled similar issues in our cases against Toyota that dealt with unintended and sudden acceleration. If you would like more information on how to pursue product liability cases involving defective car computer software, contact Cole Portis, who is the head of our firm’s Product Liability Section Head, at 800-898-2034 or by email at Cole.Portis@beasleyallen.com.

Sources: Automotive News and Wired.com

XX.
ENVIRONMENTAL CONCERNS

BIG OIL COMPANIES DEFRAUDED U.S. STATES OF MILLIONS FOR CLEANING UP THEIR POLLUTION

Double-dipping is a term normally associated with politicians, but it also applies in other areas. For example, imagine a relative of yours is involved in a “fender-bender.” Being a good relative, you provide that person with money to repair his car and, unknown to you, the relative also collects and pockets the proceeds from an insurance policy you did not know about. Now imagine that this happened several times during the course of a few years. I imagine you would be very upset when you learned about the “secret insurance money” that your kin had been collecting. You may even want repayment of the money you supplied for the repairs.

This type situation has been happening on a much larger scale in many states in the nation. Multibillion-dollar oil companies such as BP, Chevron, ExxonMobile and ConocoPhillips, companies that distribute gasoline and other petroleum products, have been allowing state agencies and funds to pay for the clean-up of dangerous, cancer-causing petroleum chemicals. The cleanups came about when the companies’ underground storage tanks containing gasoline and other petroleum products leaked and polluted nearby groundwater aquifers. Oftentimes these companies collected money for the same leaks from private insurance policies, which were in addition to the funds they received from state agencies. This “double-dipping” by Big Oil has cheated mul-
Multiple states’ agencies out of tens of millions of dollars in the past several years. Understandably, some of these states are now seeking repayment from these big oil companies for their ill-gotten gains.

Utah, Montana, Colorado, Minnesota, Massachusetts, New Mexico and other states have filed lawsuits and sought repayment of these double-dipped funds to replenish their environmental clean-up funds. In many cases the facts reveal that the polluting corporations concealed from the various states’ agencies that they also had private insurance from which they were or could collect clean-up funds for the same spills for which they also collected public funds. In an interview with Reuters, Colorado Attorney General John Suthers said:

*It appears this was really common practice and it’s very disconcerting. Basically the companies were defrauding the state.*

Colorado has collected approximately $35 million from three companies to repay the state for the fraudulently obtained funds. According to Reuters, nine states have reached settlements worth more than $105 million with four companies. Of course, as has become commonplace, none of these companies has admitted wrongdoing.

Leaking underground storage tanks, according to the U.S. Environmental Protection Agency (EPA), are one of the greatest threats to our nation’s groundwater. The potential for dangerous leaks exists at every gas station in the country. Almost 50 percent of Americans get their drinking water from groundwater. It’s inconceivable that the largest, richest companies on earth are using public money meant to protect the health and drinking water safety of Americans as a means to dishonestly earn profits and pad their already bulging corporate coffers. But having been involved in litigation with the big oil companies, I guess I shouldn’t be too surprised.

Stories like the above should remind each of us that, as American citizens, we have the right and duty to be vigilant in promoting honesty and integrity, and also to combat corporate wrongdoing. We must also assist our national, state and local governments when they demand the same type performance from huge corporations with whom they do business. That’s simply the right thing to do. If you need more information on this subject, contact Chris Boutwell at 800-898-2034 or by email at Chris.Boutwell@beasleyallen.com.

### A Look At The EPA And Coal Ash Regulation

Most Americans don’t have much firsthand interaction with coal. But the U.S. burns through the fossil fuel at an incredibly prodigious rate. Large coal-burning electric plants burn the vast majority of coal used in this country. In so doing, these plants create large amounts of coal ash as a by-product. While some of this coal ash is recycled for “beneficial” purposes, such as being mixed into cement, most of it is simply stored in massive waste disposal pits. These pits dot the outskirts of hundreds of power plants across the country, taking the form of large ponds or lined pits that are designed to hold the concentrated heavy metals and other toxins contained within coal ash.

The U.S. Environmental Protection Agency (EPA) does not designate coal ash as a hazardous material. This omission leads to a proliferation of very loose state laws that fail to properly govern coal ash disposal. As a result, there is created a heightened potential for spills and groundwater contamination. Following the massive Tennessee Valley Authority (TVA) coal ash spill in 2008, a spill that contaminated hundreds of homes and more than 300 acres of property, the EPA began an attempt to develop federal guidelines for coal ash ponds.

Unfortunately for the communities surrounding coal ash plants, the EPA’s efforts have met very tough opposition from both business owners and lawmakers. It’s claimed that EPA’s proposed rules could potentially cost the utility industry billions of dollars. They contend the rules would cause an intense backlash from the coal industry. Furthermore, many lawmakers have attempted to completely eliminate the EPA’s ability to regulate coal ash in any form. That’s a step in the wrong direction and hopefully it won’t happen.

Despite these challenges, the EPA has made progress, drafting more than 200 pages of proposed rules and reviewing more than 600,000 written comments. Issued on what we have learned in the TVA litigation, coal ash must be regulated. The end result of the EPA’s efforts has been to focus on two possible approaches to the nationwide regulation of coal ash. Those approaches are:

- The agency has proposed new water pollution discharge standards for coal burning power plants, which attempts to control coal ash disposal by limiting the concentration of the pollutant allowed in plants’ waste streams.
- The agency has attempted to outline a separate rule governing the massive ponds where coal ash is stored.

The EPA’s goal is to use these proposed rules to encourage power plants to deal with coal ash in its solid form. That’s because the liquid version of the waste is much more hazardous to store and control. Many observers believe that the EPA will attempt to regulate coal ash as “nonhazardous” waste, which would make the ash from many more power plants’ available for use by the recycling industry. That may be the only achievable solution, in an obvious area of concern, that can be accomplished.

The proposed regulations have faced years of delays, and nothing of consequence has been accomplished. But the EPA now faces a court-ordered deadline to complete these regulations by December of this year. Environmentalists are watching closely to see what steps the EPA will take to alleviate the long-term threat posed by coal ash disposal. If you agree that the EPA should act, contact members of Congress in your state and ask them to support the EPA in its efforts. You might also contact President Obama and ask him to support the EPA. If you need more information on this subject, contact Grant Cofer, a lawyer in our firm’s Toxic Torts Section, at 800-898-2034 or by email at Grant.Cofeer@beasleyallen.com.

Source: www.politico.com

### The Label “BPA-Free” Won’t Mean Your Plastic Product is Safe

In 2012, the U.S. Food and Drug Administration (FDA) banned the chemical bisphenol-A—better known as BPA—from baby bottles and sippy cups. The plastic additive has been linked to adverse human health effects, including exposure to synthetic estrogen. Manufacturers of other plastic products ranging from cups to storage containers and even plastic wrap quickly followed suit, plastering “BPA Free” labels on their merchandise as well. However, a new investigation by Mother Jones magazine revealed that chemicals used to replace BPA may be just as dangerous, if not more so.

Scientists have linked BPA exposure to diseases including cancer, diabetes, obesity and heart disease. BPA can harm brain and organ development in young children, and BPA exposure is estimated to be responsible for some $3 billion a year in health care costs.

The National Institutes of Health (NIH) recently funded a research study of BPA-free plastics, to determine what chemical impact
The NIH study was co-authored by George Bittner, a professor of neurobiology at the University of Texas-Austin and founder of CertiChem, a lab in Austin, Texas. Dr. Bittner told Mother Jones the NIH study revealed that BPA-free products “actually released synthetic estrogens that were more potent than BPA.” In 2002, Dr. Bittner established two companies with assistance from an NIH grant. Those companies are CertiChem, which tests plastics for synthetic estrogen, and PlastiPure, which works to develop non-estrogenic alternative materials. Dr. Bittner, who was inspired to create the companies based on early research on endocrine disruption linked to BPA’s, told Mother Jones:

*It struck me as the most important public health issue of our time. These chemicals have been correlated with so many adverse effects in animal studies, and they’re so pervasive. The potential implications for human health boggle the mind.*

It was reported that when BPA is removed it’s often replaced with another chemical that is similarly dangerous. According to the Environmental Defense Fund (EDF), this process is known in the industry as a “regrettable substitution.” Currently, there is no regulation for these chemical substitutions. The Toxic Substances Control Act, which is meant to protect the public, was created almost 40 years ago, but it’s largely unenforceable. Under U.S. law, you may be surprised to learn that all chemicals are presumed safe until proven otherwise. That’s rather hard to justify considering what is involved. Sarah Vogel, EDF’s Health Director, says:

*We have to press the government to require that this chemical and all chemicals we use around our homes are shown to be safe. Federal action is the only way we can solve this large-scale problem.*

Michael Green, Director for the Center for Environmental Health, calls this chemical substitution procedure a “toxic shell game,” where a known hazardous chemical is replaced with a largely untested chemical, which may turn out to be even worse than what it replaces. This in my opinion is a prime example of weak regulation of an industry.

Meanwhile, despite the limited ban, BPA is still used in a wide variety of products such as the lining of tin cans, hospital blood bags, cash register receipts and dental sealants. The FDA announced that its most recent study supports the safety of BPA. But Mother Jones notes there were problems with the control group of animals involved in the FDA study, which it says calls into question the results.

The U.S. Environmental Protection Agency (EPA) proposed a program to screen 80,000 chemicals for endocrine disruption, but to date the agency has not completed its evaluation of any of them. In 2010, the EPA asked for White House approval to add endocrine-disrupting chemicals including BPA to its “chemicals of concern” list as posing a risk to human health. This would have required the manufacturers of those chemicals to share the results of safety studies with federal regulators. Can you imagine that this wouldn’t be routinely done? But for some unknown and unexplained reason, the proposal was inexplicably and quietly withdrawn in September 2013. That’s very hard to understand and impossible to justify. Hopefully, the need to act on the BPA safety issues will find its way back on the Obama Administration’s radar screen. That would give the mission a badly needed boost.

Sources: EDF.org, Mother Jones, and DemocracyNow.org

### XXI. THE CONSUMER CORNER

#### NHTSA Probes Chrysler Pickups After Child Dies In Accident

The National Highway Traffic Safety Administration (NHTSA) has opened an investigation into an estimated 110,000 Dodge Ram pickup trucks, manufactured by Chrysler Group LLC, that potentially can be started in gear. The probe comes after a child was hit and killed by a truck started by another child. NHTSA opened the preliminary evaluation on May 19 after receiving three vehicle-owner complaints alleging that 2004 and 2006 Dodge Ram 2500 and 3500 trucks had malfunctioning clutch interlock switches, allowing the vehicles to be started while in gear. This is according to documents posted on the regulator’s website. The NHTSA notice said:

*One complaint involved an incident that occurred when a child was able to enter the vehicle and start the ignition without depressing the clutch. The vehicle then moved forward, striking another child, resulting in a fatality.*

A clutch interlock is intended to prevent a vehicle’s starter from running when the driver is not pressing the clutch pedal, which is meant to prevent the car from being started already in gear, and thus starting to move immediately. According to NHTSA, another incident occurred where an individual was working under the hood of his/her truck when the engine was cranked without the clutch being pressed, but the interlock failed to prevent the engine from moving and hitting the individual working under the hood. The individual was knocked to the ground, but did not report any injuries. The investigation by NHTSA will assess the scope, frequency and potential safety consequences associated with the alleged defect.

Source: Law360.com

#### 200,000 Nissan Cars Under NHTSA Scrutiny Over Brake Issues

Nissan Motor Co. vehicles, including the 2013 and 2014 model-year Sentra and Versa, are among some 200,000 Nissan vehicles that the National Highway Traffic Safety Administration (NHTSA) is investigating related to complaints that their brakes are not responsive enough. NHTSA has started a preliminary evaluation of the vehicles based on at least eight complaints by drivers that their cars kept driving even while they were holding down the brakes. According to a Nissan spokesman, the potential problem has not been linked to any accidents or injuries, and those models had not been investigated before for braking issues. Nissan said in March that it is recalling more than a million vehicles worldwide over a sensor defect that could prevent airbags from deploying. The recalled vehicles include certain 2013 and 2014 Nissan Altima, LEAF, Pathfinder and Sentra vehicles and 2013 NV200 and Taxi vehicles. The occupant classification sensor in some of the vehicles may wrongly identify an adult sitting in the front passenger seat as a child or an empty seat, and cause the passenger side air bag to fail to activate in an accident, according to Nissan.

In early May, NHTSA opened an investigation into more than 37,000 model year 2007
minivans manufactured by Nissan in response to complaints that the vehicles show inaccurate fuel tank levels. The agency said it opened a preliminary evaluation after receiving 12 complaints alleging that the 2007 Nissan Quest vehicles stalled because the fuel level reading indicated that there was fuel in the tank when it was actually empty.

NHTSA opened an investigation in April into a fire that started in a Nissan Leaf electric car as it was charging in a consumer's garage. The regulator launched the probe after receiving a complaint that a model-year 2013 Nissan Leaf began to smoke and burn at its connection point with a Bosch Power Xpress 240V charger, according to NHTSA documents.

Source: Law360.com

MEDICAL DEVICE ENFORCEMENT DATA SHOWS RISE IN VIOLATIONS

The U.S. Food and Drug Administration (FDA) has released enforcement data from a three-year period that details trends in its inspections of medical device manufacturing plants. It shows a sharp rise in violations and a disproportionate number of production slip-ups in foreign countries. According to regulators at the FDA's Center for Devices and Radiological Health, they unveiled the information from inspections in 2010-2012 as part of a transparency initiative. Their hope was that it would result in improved product quality and companies avoiding warning letters that can require costly responses.

The raw number of inspections jumped more than 35 percent in that time period, and the number of inspections on foreign soil rose more than 90 percent, according to the FDA. Foreign firms were targeted in about 10 percent of the FDA's roughly 2,750 inspections, but they accounted for more than 30 percent of inspections where significant violations were discovered, and they were the targets of 40 percent of warning letters for such missteps, the agency reported.

Of the 164 quality-related warning letters issued in 2012, 66 went to non-U.S. companies, with one third of that discipline targeting Chinese firms. The total number of warning letters was up sharply from 122 in 2011 and 89 in 2010, a trend the FDA attributed to the increased frequency of inspections as well as “increased focus on foreign firms by the foreign device cadre and improved site selection.” The FDA supplemented those high-level findings with an abundance of granular detail about categories of violations and the specific regulatory provisions to which they related. For example, when the FDA finds objectionable manufacturing conditions, it issues a so-called 483 report that lists the violations.

In 2012, those reports included about 4,250 total violations. Of those violations, 30 percent were related to shortcomings involving so-called corrective and preventive actions—formalized policies related to quality control. Another 30 percent concerned so-called production and process controls, which relate to ensuring a product meets its design specifications. The rest of the violations were divided in fairly equal amounts among three other categories: management oversight, special restrictions that apply to riskier devices, and record-keeping.

The court finds that $40,120,950 in compensatory sanctions is owed to consumers. The court finds that Hi-Tech, Wheat, and Smith must pay compensatory sanctions, jointly and severally, in the amount of $40,000,950. The court also finds that Wright must pay compensatory sanctions in the amount of $120,000.

In 2008, the court enjoined the defendants from advertising the weight-loss products without substantiated, competent and reliable scientific evidence, according to the order. It also ordered that all of the packaging and labels must contain a specific warning about the drug yohimbine. In November 2011, the FTC filed a motion arguing that Hi-Tech, Wheat and Smith should be held in contempt of the permanent injunction for making statements about the four Hi-Tech products that are not substantiated by competent or reliable scientific evidence. A similar motion against Wright followed in March 2012.

According to the court’s order, Hi-Tech, Wheat and Smith disseminated print advertisements for Fastin, Lipodrene, Benzedrine and Stimerex-ES through national magazines and through its website with claims that violated the injunction. The FTC also said it purchased a bottle of the drugs that did not contain the required yohimbine warning on the product packaging, according to the order. The order stated:

The Hi-Tech defendants did not remove violative advertising from the company website until January 2014, approximately 5 months after the court had found the defendants in contempt.

The court also found that Hi-Tech and its directors provided inaccurate and incomplete information in compliance reports to the FTC and failed to report to the FTC that it had acquired two other companies that engage in activities covered by the injunction order. According to the order, Hi-Tech and the directors still owe almost $4 million of the original $15.9 million judgment entered by the court. They also have not recalled any of the products with the packaging containing claims that violate the injunction. Jack Venik, counsel for Hi-Tech, said the company is still reviewing the decisions and its options.

Source: Law360.com

MAKER OF DIET DRUGS TO PAY $40 MILLION AND ISSUE RECALL OVER LABELING

A Georgia federal judge has ordered Hi-Tech Pharmaceuticals Inc. and three of its directors to pay more than $40 million in sanctions to consumers and to recall four of its products with labels that falsely advertise that its dietary supplements cause substantial weight loss. U.S. District Judge Charles A. Pannell, Jr., issued the ruling in the Federal Trade Commission's (FTC) 2004 suit against Hi-Tech, National Urological Group Inc., Jared Wheat, Sean Smith and Terrell Mark Wright. It was alleged in the suit that the defendants made unsubstantiated claims about weight loss drugs Fastin, Lipodrene, Benzedrine and Stimerex-ES.

After finding the defendants were in violation of a 2008 permanent injunction, Judge Pannell ordered them to pay damages and to recall all of the products with packages that violate a 2008 injunction. The court’s order stated:

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Source: Law360.com

JUSTICE DEPARTMENT TAKES ACTION AGAINST SALLIE MAE

Shame on the student lending giant Sallie Mae! The lending giant has been ordered to pay nearly $100 million in restitution and penalties for “unfair and deceptive” practices related to student loans and for violating the legal rights of members of the military. The U.S. Department of Justice (DOJ) and the Federal Deposit Insurance Corporation (FDIC) announced the order entered in the case on May 13. The lawsuit filed by the department alleges that Sallie Mae failed to provide a 6 percent interest rate cap on student loans, as promised, to active duty service members under the Servicemembers Civil Relief Act (SCRA). Reportedly, there are about 60,000 service members who were victims of the violations by Sallie Mae.

Source: Law360.com
The settlement would also require Sallie Mae—which recently separated into two companies, Sallie Mae Bank and Navient Solutions—to request that all three credit bureaus delete any negative credit history associated with the violations. Attorney General Eric Holder said during a news conference:

By requiring Sallie Mae to compensate its victims, we are sending a clear message to all lenders and servicers who would deprive our service members of the basic benefits and protections to which they are entitled; this type of conduct is more than just inappropriate; it is inexcusable. And it will not be tolerated.

In addition to failing to provide service members with the interest rate cap guaranteed to them under federal law, the attorney general said Sallie Mae in some cases obtained default judgments against service members who qualified under SCRA, and charged excessive rates to those who provided documents proving they were members of the military.

The FDIC also announced its own settlement with Sallie Mae Bank for “unfair and deceptive practices related to student loans,” and for violations of SCRA. In a statement on the settlement, the FDIC said Sallie Mae violated federal law prohibiting such practices through inadequately disclosing the ways in which it allocates borrowers’ payments across multiple loans in a way that maximizes late fees, and misrepresenting and inadequately disclosing how borrowers could avoid late fees.

The FDIC said Sallie Mae was in violation of SCRA for incorrectly telling service members they had to be deployed to receive their student loan benefits and failing to provide complete relief to borrowers after having been notified of their active duty status. The FDIC settlement stipulates Sallie Mae Bank, which originates private student loans, must pay $3.5 million in penalties. Navient, which services $300 billion in federal and private student loans on behalf of Sallie Mae, is responsible for paying another $3.3 million in penalties, $30 million in restitution to refund late fees and the $60 million to compensate service members.

A 2012 report from the Consumer Financial Protection Bureau (CFPB) brought attention to complaints from service members who said they faced serious obstacles in accessing their student loan benefits, including the interest rate cap provided through SCRA. Additionally, several service members reported receiving unclear information about their loan repayment options. According to the report, some were told they could not receive their SCRA benefits unless their loans were placed into deferment or forbearance, which could actually increase the cost over time because interest would still accrue. Holly Petraeus, assistant director of the Office of Servicemember Affairs at the CFPB, in a statement said:

I have been concerned for some time about the way that military personnel are treated by their student loan servicers. The men and women serving this country should receive quality customer service and the legal protections afforded to them. Instead, Sallie Mae gave service members the runaround and denied them the interest-rate reduction required by law. This behavior is unacceptable.

Sen. Tom Harkin, D-Iowa, who chairs the Senate’s education committee, said he was “dismayed” to learn about the problems identified in the settlement. He said in a statement:

Our service members, who have been systematically denied the benefits to which they are entitled under the law and which were put in place to ensure they have an affordable education, deserve better. Today’s settlement only strengthens my resolve to put in place strong rules to ensure that all borrowers, especially those that sacrifice so much for this nation, are better protected from these abuses. While some of these bad actors might think that they are too big to fail, I am committed to ensuring that student loan borrowers are no longer too small to ignore.

In order to protect service members in the future, under the terms of the settlement agreement, going forward Sallie Mae will be required to streamline the process by which service members notify the lender that they are eligible for SCRA benefits. This includes employing customer service representatives who are specially trained about the benefits and rights due those in military service.

The week after the settlement was announced, groups representing students, educators and the nation’s largest labor federation asked the White House to terminate the contract between the Department of Education and Sallie Mae and Navient. These groups include the AFL-CIO, United States Student Association, and the American Federation of Teachers. They have created an online petition that calls for Education Secretary Arne Duncan to sever the contract with Navient Corp. The petition, which was organized by the nonprofit Jobs With Justice, reads in part:

The Department of Education shouldn’t be in business with companies like Sallie Mae that break the law, and I don’t want my taxpayer dollars supporting such a company. I urge you to not turn a blind eye to these disreputable practices. Please take these matters seriously by ending your agency’s contract and business dealings with Sallie Mae at once.

The joint petition currently has more than 50,000 signatures. Additionally, the United States Student Association has asked the Government Accountability Office and the inspector general overseeing the Education Department to investigate the department’s decision to renew Navient’s contract. The department last fall told Sallie Mae it intended to renew the contract, even though the federal investigators uncovered evidence a few months prior that the company violated the servicemembers law.

I am totally convinced that the American people expect members of our nation’s armed services to be protected from wrongdoing regardless of who the wrongdoers might be. It’s a national disgrace for the offender in this situation to have cheated service members. This wrongdoer should be made to be totally accountable for its wrongdoing.

Sources: Usnews.com; U.S. Department of Justice; and Huffington Post

Hackers Access 145 Million EBay Records

Hackers raided the network of EBay Inc. three months ago, accessing some 145 million user records. This will go down as one of the biggest data breaches in history, based on the number of accounts compromised. EBay advised customers to change their passwords immediately, saying they were among the pieces of data stolen by cyber criminals who carried out the attack between late February and early March.

EBay spokeswoman Amanda Miller told Reuters that those passwords were encrypted and that the company had no reason to believe the hackers had broken the code that scrambled them. She had this to say:

There is no evidence of impact on any EBay customers. We don’t know that they decrypted the passwords because it would not be easy to do.
Ms. Miller said the hackers gained access to 145 million records and that they copied “a large part” of them. Those records contained passwords as well as email addresses, birth dates, mailing addresses and other personal information, according to Ms. Miller. But she says financial data, such as credit card numbers, were not taken.

EBay has hired FireEye Inc.’s Mandiant forensics division to help investigate the matter. Mandiant is known for publishing a February 2013 report that described what it said was a Shanghai-based hacking group linked to the Peoples Liberation Army. EBay earlier had said a large number of accounts may have been compromised, but declined to say how many. Security experts advised EBay customers to be on the alert for fraud, especially if they used the same passwords for other accounts.

Trey Ford, a global security strategist with cybersecurity firm Rapid7, said that: “People need to stop reusing passwords and should change their affected passwords immediately across all the sites where they are used.” According to Michael Coates, director of product security with Shape Security, there is a significant risk that the hackers would unscramble the passwords because typically companies only ask users to change passwords if they believe there is a reasonable chance attackers may be able to do so. Still, EBay said it had not seen any indication of increased fraudulent activity on its flagship site and that there was no evidence its PayPal online payment service had been breached.

EBay said the hackers got in after obtaining login credentials for “a small number” of employees, allowing them to access EBay’s corporate network. Reportedly, EBay discovered the breach in early May and immediately brought in security experts and law enforcement to investigate, Ms. Miller, when asked why the company had not immediately notified users, responded that the company had “worked aggressively and as quickly as possible to insure accurate and thorough disclosure of the nature and extent of the compromise.” Apparently, that was her only explanation for why the company had not immediately notified users. I am not sure that answer to this question is acceptable.

The breach, based on the number records accessed by the hackers, could go down as the second-biggest in history at a U.S. company. Computer security experts say the biggest such breach was uncovered at software maker Adobe Systems Inc. in October 2013, when hackers accessed about 152 million user accounts. It would be larger than the one that Target Corp. disclosed in December of last year, which included some 40 million payment card numbers and another 70 million customer records. I suspect the inquiries relating to the EBay problems are just beginning.

Source: Claims Journal

XXII.
RECALLS UPDATE

We are again reporting a large number of safety-related recalls. In fact, we could have had a separate section this month on recalls by General Motors. We have included some of the more significant recalls that were issued in May. 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 2.7 MILLION VEHICLES FOR LIGHT AND BRAKE SAFETY CONCERNS

General Motors (GM) announced another huge recall on May 16 of about 2.7 million vehicles for safety issues, including lighting problems, brake malfunctions, windshield wiper failures and tie-rod defects. This is in addition to the recall of about 2.6 million vehicles for ignition switch problems that have caused more than 300 deaths. During May, General Motors has also announced four other recalls that cover about 180,000 vehicles.

The most recent recall by GM covers about 2.4 million GM mid-size passenger cars for tail lamp malfunctions, 112,000 Chevrolet Corvettes for loss of low-beam headlamps, 140,000 Chevrolet Malibus for hydraulic brake booster malfunctions, 19,000 Cadillac CTs for windshield wiper failures and 477 full-size trucks for a tie-rod defect that can lead to a crash. The largest recall involves 2004-2012 Chevrolet Malibu, 2004-2007 Chevrolet Malibu Maxx, 2005-2010 Pontiac G6 and 2007-2010 Saturn Aura model cars in the U.S. to modify the brake lamp wiring harness.

GM said in a statement that affected vehicles could have corrosion develop in the wiring harness for the body control module due to microvibration. It says the condition could result in brake lamps failing to illuminate when the brakes are applied or brake lamps illuminating when the brakes are not engaged. Additionally, cruise control, traction control, electronic stability control and panic braking assist operation could be disabled. The company said it is aware of several hundred complaints, 13 crashes and two injuries. But it says there have been no fatalities as a result of the condition.

The second safety recall covers 111,889 Chevrolet Corvettes from the 2005-2007 model years for potential loss of low-beam headlamp operation. Models from 2008-2013 will be covered under a customer satisfaction program. In this case, when the car’s engine is warm, the underhood electrical center housing could expand, causing the headlamp low-beam relay control circuit wire to bend slightly, possibly leading to a fracture and separation, after which the low beams won’t illuminate. GM said it is aware of several hundred complaints as result of the condition but no crashes, injuries or fatalities.

The third recall covers 140,067 Chevrolet Malibus from the 2014 model year with 2.5 liter engines and stop/start technology. These vehicles are subject to the disabling of hydraulic brake boost that can require greater pedal efforts and extended stopping distances. GM said it is aware of four crashes but it is not clear that these are related to the condition, and no injuries are known from those crashes.

The fourth recall covers 19,225 Cadillac CTs from the 2013-2014 model year for a condition in which the windshield wiper system may become inoperable after a vehicle jump-start with wipers active and restricted, such as by ice and snow. The fifth recall involves certain 2014 Chevrolet Silverado and GMC Sierra light-duty pickups and 2015 model year Chevrolet Tahoe SUVs. The tie-rod threaded attachment to the steering gear rack in these vehicles may not be tightened to specification. With this condition, the tie-rod can separate from the steering rack and a crash could occur without prior warning.

GENERAL MOTORS RECALLS ANOTHER 2.4 MILLION CARS

General Motors’ (GM) recall headache continues to grow. The automaker recalled another 2.4 million U.S. cars and trucks on May 20, including 1.3 million popular late-model crossover vehicles, and 1.1 million older cars. The crossover SUVs being recalled—Buick Enclave, Chevrolet Traverse, GMC

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Acadia and Saturn Outlook—have a problem that can cause the front seat belt to separate from the car during a crash. GM said it is a serious enough problem that it is ordering dealers not to sell new or used models of the vehicles until repairs are made. The model years involved are 2009 to 2014.

So far in 2014, GM has recalled 13.6 million vehicles in the U.S. and a total of 15 million worldwide. GM said there have been no injuries or deaths associated with the recalls. But there were 18 accidents tied to a problem with the transmissions in 1.1 million Chevy Malibu and Pontiac G6s. That recall covered model years from 2004 through 2008.

GM also recalled 1,400 2015 Cadillac Escalades for an airbag problem, as well as 58 2015 Chevy Silverado and GMC Sierra being recalled due to a fire risk. That is one of two recalls GM has announced this year of less than 100 vehicles. GM said the recall announced on May 20 will cost $200 million, bringing total charges for this quarter up to $400 million. Last quarter the company took a $1.3 billion charge associated with recalls. Those charges are only for the cost of repairs, not fines or potential payments to those injured or killed.

**A SMALLER GM VEHICLE RECALL**

General Motors (GM) has recalled about 56,400 Cadillac SRX crossover vehicles from model year 2013 because of possible lags in acceleration caused by problems with the module that controls the transmission. The recall affects 2013 Cadillac SRX crossovers equipped with 3.6L engines that have an acceleration lag that can occur in lower speed and stop-and-go driving. The recall includes 50,591 vehicles in the United States, 3,306 in Canada, 367 in Mexico and 2,125 in other markets, according to General Motors.

"A three- to four-second lag in acceleration may increase the risk of crash," the National Highway Traffic Safety Administration said in a report released on May 1. Alan Adler, a representative for GM, said the transmission control module calibration in the vehicles may cause a three-to-four-second lag in acceleration if a particular sequence of events occurs. While the lag could lead to an increased risk of crash, GM said it is unaware of any crashes or injuries due to this problem.

**ANOTHER GM RECALL**

General Motors (GM) has also recalled 51,640 SUVs because the fuel gauges may show inaccurate readings. The recall involves the Buick Enclave, Chevrolet Traverse and GMC Acadia from the 2014 model year. All of the affected SUVs were built between March 26 and Aug. 15 of 2013. GM says the engine control module software may cause the fuel gauge to read inaccurately. If that happens, the vehicle might run out of fuel and stall without warning.

The company says it doesn't know of any crashes or injuries related to the problem. GM says dealers will reprogram the software for free, starting immediately. The company will also notify owners by mail. The recall was posted on the National Highway Traffic Safety Administration's Web site.

**STILL ANOTHER GM RECALL**

General Motors (GM) has recalled nearly 60,000 Saturn Auras from model years 2007 and 2008 in the U.S. and Canada because of a problem where the shift cable can wear out, resulting in shift levers that can show the wrong gear. Saturn Aura vehicles with a four-speed automatic transmission have a condition where the transmission shift cable can fracture at any time. As a result, the driver may not be able to select a different gear, remove the key from the ignition or place the transmission in park, which could cause the vehicle to roll away and crash, according to GM.

GM says it’s aware of 28 crashes and four injuries but no fatalities in the last seven years. In a letter to the National Highway Traffic Safety Administration (NHTSA), GM said it submitted a plan on May 23, 2013, to provide repairs for the problem, but the automaker does not give any information on why the vehicles were not recalled for almost a year. GM representative Alan Adler said the vehicles were previously covered by a 10-year/120,000-mile extended warranty and other similar vehicles were the subject of a recall in 2012. In addition to the 56,214 recalled vehicles in the U.S., there are also 3,414 vehicles in Canada, Adler said. GM says dealers will replace the shift cable assembly and mounting bracket free of charge.

**YET ANOTHER GM RECALL**

This is beginning to sound like a "broken record," but General Motors Co. (GM) has issued yet another recall. This recall is for more than 8,200 Chevrolet Malibu and Buick LaCrosse vehicles in the United States for "possible reduced braking performance" caused by rear brake rotors being assembled into the front brake assembly. GM said its latest recall covers 8,208 vehicles made in the U.S. between Jan. 29 and March 31. The majority of the vehicles, according to GM, are in dealer stock. GM said only 1,694 of the recalled vehicles are in customer possession and that they expect a "very small percentage" of the recalled cars will contain the front brake assembly issue.

GM representative Alan Adler said that, if present, the condition could significantly shorten a vehicle’s front brake pad life and reduce brake system performance, which could in turn increase the risk of crash. He stated:

On affected vehicles, the front brake assembly may have been built with a rear brake rotor, which by design is 7 mm thinner than the front rotor. Brake performance is unaffected when the vehicle is new, but over time, higher heat generated by the thinner rotors will significantly shorten front brake pad life.

As for the most recent recall, GM says it is unaware of any crashes or injuries related to the condition. Dealers will inspect subject vehicles and, if necessary, replace the front rotor(s) and front brake pads, according to GM. Customers who have taken delivery of a potentially affected vehicle will be notified by letter and may request a courtesy vehicle until front brake rotors and front brake pads can be inspected and, if necessary, replaced.

**SUZUKI RECALLS 184,000 CARS BUILT BY GM KOREA FOR FIRE RISK**

Suzuki Motor Corp. has recalled 184,244 Forenza and Reno compact cars manufactured by General Motors Co. in South Korea because of a defect that can cause the running lights to overheat and cause a fire. The Japanese automaker is recalling Forenza vehicles from model years 2004 to 2008 and Reno vehicles from 2005 to 2008 because heat may be generated in the...
headlamps were also recalled. This marks 28,520,000 Escapes with flawed door latches during rollover crashes. Also, 741,000 C-MAX vehicles in the U.S. due to a soft:"}

**Honda Recalls Odyssey Minivans For Air Bag Problem**

Honda has recalled nearly 25,000 of its Alabama-made Odyssey minivans for an electrical defect that may prevent air bags from deploying in an accident. Their passenger-side curtain air bags may not deploy in a crash. The affected minivans are from the 2014 model year. An electrical connector, called the shorting terminal, may have been damaged during assembly; according to documents posted on the National Highway Traffic Safety Administration (NHTSA) website. The automaker said that the recall involves 24,889 model year 2014 Odyssey vehicles. They are being recalled in the U.S. to replace the shorting coupler, an electrical component in the side curtain air bag system.

During the assembly of the electrical coupler for the side curtain air bag on the passenger side of the vehicle, Honda said it is possible that the shorting terminal, which is used to prevent deployment of the air bag before it is assembled into the vehicle, may have been damaged. “A damaged shorting terminal may illuminate the supplemental restraint system indicator as well as prevent the side curtain air bag from deploying during a crash, increasing the risk of injury. No crashes or injuries have been reported related to this issue, which was discovered through warranty repairs,” the company said.

Honda will notify owners, and dealers will provide a fix, free of charge. The recall was to have started last month. The Odyssey is produced at Honda’s Talladega County plant, where workers also build the Pilot SUV, Ridgeline pickup and Acura MDX.

**Ford Recalls Another 1.4 Million Vehicles For Steering, Rust And Floor Mat Issues**

Ford Motor Co. has issued four more recalls affecting just less than 1.4 million vehicles for a range of safety vulnerabilities, most notably potential electrical problems in Ford Escape, Mercury Mariner and Ford Explorer sport utility vehicles that can cut off their power steering. The largest of the four recalls comprised 915,000 Escape and Mariner SUVs worldwide—741,000 in the U.S.—from model years 2008-11 that contain torque sensors with an electrical connection prone to failing.

If the sensor is interrupted, the vehicles’ power steering assist can fail, causing them to revert to manual steering and making them more difficult to control, according to Ford’s announcement. Although drivers can still steer, more strength is required, purportedly increasing the risk of accident. So far, the automaker says it knows of five accidents and six injuries linked to the defect. The report indicated that Ford knew of a possible problem in the component as early as 2009, but decided not to conduct a recall.

Although the National Highway Traffic Safety Administration (NHTSA) never launched a formal investigation, Transport Canada, the country’s auto safety agency, had begun probing the issue in 2011, eventually prompting the May 30 recall in both countries. Ford said dealers will either update software in the vehicles’ power steering module and instrument cluster module, replace the torque sensor or replace the steering column depending on which diagnostic code surfaces when they are brought to dealers for repairs.

Separately, Ford recalled 196,000 Ford Explorers from model years 2011-13 for an electrical issue in the steering gear that can also cut off power steering assist. The issue had been under scrutiny from both U.S. and Canadian regulators as well. Again, Ford said in a filing with NHTSA that it noticed more warranty claims than usual related to the steering component, but decided against a recall. NHTSA opened an investigation in 2012, and Ford subsequently issued a recall. Dealers can fix the component by upgrading software for the power steering control module or replace the steering gear, Ford said.

The third recall affects 196,000 Ford Taurus sedans for a vulnerability in their license plate lamps that can allow water inside. In areas that regularly use road salt, the lamps can corrode, causing a short circuit and potentially a fire, according to the automaker. The recall only applies to vehicles in 20 states and the District of Columbia that employ high levels of road salt to combat winter weather conditions.

Lastly, the automaker called back 82,500 floor mats on some Ford Fusions, Mercury Milans, Lincoln Zephyrs and Lincoln MKZs that it said can obstruct the accelerator pedal if installed improperly.

**Chrysler Recalls 780,000 Minivans Over Window Switch Defect**

Chrysler Group LLC has recalled an estimated 780,000 minivans worldwide to replace window switches that could overheat. The recalled vehicles are certain model years 2010 through 2014 Dodge Grand Caravan and Chrysler Town & Country minivans assembled between Aug. 25, 2010, and Oct. 31,
2013. Chrysler said 644,850 are in the U.S., 106,980 are in Canada, 8,009 are in Mexico and 20,638 vehicles are outside the North American Free Trade Agreement (NAFTA) region, primarily in Europe and the Middle East.

The minivans are equipped with third-row power window vents following incidents of overheating, according to the Michigan automaker, now owned by Italy’s Fiat SpA. Chrysler Group is unaware of any related injuries or accidents. Affected customers will be contacted directly and advised when they may schedule service. Associated costs will be borne by the company.

Customers were advised to visit their dealers to have the vent switches disconnected, which would eliminate any risks associated with the issue and affects only third-row window-vent operation. The company said it was alerted to the issue by warranty data, and launched an investigation. Engineers found a link between short circuits and beverage spills on the vent switch, as well as direct exposure to moisture from rain, snow or car washes, Chrysler said. Those short circuits may cause overheating, but the company said it is aware of only 36 incidents, less than 0.005 percent of the vehicles subject to the recall.

**TOYOTA RECALLING 516,000 VEHICLES**

Toyota has recalled 516,000 vehicles worldwide—including 430,500 in the U.S.—for three separate safety problems, including brakes that can activate without warning. The company said it has no reports of accidents or injuries due to the defects. In all three cases, the company will alert owners and dealers will repair the issues for free. The largest recall, of 450,000 Sienna minivans from the 2004-2011 model years, targets vehicles sold in cold weather areas. Toyota said road salt can corrode the spare tire carrier under the vehicle and the tire can fall off.

Siennas from the 2004-2010 model years were recalled for the same issue in 2010, and a splash protector and anti-rust protection were applied. But the company says the splash protector can fall off and rust can still occur. The recall involves 370,000 minivans sold in the U.S., 80,000 in Canada and 400 in Europe. Also recalled were:

- 16,000 Lexus GS 250 and 350 sedans from the 2013 model year because a manufacturing defect can cause the brakes to activate without warning, and without turning on the brake lights. Most of the vehicles—10,500—were sold in the U.S. Also included are left-hand-drive sedans sold in Canada, China and Europe.

- 50,000 Highlander and Highlander hybrid SUVs from the 2014 model year. Toyota says a software glitch may prevent the vehicle from properly calculating the size of the front passenger when determining whether to fire the air bags. The affected vehicles assume the passenger is smaller, so the bags may not fire or they may fire at a lower speed than necessary for a larger passenger. Toyota says most of the affected vehicles—45,287—were sold in the U.S. Around 3,400 were sold in Canada and the rest were sold in Mexico and Europe.

**HYUNDAI RECALLS 140,000 COMPACT SUVs WITH LOOSE AIRBAGS**

Hyundai Motor Co. has recalled more than 140,000 Tucson compact sport utility vehicles from model years 2011 to 2014 because the airbag may not be securely attached to the steering wheel. According to a May 13 National Highway Traffic Safety Administration (NHTSA) report, the airbag assembly installed in the steering wheel may become loose from its mounting and result in an increased risk of injury to the driver in the event of a crash. The recall affects 137,500 vehicles in the United States and an additional 3,500 vehicles in Puerto Rico.

According to Jim Trainor, a representative for Hyundai, two bolts that mount the airbag to the steering wheel could come loose because they may have not been tightened properly when the vehicles were manufactured. Hyundai said its dealers will inspect and tighten the bolts that secure the driver's airbag free of charge. The South Korean automaker also said it is not aware of any accidents or injuries as a result of the defect.

**KIA RECALLS 7,000 UK MODELS OVER FAULTY BELT TIGHTENERS**

Kia Motor Corp.'s United Kingdom wing has recalled more than 7,200 Sportage and Soul crossover models. The auto-maker said defective seat belt pre-tensioners that could place drivers and passengers at increased risk during accidents made their way into the vehicles. Kia Motors UK Ltd. expressed concern that a faulty piston in a batch of pre-tensioners may prevent the mechanism from functioning properly, although no injuries have been linked to the defect, according to the recall. The Korea-based Carmaker recalled 5,787 Sportage and 1,432 Soul vehicles and promised to swap out the component at its dealerships for free within two hours. Only cars fitted with parts from the defective batch are affected, according to Kia.

Seat belt pre-tensioners are comprised of an intricate set of parts designed to activate during a collision and keep passengers secured in their seats by preventing belts from slackening. The affected Sportage models rolled off the line at a manufacturing plant in Zilina, Slovakia, between October 2011 and November 2012 and the Soul models originated from a facility in Kwangju, Korea, between August 2011 and March 2012. Models of the newest Soul, introduced in the U.K. in April, were said to be in no danger. Kia says the defect was discovered through routine vehicle monitoring rather than by a consumer complaint.

**BMW RECALLS 6,400 SUVs OVER DOOR-Lock DEFECT**

BMW of North America has recalled roughly 6,400 X5 sport utility vehicles in the U.S. this month because a defect can cause child-safety locks to disengage when rear inside door handles are pulled. Rear-seat occupants can disengage child safety safety locks by pulling the door handle and then, when pulling the handle a second time, open the door while the car is parked or in motion, the National Highway Traffic Safety Administration (NHTSA) said in a notice of the voluntary recall campaign.

About half of the 6,400 vehicles, which are equipped with the soft-close automatic door option, and which were manufactured by BMW AG from Dec. 12, 2013 through Mar. 10, 2014, contain the defect, according to NHTSA. BMW says it isn’t aware of any injuries tied to the defect.

The move comes amid a separate recall in which BMW is recalling more than 156,000 vehicles in the U.S. and more than 232,000 vehicles in China because
of a potential defect that causes some 2010 to 2012 vehicles with six-cylinder engines to stall or suffer engine damage.

BMW says it discovered the door-lock issue in early March during audit testing on a vehicle built with the soft-close automatic option. The company immediately sent affected parts to the supplier for analysis, which determined that the defect stemmed from the narrowing of the clearance between internal components of the locking system. While the parts that weren’t produced to specification are identifiable by date codes contained on them, it isn’t known which specific vehicles were manufactured with the parts, the NHTSA notice said.

Nest Labs Recalls Nest Protect Smoke + CO Alarms Due To Failure To Sound Alert

About 440,000 Nest Protect: Smoke + CO Alarms have been recalled by Nest Labs Inc. of Palo Alto, Calif. Activity near the product during a fire can prevent the alarm from immediately sounding when the Nest Wave feature is enabled. This recall includes all Nest Protect Smoke + CO alarms. The alarms are made of black or white plastic and are about 5.25 inches square with rounded corners and about 1.5 inches deep. The word “nest” is on a large button on the face of the alarm. Consumers can enable the alarms to be controlled by a computer or a smartphone over a wireless network. The alarms have a Nest Wave feature, which allows users to temporarily silence some alerts or cancel a manual test by vigorously waving an arm near the unit that triggered the alarm. Nest Protect Smoke + CO alarms came from the factory with the Nest Wave feature enabled and with the slider button in the “On” position in Nest Protect Settings. Nest Labs says it has received no reports of incidents, injuries or property damage.

The repair is an automatic electronic update that disables the Nest Wave feature and is delivered automatically to devices connected wirelessly to the Internet and linked to a Nest account. Contact Nest Labs at 800-249-4280 any time or online at www.nest.com and click on Nest Protect Safety Notice for more information.

The devices were sold at Best Buy, Home Depot and other retailers nationwide, and online at nest.com, amazon.com, bestbuy.com and homedepot.com from November 15, 2013 to April 3, 2014 for about $130.

Consumers who have not connected their Nest Protect devices to their wireless network and linked them to a Nest account should immediately do so. The devices will automatically receive the update that disables the Nest Wave feature. Customers should confirm that their devices have been updated by going to Nest Sense on their Nest account mobile or web application and ensuring that the button for Nest Wave is off and grayed out. Instructions on how to connect to a network and disable the feature are available at http://support.nest.com/article/Nest-Protec-Safety or by contacting Nest Labs.

Customers whose Nest Protect devices are connected to their wireless network and linked to a Nest account should immediately confirm the receipt of an automatic repair that disabled the Nest Wave feature by going to Nest Sense on their Nest account mobile or web application and ensuring that the button for Nest Wave is set to “off” and grayed out. The company says no further action is required and consumers can continue to use their devices.

Coleman Recalls Northstar Lanterns Due To Fire Hazard

About 95 Northstar® Liquid Fuel Lanterns have been recalled by The Coleman Company, Inc. of Wichita, Kan. An incorrect gas feed tube was installed on the lantern. When lit, the tube can release too much fuel, posing fire and burn hazards. This recall involves Northstar® liquid fuel lanterns with model number 2000B750 and date codes 10 13 or 11 13. The model number is printed on the base of the lantern, under the lighting instructions. The date code is stamped on the underside of the lantern. A Coleman logo sticker is affixed to the front of the lantern base. The green lanterns measure about 15” tall by 7” wide by 7” deep. The firm has received two reports of lanterns catching fire when fuel unexpectedly leaked from the bottom of the unit. No injuries have been reported.

Consumers should immediately stop using the recalled lanterns The lanterns were sold at sporting goods stores nationwide and online at coleman.com from November 2013 through February 2014 for about $125. Contact the Coleman Company, Inc. at 800-835-3278 from 7 a.m. to 5 p.m. CT Monday through Friday, by email at consumerservice@coleman.com or online at www.coleman.com and click on “Important Safety Information” for more information.

Adult Portable Bed Handles Recalled By Bed Handles Inc.

Bed Handles Inc., of Blue Springs, Mo., has recalled about 113,000 adult portable bed handles. When attached to an adult’s bed without the use of safety retention straps, the handle can shift out of place creating a dangerous gap between the bed handle and the side of the mattress. This poses a serious risk of entrapment, strangulation and death. In fact, deaths have been reported.

Three women died after becoming entrapped between the mattress and the bed handles. They include an elderly woman, who died in an Edina, Minn., assisted living facility; a 41-year-old disabled woman who died in a Renton, Wash., adult family home; and a woman who died in a Vancouver, Wash., managed care facility.

The recall involves adult portable bed handles sold by Bed Handles Inc. from 1994 through 2007 that do not have safety retention straps to secure the bed handle to the bed frame to keep the bed handle from shifting out of place and creating a dangerous gap. Recalled models include the Original Bedside Assistant® (BA10W), the Travel Handles™ (BA11W) which is sold as a set of two bed handles, and the Adjustable Bedside Assistant® (AJ1).

The L-shaped bed handles are made out of ¾ inch tubular steel, measure 20 inches wide, 16 to 20 inches tall and have 3 ft. poles that extend under the mattress. The Original Bedside Assistant® (BA10W) and the Travel Handles™ (BA11W) have a white handle with white poles that go under the mattress. The Adjustable Bedside Assistant® (AJ1) is gold in color and has a black cushioned foam handle. The bed handles are intended to assist adults with getting in and out of bed by giving them a bar to grip. Bed Handles Inc. and the model number are printed on a white label on the bed handles.
The bed handles were sold by home health care stores, drug stores and medical equipment stores nationwide and in home and health care catalogs from January 1994 through December 2007 for about $100. They were manufactured in the United States. Consumers should immediately stop using all recalled bed handles that were sold without safety retention straps. Contact Bed Handles Inc. for free safety retention straps to secure the bed handle to the bed frame, new assembly and installation instructions for models BA10W, BA11W and AJ1 and a warning label to attach to the bed handles. The bed handles should be used only with the safety retention straps securely in place attaching the bed handle to the bed frame in order to prevent a gap. Contact Bed Handles Inc. at 800-725-6903 from 8:30 a.m. to 4:30 p.m. CT Monday through Friday, or online at http://bed-handles.com/recall.html.

**Sun Pharma Recalls 428,000 Substandard Pill Bottles**

Sun Pharmaceutical Industries Ltd.’s U.S. subsidiary has recalled more than 428,000 bottles of antidepressant and antihistamine pills that failed to meet U.S. drug release standards, according to the U.S. Food and Drug Administration (FDA). Sun Pharma’s Caraco Pharmaceutical Laboratories Ltd. began the series of recalls in March and April that affected 251,882 bottles of Venlaxafine, a prescription drug that treats depression, and 176,176 bottles of the antihistamine Cetirizine, according to FDA enforcement reports posted on the agency’s website. The tablets failed to meet U.S. drug-release dissolution specifications, the FDA said, and Caraco recalled the Venlaxafine tablets in March and the Cetirizine pills the following month.

The recalls come months after FDA officials blackballed one of the generic drug giant’s overseas plants and as Indian drugmakers face increasingly intense scrutiny from U.S. regulators. FDA officials blackballed a Sun Pharma plant in March, saying the manufacturer’s Karkhadi, India, facility violated U.S. good-manufacturing standards. The generics maker has 24 plants, 15 of which are approved by either the FDA or European regulators and three of which are in the U.S. FDA regulators have also placed bans on six Ranbaxy Laboratories Ltd. facilities as Sun Pharma attempts to buy the struggling Ranbaxy in a $3.2 billion all-stock deal.

The FDA found that employees at Ranbaxy’s Toansa, India, plant regularly retested raw materials, intermediate drug products and finished active pharmaceutical ingredients that failed to meet specifications until they obtained “acceptable results.” Sun Pharma shareholders accused the companies of violating Indian insider trading rules. According to the petition, a Sun Pharma subsidiary bought a substantial chunk of Ranbaxy shares in the days before the deal announcement. The merged company would become India’s biggest pharmaceutical company with a presence in dozens of countries around the world, driving annual revenues past $4.2 billion. During a trip to India in February, FDA Commissioner Margaret Hamburg said the agency would increase its collaboration with Indian drug regulators after the FDA issued restrictions on the nation’s exported drugs and increased its presence there.

**Bravo Recalls Pet Food For Potential Listeria Contamination**

Bravo has recalled select lots and products of Bravo Pet Food because they have the potential to be contaminated with *Listeria monocytogenes*. The FDA has reported that an independent lab detected the bacteria in a sample during a recent review. The company has received a limited number of reports of dogs experiencing nausea and diarrhea that may be associated with these specific products. The company has received no reports of human illness as a result of these products.

*Listeria monocytogenes* is an organism that can cause serious and sometimes fatal infections in young children, frail or elderly people, and others with weakened immune systems. Although healthy individuals may suffer only short-term symptoms such as high fever, severe headache, stiffness, nausea, abdominal pain and diarrhea, *Listeria* infection can cause miscarriages and stillbirths among pregnant women. However, healthy cats and dogs rarely become sick from *Listeria*. Animals ill with *Listeria* will display symptoms similar to the ones listed above for humans. People who have concerns about whether their pet has *Listeria* should contact their veterinarian.

The recalled product was distributed nationwide to distributors, retail stores, Internet retailers and directly to consumers. The product can be identified by the batch ID code (best used by date) printed on the side of the plastic tube or on a label on the box. Bravo discontinued all manufacturing in New Zealand on Oct. 10, 2013. The company says it will immediately start working with distributors and retailers to properly dispose of any affected product left on freezer shelves. The company will also be announcing the recall to pet owners to ensure they dispose of any affected product that has been purchased.

The recalled product should not be sold or fed to pets. Pet owners who have the affected product at home should dispose of this product in a safe manner (for example, a securely covered trash receptacle). They can return to the store where purchased and submit the Product Recall Claim Form available on the Bravo website for a full refund or store credit. More information on the Bravo recall can also be found on the company website or by calling toll-free 866-922-9222.

Once again there have been a large number of recalls since the last issue. To say that the number of GM recalls is shocking is a classic understatement. While we weren’t able to include all of the other product recalls in this issue, we attempted to include 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 beginning of this section, you can contact Shanna Malone at Shanna.Malone@beasleyallen.com for more recall information or to supply us with information on recalls.

**XXIII. FIRM ACTIVITIES**

**Beasley Allen Lawyer Is Appointed To Leadership Role In Target Data Breach Litigation**

Dee Miles, head of our firm’s Consumer Fraud Section, has been named to the Financial Institution Cases Steering Committee for
the Multidistrict litigation (MDL) surrounding the Target data breach. Dee was appointed by U.S. District Court Judge Paul A. Magnuson, who is overseeing the MDL in United States District Court, District of Minnesota.

Target Corporation, which is headquartered in Minnesota, suffered a massive data breach that is believed to have taken place primarily between Nov. 27 and Dec. 15, 2013. It was originally believed to have affected about 40 million Target shopper accounts including credit and debit card information. However, after further investigation, Target officials revealed that hackers stole not only information from cards used by shoppers at Point of Sale (POS) machines, but that other information was compromised, including names, phone numbers, email and mailing addresses from more than 100 million other customers.

Our law firm filed two class action lawsuits in the wake of the Target data breach, one on behalf of consumers whose information was compromised, and another on behalf of Alabama State Credit Union as lead Plaintiff representing credit unions, banks and other financial institutions. Financial institutions are burdened with the extravagant costs of closing accounts and reissuing debit and credit cards as a result of Target’s failure to secure its data.

Reports by the Consumer Bankers Association and the Credit Union National Association in February estimated the cost of the data breach for financial institutions had already surpassed $200 million. That number was expected to grow as more customers requested debit and credit cards tied to stolen information be replaced.

In addition to his role leading the firm’s Consumer Fraud Section, Dee has a proven track record of leadership in MDL cases throughout the country. He has been selected by Federal Courts to leadership positions in previous MDL cases, and the firm has been selected to 16 different Plaintiff Steering Committees on MDLs ranging from the recent Toyota MDL to the BP MDL. Dee has also served as lead or co-lead counsel in national class actions.

Perhaps most significantly, Dee recently completed serving as lead counsel on behalf of eight separate states and their attorneys general (Alabama, Alaska, Hawaii, Kansas, Louisiana, Mississippi, South Carolina and Utah) in the Average Wholesale Price (AWP) / Medicaid Fraud Litigation. This effort resulted in $1.5 billion to the states by way of settlements and judgments. Without any doubt, these cases have made a significant social change in the way our Medicaid program operates nationwide.

Dee is also specifically suited for this Target Data Breach Litigation as it relates to financial institutions. Prior to attending law school, he gained experience as a Corporate Internal Auditor for a major financial institution before attending law school (AmSouth Bank, now known as Regions Bank), which makes him uniquely qualified for the financial institution side of the case.

This is very important litigation that exposes the critical flaws in the way credit and debit card systems operate in the United States. Because Target failed to maintain adequate computer data security, it exposed millions of people to the risk of fraud and identity theft, and violated their privacy rights. Since Target admitted its security breach, more retailers came forward and also confessed to similar data security thefts. Unless something is fundamentally changed, consumers will continue to be at risk.

It is an honor to be selected by the federal court to serve in leadership on any MDL cases, but Judge Magnuson’s appointments in this Target MDL is a special honor considering that more than 100 lawyers from all across the country were seeking one of the 19 positions the judge created. We are honored that Dee was selected. He will work hard to see that this MDL gets a badly needed job done.

Employee Spotlight

KATHY ECKERMAN

Kathy Eckermann, who has been with the firm for 13 ½ years, now serves as my Executive Assistant. She replaced Libby Wilbanks, who had served in that capacity for 25 years, in January 2011. Kathy holds a very important position. It takes a very special person to handle the many demands that go along with the job. Kathy assists me with a number of things including answering the phone, returning phone calls, checking the firm trial schedule for accuracy, making travel arrangements, scheduling board meetings, formatting articles for the Report, firm sponsorships and coordinating charities.

But I believe her most important function is dealing with all of the folks who contact my office. Kathy handles all sorts of people who contact my office and she does it very well. We get calls and contacts from people, mostly lawyers, from all across the country. It takes a person with excellent people skills to handle the demands on this position. I am most fortunate to have had two persons, Libby and Kathy, with these skills. I really believe each has enjoyed the part of their work that involved dealing with people.

Kathy has been married to Eddie Eckerman for 33 years. Eddie, a retired school teacher, currently drives buses around the country for Capital Trailways. Kathy and Eddie have a son and a daughter. Aaron, who lives in Nashville and works for Gibson Guitar, will be getting married in August. Leah lives in Montgomery and works for M.A.R.C.

Kathy attended Huntingdon College and received a Bachelor of Arts in Music Education, graduating cum laude. She says she loves playing the piano and composing music, reading, walking for exercise, hiking when on vacation and spending time with her family. Kathy serves as the orchestra pianist at her church, Eastmont Baptist. Kathy does a tremendous job and I am blessed to have her working with me.

Beasley Allen Sponsored The Montgomery Chamber of Commerce’s “Alabama Update”

As I mention from time to time, our firm is a proud supporter of the Montgomery Area Chamber of Commerce. I have served on the Board of Directors for several years. For several years we have sponsored different events that give local and state officials an opportunity to update area business people on activities in their government. We believe this to be very important.

In late May, the annual “Alabama Update” was held. Although it was unfortunate that Governor Bentley was unable to attend, outgoing Chief of Staff David Perry presented an update on the matters of the state. He did a tremendous job and was well received. The event was interesting, as always, and wrapped up with David praising our local officials and business leaders. He said, “I can’t tell you how much better off the state would be if every area was as well organized and with as strong of a team and as good of collaborators as you all are. If we could get Jefferson County to get their act together in the same way that you do, the state would be in a different place.” Dave also praised our law firm’s work in the very important BP litigation. We represent Gov. Bentley in this litigation.

These were most interesting remarks and it was an informative program all around. I would encourage our readers who are members of a local Chamber of Commerce to take advantage of attending these events. It’s a very good way to stay current on what is really happening in government at the state and local levels.
Throughout the years we have held many blood drives to give our staff and others working downtown the opportunity to give several times a year. This year we held our Spring Blood Drive on Tuesday, May 13, and it was a tremendous response! I am very pleased at the results of the drive, especially the mcdowell lee Story

As you know, it’s not uncommon for me to be proud of the folks who work at Beasley Allen. While that’s true in this instance, I must also mention the participants from our Commerce Street neighbors, including Jackson Thornton and their subsidiary, Complete Practice Management. Together, we all helped save lives!

The McDowell Lee Story

As I mentioned in the May issue, my longtime friend McDowell Lee died on April 17 at his home in Auburn, Ala. Mac, as he was known to family and friends, had a long and distinguished career. In fact, even before 1963, when he was elected Secretary of the Alabama Senate, Mac already had a most interesting career. He had served in the U.S. Navy and also as a head high school football coach, a mayor, a banker and as an FBI agent. But most of his life was spent in Alabama’s political life. Mac was best known as the Secretary of the Alabama Senate, where he spent 47 years. His was a national record for tenure. During his time as Secretary of the Senate, Mac received hundreds of awards and recognitions over the years. He truly loved the Senate and its traditions.

Mac was extremely knowledgeable about all facets of Alabama history. You could ask him a question about any subject from any era in Alabama history, and you would get a prompt and accurate answer. Mac could also tell you in detail about every important vote in the Alabama Senate. His memory for detail was unbelievable.

Mac was a master Parliamentarian and his skills in that arena won him national acclaim. Mac’s reverence and obedience to the rules, procedures and traditions of the Senate were unparalleled. He could not tolerate a member of the Senate who would knowingly violate the rules. Neither did he have any respect for a senator who would not take the time required to learn the rules. There have been a few who fall in that category. Mac’s reputation for fairness and impartiality won him tremendous respect by both senators and lobbyists. The latter group’s work required a presence in and around the Senate Chamber. They all knew not to cross Mr. Lee and to follow the rules that governed lobbyists.

I can say without reservation that McDowell Lee was a great man who truly loved his job as Secretary of the Senate. Perhaps the best thing I can say about Mac is that he was a loyal friend. I have never known a person who was more loyal to his friends and who would stand up for them regardless of the circumstances. Over the years, I never had a better friend nor a more trusted advisor.

Mac took an inexperienced young lawyer from Barbour County, who had been elected Lt. Governor, and spent weeks teaching him the rules of the Senate. I will never forget that experience. I will miss Mac greatly, as will all who knew him. To say that this man from Barbour County is a legend is as accurate a statement as I could make.

The Travis Grant Story Is A Good One

Of the great basketball players produced by the state of Alabama, one of the least heralded was from my hometown. But none of them was more prolific than Travis Grant. Travis, a native of Clayton, played at Barbour County High. He is the all-time all-division scoring leader in NCAA basketball history. Travis’ accomplishments already have him in the Basketball Hall of Fame. He has now entered the Alabama Sports Hall of Fame. Travis scored 4,045 points in his career at Kentucky State, 378 more points than Pete Maravich, the all-time NCAA Division I leader.

The Los Angeles Lakers made Travis the No. 15 pick in the 1972 draft—one pick below Julius Erving. Travis spent a year in Los Angeles, then played three years in the ABA. He wound up as second-leading scorer in the league in 1974-75, averaging 25.2 points per game for San Diego. Travis had this to say in an ESPN.com interview:

You can gain a lot by going to those black institutions. It’s not just the education you receive there. It’s more than that. It’s also about learning to grow up and learning values and respect. Leaders come out of there.

I don’t think that you have to go to those colleges, but they have value that is worth preserving. I had to consider basketball in my decision, and John Chaney said, sometimes you pick your college because of the man. The person that is going to be coaching you is probably the most important thing.

Travis was inducted into the College Basketball Hall of Fame in 2009 and the NAIA Hall of Fame in 2011. He was presented the NAIA Chuck Taylor Most Valuable Player Award twice and was the first small college player to win the Lachick Trophy - Sporting News College Basketball Player of the Year award in 1972. I am very proud of all that Travis has accomplished and am glad to say that he is a fellow “Barbour Countian!”

Source: Al.com

The Children’s of Alabama Protects Our Future Generations

Folks in Alabama—and actually those throughout the Southeast—are blessed to have a wonderful resource to care for sick and injured children. Children’s of Alabama, which most people refer to as Children’s Hospital, is located in Birmingham, Ala. The hospital provides specialized medical care for youngsters throughout the state and across the southeast. For the last four years, Children’s has been ranked among the best children’s hospital programs in the nation and that ranking is well-deserved.

Nobody likes to think about their child becoming seriously ill or being injured, but if this should happen, it’s amazing to have such a specialized facility close at hand. Children’s has been treating our state’s youngest patients since 1911. Today, they serve more than 670,000 outpatient and almost 14,000 inpatient visits from every county in Alabama, as well as from 41 states and even from foreign countries.

The Children’s of Alabama website lists not only a “mission statement,” but it also shares the vision and values of the organization:

• Mission—to provide the finest pediatric health services to all children in an environment that fosters excellence in research and medical education. Children’s of Alabama will be an advocate for all children and work to educate the public about issues affecting children’s health and well-being.

• Vision—a better childhood for all children—a childhood where all children have access to health care, live in safe neighborhoods, grow up in economically stable families and attend functional schools within communities that value each child as a unique human being.

• Values—compassion, commitment, innovation, trust and teamwork.

Among those who have served on the Board of Trustees for Children’s of Alabama for many years is Beth Dubina, wife of Judge Joel Dubina. She has been a very valuable member of the board and has assisted the hospital in many ways. There are many ways to become involved with this worthwhile organization. You can: donate money to either support Children’s operation, to a specific unit of the hospital; donate toys and other items to Children’s patients; serve as a volunteer; or coordinate a group to perform to entertain patients or to complete a specific service project. You can find out more information about how you can get involved by visiting the Children’s of Alabama website at www.childrensal.org. Needless to say, Children’s of Alabama is a tremendous organization and is a state treasure.

Source: childrensal.org

XXV.
FAVORITE BIBLE VERSES

Allison Hunnicutt, who is Of Counsel in our firm’s Mass Torts Section, furnished a verse for this issue. Allison says when suffering occurs in her life and the lives of those she loves, she takes great comfort in these verses from 1 Peter that remind her that Christ suffered greatly and that suffering is a necessary part of life which actually brings us closer to Christ and therefore closer to God. Allison rededicated her life to Christ on Sunday, May 25, 2014, when she was baptized by immersion at Morningview Baptist Church of Montgomery, Ala.

Beloved, do not think it strange concerning the fiery trial which is to try

you, as though some strange thing happened to you; but rejoice to the extent that you partake of Christ’s sufferings, that when His glory is revealed, you may also be glad with exceeding joy.

1 Peter 4:12-19

Betty Baggott sent in two verses this month. Betty, who now lives in Montgomery, does lots of speaking. Her husband Bob, who died much too early, was a very good Baptist preacher. Bob also served as Chaplain for the Auburn football team under Coach Pat Dye. Betty is in great demand as a motivational speaker and she stays very busy. Betty also gives the devotion at our firm once each month. Our employees really enjoy her visit in that capacity.

For God is not unjust to forget your work and labor of love which you have shown toward His name, in that you have ministered to the saints, and do minister. And we desire that each one of you show the same diligence to the full assurance of hope until the end, that you do not become sluggish, but imitate those who through faith and patience inherit the promises.

Hebrews 6:10

If anyone’s work which he has built on it endures, be will receive a reward.

1 Cor. 3:14

My good friend, Chuck James, a Montgomery lawyer, sent in a timely verse this month.

And the King will answer and say to them, ‘Assuredly, I say to you, inasmuch as you did it to one of the least of these My brethren, you did it to Me.’

Matthew 25:40

Evan Allen, a lawyer in our firm’s Personal Injury/Products Liability Section, also furnished two most meaningful verses.

For everyone who exalts himself will be humbled, and he who humbles himself will be exalted.

Luke 14:11

Be on your guard; stand firm in the faith; be men of courage; be strong.

1 Corinthians 16:13

XXVI.
CLOSING OBSERVATIONS

Over the years I have had to be reminded that, as a lawyer and more importantly as a follower of Jesus Christ, I have an obligation to help others and to do so for the right reason. On occasion I must admit that I put my own interest over that of others and when I did so I always regretted it later. Last month, I saw firsthand what it means to put the interests of others over your own personal interest. I attended a news conference in the law office of Lance Cooper in Marietta, Ga. That event had to do with the filing of a lawsuit by the parents of a young woman who had been killed in a tragic motor vehicle crash.

Ken & Beth Melton, the parents of Brooke Melton, a beautiful young lady who was killed in the motor vehicle crash in 2010, had settled a wrongful death lawsuit for a confidential amount with General Motors. They had learned later that the automaker had for more than 10 years covered up a known safety defect in their cars, one of which was involved in Brooke’s death. The Meltons also learned that GM had lied under oath during their case and also had lied to the court and to the American people.

The Meltons decided to return the money received in their settlement to the automaker and refile the lawsuit. Their mission now is to make the death of their daughter bring to the public’s attention the unsafe practices of the automaker, which included a deliberate cover-up, and to save lives in the future. While the Meltons seek justice, they also desire that a lasting memorial to Brooke be that others might live who otherwise might become victims of corporate deceit and greed.

I left Lance’s office that day fully realizing what a brave and courageous act of unselfish love for others I had observed. Regardless of the outcome of the Melton case, it gave me a new and lasting understanding of what it really means to help others. I saw by the actions of two persons who had suffered tremendous hurt a sincere desire to put the interests of others over their own. My prayer is that others may learn from that act of love and concern for others. The following scripture describes what the Meltons have done.

Each of you should look not only to your own interests, but also to the interests of others. Your attitude
should be the same as that of Christ Jesus.

Philippians 2:4-5

My involvement with the Meltons makes me realize how blessed I am to be a lawyer who helps people. I thank God for the opportunity!

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 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

XXVII.

PARTING WORDS

I heard a song recently that definitely got my attention and it caused me to do lots of thinking about all of the disputes and conflicts that are a part of our lives. On a daily basis, we hear or read about conflicts between nations, races, businesses, political parties and their leaders, genders, friends, and families. They even occur in the churches, of all places. Folks abuse each other, misuse each other, lie to each other, cheat each other, manipulate each other, and nowadays even kill folks they don’t even know in mass shootings. Where in the world are we headed?

The song “Why can’t all of God’s children get along?” asks some most profound questions. Is this God’s plan? Is sin the culprit? Does God allow it and if so why? The short answers are “no,” “yes,” and “yes,” with the qualification on the latter that it’s because God gives us “choice.” I believe we can all agree that there may be more hurt in the world today than perhaps ever before. Many believe that it’s because of a disconnect with God and that this is the real problem that breeds the others. By the way, the song referred to above is by Karen Peck and New River and it’s worth a listen.

There is a way to get things in the proper perspective and that is to find what Jesus had to say about how to get along in this troubled world we live in. Remember, as we take a look at the words of Jesus, the context in which they were spoken. First, it must be recognized that Jesus came to announce, to us (and unto the world) the Kingdom of God. He did that without question. The religious leaders of that day—the Sadducees and Pharisees—constantly debated Jesus in an attempt to trap Him and discredit Him. They saw Jesus as a threat to their position, power and authority over the masses. In one of these debates the leaders were asking Jesus why He did certain things like healing on the Sabbath and other things that their “rules” banned. A lawyer observed one of the debates where the various commandments were being debated. He asked Jesus a most timely and important question and that was: “which is the most important commandment?”

Jesus answered the lawyer by saying that the most important commandment is to “love the Lord your God with all of your heart, all of your soul, with all of your mind, and with all of your strength.” Jesus then said that the second most important is to “love your neighbor as yourself.” Jesus concluded by saying that “there is no greater commandment than these.” I have to wonder how different our lives would be if we really followed these commandments?

The way of Jesus is a commitment to a radical life of love. Living a kingdom-centered life involves nothing more, and nothing less, than living out the Biblical call to love God and to love your neighbors. It is critical to understand and accept that your neighbor may not look like you, talk like you or even live in your state or even your country. Living for God, and according to His commandments, involves acting as Jesus would act in your daily dealings with folks. Loving folks may not come easy, but remember that we love God because God first loved us. If we have faith in God’s promises, trust God and obey His commandments, then getting along with folks has to become very easy.

My prayer is that we will be like the lawyer in Mark 12:28-34 and really understand what Jesus is telling us in those verses. I am working on that and will try extra hard to do a better job of getting along with “my neighbors” in the future.

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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.