I.  CAPITOL OBSERVATIONS

THE CIVIL JUSTICE SYSTEM DOES MAKE A DIFFERENCE

Our firm tried a most significant lawsuit in Montgomery County last year dealing with a defective cab guard on a log truck. The company that manufactured the cab guard admitted during the trial that it knew the cab guard it was selling was unsafe. However, the company had failed to warn purchasers and users of the hazardous condition created by the unsafe cab guards. In fact, it was marketed by the manufacturer as being protective. We proved at trial that the manufacturer’s management knew that the cab guard was unreasonably dangerous and that it should not have been used on the log truck involved in the case.

I wrote last month about the importance of the civil justice system and how lawsuits have brought about needed design changes. The cab guards case is a prime example of how the system works to make products safer. We recently received the new warning label that is now being used by this company. The new label reads as follows:

Read and heed all safety information with this product. Failure to follow safety instructions can result in serious injury or death.

Forward-shifting cargo can cause serious injury or death to cab occupants in a sudden or hard braking or stopping situation and in accidents. This product will not provide protection from forward-shifting cargo under any circumstances.

This change in the warning label by the manufacturer is proof that litigation serves a useful purpose in the design of products and in bringing about needed product changes. I am convinced that had we not tried this case the new warning would never have been put on the company’s cab guards. Lives will be saved and that’s a result worth all the effort that went into this case. The civil justice system has been under constant attack by tort-reform groups whose mission is to protect wrongdoers at the expense of the public interest. Hopefully the American people realize that their constitutionally protected right to a trial by jury in civil lawsuits is worth fighting for. The cab guard case is a prime example of how important that right is and why the system must be saved.

II. THE ONGOING SAGA OF THE GENERAL MOTORS SAFETY PROBLEMS

MORE ON GM’S ‘SWITCH FROM HELL’

A great deal has been happening involving the General Motors safety problems over the past few days. In fact, you need to be on your toes to keep up with all of the recalls. It’s most significant that the criminal investigation now appears to be in high gear. That has to have gotten the attention of several key folks at GM. On June 30, as we were getting ready to send this issue to the printer, Ken Feinberg announced the GM compensation plan. I will discuss this plan in some detail under a separate heading. Also late on June 30, GM recalled another 8.4 million vehicles, bringing its total for the year to about 29 million!

The automaker’s testimony in front of a congressional committee last month left me even more convinced that GM executives had to have been aware of the deadly safety defects surrounding the ignition switch in its vehicles. If GM bosses and top management didn’t know of a defect that was around for more than 10 years, the company is even worse than I thought.

GM CEO Mary Barra, on June 18, made her second appearance before the Congressional Committee on Energy & Commerce Subcommittee on Oversight and Investigation. Accompanying Ms. Barra this time was Anton Valukas, the lawyer who was hired by GM to do a so-called independent evaluation of the automaker’s conduct. If GM’s conduct is not criminal, it’s as close to it as anything I have observed over the years.

The hearing testimony by both Ms. Barra and Mr. Valukas left a great deal unanswered and it’s quite obvious that much work is yet to be done. No reasonable person would believe that top management at GM didn’t know about there most serious safety problems involving the ignition switch, which was labeled the “Switch from Hell” by the very engineer who designed it. GM was described during the hearing as being both incompetent and negligent for a period of 11 years. That finding relating to safety issues came directly from the Valukas report. To say that is a shocking assessment is a gross understatement. It has to be greatly concern folks who are driving GM vehicles.

The new CEO of GM wanted the Congressional Committee to believe that top management for more than a decade was totally in the dark about a most serious safety issue. That is especially disturbing considering during that decade hundreds of innocent victims were being killed and seriously injured. GM had actual knowledge of at least some of the deaths, if not all, during that time. It now claims that 13 victims were killed. Of course we know that number is very much larger. In fact, it’s

IN THIS ISSUE

I. Capitol Observations .......................... 2
II. The Ongoing Saga of the General Motors Safety Problems . 2
III. A Report On The Gulf Coast Disaster . . . 6
IV. Drug Manufacturers Fraud Litigation . . . 6
V. Court Watch ................................ 8
VI. The Corporate World .......................... 9
VII. Whistleblower Litigation ..................... 10
VIII. Product Liability Update ................... 12
IX. Mass Torts Update ........................... 13
X. Business Litigation ............................ 14
XI. An Update On Securities Litigation ......... 15
XII. Insurance and Finance Update ........... 16
XIII. Predatory Lending .......................... 19
XIV. Premises Liability Update ................ 19
XV. Transportation ............................... 20
XVI. Environmental Concerns .................. 21
XVII. The Real Story On Pharmacy Benefit Managers ................ 24
XVIII. The Consumer Corner .................... 26
XIX. More Automobile News Of Note ......... 28
XX. An Update On More Recalls ................. 31
XXI. Firm Activities .............................. 34
XXII. Special Recognitions ...................... 36
XXIII. Favorite Bible Verses ..................... 37
XXIV. Closing Observations ..................... 38
XXV. Parting Words .............................. 38
been estimated that more than 300 were killed.

GM needs to come clean and start telling the complete truth about what GM knew, who all knew it, and why nothing was done. After the hearing, we are still not getting the complete truth. To finally get the full truth about the safety culture and performance at GM, it will require the total involvement of the civil and criminal justice systems. I am concerned that GM can’t be trusted to do the right thing for the hundreds of families who have buried loved ones killed because of GM’s wrongdoing and massive cover-up.

As has been widely reported, the ignition switch in the GM vehicles can move from the “run” position to the “off” or “accessory” position, disabling power steering and brakes during operation, in most cases also deactivating the airbags. In February 2014, only after evidence was discovered in the wrongful death lawsuit filed by Ken and Beth Melton, did GM do anything to acknowledge the existence of the safety problems. When you consider that GM had longstanding knowledge of the ignition switch defect, the long delay is most disturbing with the deadly consequences of the delay and cover-up bringing even more disturbing!

The company—because of the Melton lawsuit—started recalling its affected vehicles for the first time this year. That recall now encompasses 2.6 million vehicles, and GM will now have to admit that there were many more than 13 deaths related to the defect. GM has claimed that it “fixed” the “Switch from Hell” in 2006. Last month, however, GM recalled an additional 3.4 million midsize and large cars for the very same ignition switch defect. The model years in that recall were 2010-2014. There were also 50,000 Chevrolet Camaros recalled for a key fob problem. Now we see 8.4 million GM vehicles recalled on June 30 for the very same ignition switch problems that we saw in the Cobalts.

A criminal subpoena from the U.S. Attorney’s office in the Southern District of New York has been issued to GM. I predict there will be lots of GM officers, engineers and maybe a few lawyers who will be taking advantage of the 5th Amendment to the U.S. Constitution when they are called to appear before the grand jury. In fact, eventually I believe several GM officers, engineers and perhaps some others will be charged with a criminal offense.

Source: Law360.com

A LOOK AT THE GM INTERNAL INVESTIGATION REPORT

The Valukas report has received a great deal of media attention since it was released last month. Even though it was a rush job, the findings don’t paint a pretty picture of General Motors or the automaker’s conduct. The June 9 edition of the Montgomery Advertiser contained an excellent editorial relating to the GM ignition switch problems and the so-called independent report done for the automaker. The editorial points out how truly bad GM has been for more than a decade. It also points out that there is much left unsaid and unanswered in the report.

“NOD” NO OPTION FOR GM

The internal report on GM’s decade-long failure to recall cars with a deadly safety hazard is not the whitewash that many critics predicted. The report details an appalling culture of incompetence and irresponsibility inside one of America’s once-great corporations. Its defining characteristic was something known as the “GM nod,” described as “when everyone nods in agreement to a proposed plan of action, but then leaves the room with no intention to follow through.” That nodding contributed to at least 13 deaths in more than 50 crashes.

GM CEO Mary Barra vowed to change the culture and was quick to point out that the report does not reveal a “conspiracy by the corporation to cover up the facts.” Maybe not, but it certainly describes a company that ignored warnings about the faulty ignition switch that contributed to those crashes. The switches were left in millions of Cobalts and other models.

Among the damning particulars:

- The GM engineer who designed the ignition switch called it the “switch from hell” before the car went on the market. The switch was redesigned, but it still fell below GM’s specifications. The company installed it anyway.
- GM classified sudden stalls at highway speeds as an “issue of customer satisfaction, not safety.” Really? Have these people never driven a car? GM’s decision meant the cars did not have to be recalled, and money did not have to be spent to fix them.

Source: USA Today

THE DEATH TOLL IS MUCH HIGHER THAN GM WILL ADMIT

The public statements by General Motors CEO Mary Barra as to the number of fatali-
ties tied to its ignition switch defect have been evasive and unacceptable. Ms. Barra made remarks last month at a shareholders' meeting in Detroit that gave the impression there have been more than the 13 fatalities GM admits. She also answered questions on June 18 when she went back before a Congressional Committee hearing. Her answers at the hearing were vague when she was asked specifically how many deaths had been caused by the ignition switch defect.

The National Highway Traffic Safety Administration is among several skeptics of GM's estimate that the defect caused only 13 fatalities. Acting Administrator David Friedman said in May that the actual count could be higher, putting the number at 74. But Friedman said the agency does not have exact figures for the number of deaths caused by the defect. NHTSA, which in May locked the automaker into a settlement that included a $35 million fine, said that it is helping families of victims determine whether their loved ones are among the fatalities that GM has acknowledged. GM's internal investigation showed a pattern of incompetence and neglect by GM employees. The Center For Auto Safety puts the number of deaths at 303 and we believe the actual number could even be higher.

Source: Law360.com

**AN UPDATE ON THE MELTON CASE**

Since the Melton case has been in the spotlight lately, and because of its utmost importance, I felt an update would be good at this juncture. In an incredible revelation of its true character, General Motors has moved the Melton lawsuit to a federal court. The automaker is either trying to hide behind the protection of its "old GM" bankruptcy firewall or is trying to stall for time. Instead of living up to the promise by its CEO to the American people to do the right thing by victims of its long-withheld ignition switch defect, which has caused hundreds of deaths, GM is trying to again cheat the Melton family.

Ken and Beth Melton, parents of 29-year-old Brooke Melton, who was killed in a 2010 crash linked to the ignition switch defect, refiled their wrongful death lawsuit on behalf of their daughter on May 12. Rather than leaving the civil liability lawsuit in the State Court in Cobb County, Ga., where it was originally filed and where it belongs, GM removed the case to federal court. Based on the removal petition, GM's goal is to have the case transferred from Georgia to the multidistrict litigation (MDL) in a New York federal court.

We were on track in state court to move forward with getting answers to the lies told by GM in the Melton case. Now GM wants to delay for months on end by moving the case to federal court. It's most significant that GM did not remove the case when it was initially filed a few years ago. In fact, the case remained in state court for more than two years with no attempt to remove it to federal court. This latest move is blatant evidence that GM is again lying— to Congress, to the National Highway Traffic Safety Administration (NHTSA), to the public and, most importantly, to the victims' families. GM has been telling everyone who would listen that the company will do the right thing. But now in the Melton case, GM is trying to move the case from Georgia to New York. We have opposed this wrongful removal and are waiting for a court order.

Not only did GM wrongfully remove the Melton's case from Cobb County, GM accuses the Meltons of fraudulent conduct in re-filing the lawsuit in Cobb County. It is ironic that in the first court filing by GM after a news conference by Ms. Barra— during which she promised GM would do the right thing—GM and its lawyers accuse the Melton family of fraud when they are simply asking that they have an opportunity to have their day in court.

When GM CEO Mary Barra addressed her employees and the public at a stockholder's meeting last month, she expressed sympathy for victims and their families, saying:

_I realize there are no words of mine that can ease their grief and pain. But as I lead GM through this crisis, I want everyone to know that I am guided by two clear principles: First that we do the right thing for those who were harmed; and, second, that we accept responsibility for our mistakes and commit to doing everything within our power to prevent this problem from ever happening again. We are going to do the right thing for the affected parties._

The action by GM in the Melton case is direct proof that you can't trust GM. The automaker's actions speak much louder than its words to the victims' families. Court documents and other evidence reveal that GM knew about the ignition switch problem as early as 2001. However, GM rejected several design changes and solutions that were recommended by its own engineers on numerous occasions because of the cost and the time it would take to make the changes.

GM's collective willingness to ignore and cover up known problems is quite evident. The automaker failed to adhere to federal regulations and recall its ignition switches despite years of incident complaints, crash reports, failed engineering tests, and repeated warnings from a GM lawyer that the company "could be accused of egregious conduct" in lawsuits involving Chevy Cobalts and other small cars.

**GM COMPENSATION PLAN FALLS SHORT FOR VICTIMS OF IGNITION SWITCH DEFECT**

Ken Feinburg announced GM's compensation fund on June 30. The fund set up by GM to compensate victims of its defective ignition switch falls far short of providing complete justice for the automaker's hundreds of victims. While we appreciate the hard work of the plan administrator and acknowledge the compensation fund is on the right track in two areas:

- It will pay pre-bankruptcy matters, and
- Feinberg intends to pay those who previously settled cases with GM before the ignition switch defect came to light.

But we have some substantive and well-founded concerns about the plan. For example, we do not believe the compensation fund is fair for the vast majority of GM's victims. The Feinberg plan falls far short of the requirements for an adequate compensation plan. Some objections to the plan include:

- The plan fails to address all of the vehicles that have been recalled for ignition switch defects. GM has limited the scope of eligible vehicles. Therefore, the plan—as proposed by Feinberg—would not compensate all of GM's victims. GM is calling the shots on eligibility and appears to have tied Feinberg's hands.
- There are legitimate claims against GM involving defective ignition switches where the air bags did deploy. Even the death of Brooke Melton would not be covered by the proposed plan. That is totally unacceptable.
- The proposed plan gives Ken Feinberg unbridled control over claims. He would have the sole discretion to accept or reject claims.
- The plan does not take into consideration the element of punitive damages, which must be factored in. GM's conduct, based on the incompetence and gross negligence found by the Valuikas investigation,
deserves punishment. It is totally unfair to allow GM to escape being punished for its wrongful conduct over a period of 11 years.

- In spite of GM’s acknowledgement that its ignition switch is defective, the plan places a greater burden on claimants to prove their cases. There is no presumption that GM’s ignition switch caused one’s injuries. Specifically, the administrator—who is paid by GM—is given the latitude to reject any and all claims. It is unclear from the plan how the evidence will be viewed by the administrator.

- There are some good features of the plan: paying pre-bankruptcy claims, and paying those claims that were settled before the truth came out about GM’s covering up a known defect that had killed and injured hundreds for more than a decade.

- Finally, this is a voluntary plan. Unless GM changes its litigation strategy, which is contrary to the automaker’s public claims to do “right” by persons with pre-bankruptcy claims and by those persons who had settled their claims before GM’s ignition switch defect and cover-up came to light, this fund won’t work. It’s contrary to “doing right” to force those claimants into the Feinberg plan.

We have consistently stated that we favor a compensation plan and have no objection to Mr. Feinberg being the administrator. But I firmly believe that, in order for the plan to really work, there must be court supervision. That is our proposal as an amendment to the Feinberg plan, along with the need for increases in the amounts to be paid, an expansion of the criteria for eligible claims and a clarification of the burden of proof. Our co-counsel in the GM litigation, Lance Cooper, and Cole Portis from our firm, were given advance notice of the details of the plan, but we couldn’t reveal anything until Feinberg announced it. Lance has had numerous discussions with Feinberg about the plan. Hopefully, the fund won’t be used to coerce victims’ families to settle their claims too cheaply.

Mrs. Barra has admitted to a history of incompetence and negligent conduct at the company she now heads. She has repeatedly said the company will establish a compensation fund for its victims, which will help families of persons who were killed and the victims who were injured. While that sounds good, and is part of a “fix GM” public relations campaign, I do not believe a fund under the complete control of GM will work. I believe any compensation fund must be court-supervised to insure fairness to all concerned.

It is critical to make sure GM’s “corporate feet” are held to the fire for its wrongful conduct and for its failure to report a known defect that caused hundreds of deaths and many serious injuries. To be effective, and achieve the desired purpose, any settlement with GM must factor in the element of punitive damages. Not only should the families of victims be compensated, but a company that covered up for more than a decade a known and most serious safety problem that killed a tremendous number of innocent people, must also be punished severely.

The more we learn about what GM knew about the defect and cover-up—who all knew about it, and who actually made the decisions that were made, putting profits before safety, the more certain it is that GM deserved to be punished. Our goal is to make sure not only that all of our clients are treated fairly, but that GM is taught a lesson about safety. The involvement of the court system is critically important. Completing the necessary discovery to get to the bottom of GM’s safety problems is badly needed. While the Valukas report is helpful, it leaves too much unanswered.

**Texas Woman Charged In 2004 Fatal Crash Sues GM**

A Texas woman who pleaded guilty to a criminal charge in a 2004 car crash that killed her fiancé has filed suit against General Motors (GM) Co. Candice Anderson is asking a federal judge in Tyler to set aside a $75,000 settlement in the case. Ms. Anderson also seeks punitive damages. Ms. Anderson was driving a 2004 Saturn Ion in November of 2004 when the car suddenly veered off a road and ran into a tree in Van Zandt County, Texas. Her fiancé, Gene Mikale Erikson, who was 25 at the time, was killed. Anderson, then 21, was severely injured.

Because there were no skid marks, authorities believed Anderson was at fault and charged her with negligent homicide. Believing she was to blame, Ms. Anderson
pleaded guilty and was sentenced to five years of deferred punishment and 260 hours of community service. She also was required to pay for Erikson’s funeral and $3,500 in court costs. The lawsuit alleges that a faulty GM ignition switch was the real cause of the crash. It contends the switch slipped out of the run position, knocking out power steering and brakes and disabling the air bags. The lawsuit alleges that GM knew about the bad switches, but failed to disclose the problem even though Ms. Anderson was pleading guilty to a criminal offense. The National Highway Traffic Safety Administration (NHTSA) has confirmed that the crash was caused by the bad switch.

Source: Claims Journal

III. A REPORT ON THE GULF COAST DISASTER

BP’S STAY REQUEST FAILS BEFORE THE SUPREME COURT

In just one sentence, the United States Supreme Court rejected BP’s latest attempt to stay economic claim payments to Gulf Coast business. For months, BP has manufactured arguments and contradicted its own statements in open court in a desperate attempt to rewrite its own settlement agreement, which the company negotiated, agreed to and supported just two years ago. BP’s latest effort to halt payments followed the Fifth Circuit Court of Appeals’ rejection of the company’s alternative causation arguments, leaving the company with a final appeal route to the Supreme Court of the United States. The company was seeking to stay the Fifth Circuit’s mandate while it considered certiorari review of the Fifth Circuit’s order.

While not conclusive, the Supreme Court’s order is likely the most devastating ruling to date against BP in its settlement fight. To put the Court’s order in perspective, one of the most important questions the Supreme Court had to answer when deciding whether a stay on payments should be entered was whether the Court believed it would accept BP’s appeal of the causation order. If the Court believed it would consider a writ of certiorari from BP, the Court would have likely granted a stay on claim payments. Tellingly, not just assigned Justice Scalia but the entire Supreme Court rejected the stay.

There can be no doubt—the Supreme Court made the right decision in this case. BP negotiated, agreed to and openly supported the settlement agreement in order to obtain full and final releases from Gulf Coast residents in five states. After the opt-out deadline passed for class participants, the company completely turned course and sought to destroy the settlement. Now, with losses at every level of the federal judiciary, the door is closing fast on BP’s manufactured settlement arguments. Hopefully, armed with a very clear message from the Supreme Court, the company will finally fall in line and make good on its promises to Gulf Coast residents and businesses. If you need more information on the BP litigation, contact Parker Miller, a lawyer in our Toxic Torts Section, at 800-898-2034 or by email at Parker.Miller@beasleyallen.com.

IV. DRUG MANUFACTURERS FRAUD LITIGATION

PFIZER TO PAY $325 MILLION TO END NEURONTIN OFF-LABEL SUIT

Pfizer Inc. and Warner-Lambert Co. LLC have agreed to pay $325 million in settlement of a lawsuit brought by a class of third-party payers. It was alleged that the drug Neurontin had been fraudulently marketed by Pfizer and Warner-Lambert. All of the claims brought by class members arising out of the sale and marketing of Neurontin will be resolved. The Plaintiffs’ motion for preliminary approval of the settlement came just more than a month after Pfizer agreed to settle the remaining claims for attorneys’ fees in Kaiser Foundation Health Plan Inc.’s suit against the drug manufacturer in the multidistrict litigation (MDL).

The class Plaintiffs, which include Harden Manufacturing Corp., Louisiana Blue Cross/Blue Shield and others, were ready to bring the litigation to an end. The members of the class Plaintiffs’ steering committee (PSC) wrote in a memorandum in support of the settlement:

This settlement, which provides significant and long-awaited benefits to class members, exceeds the standard for preliminary approval of a class action settlement.

The settlement came less than a month after Pfizer agreed to settle another suit in the MDL. Pfizer agreed in that settlement to pay Kaiser, a health maintenance organization, an undisclosed amount of attorneys’ fees. Since 2004, payers of Neurontin have accused the Defendants in several suits of fraudulently marketing the drug and causing them economic harm. Those suits were ultimately centralized before the United States District Court for the District of Massachusetts for MDL proceedings.

In the newly settled suit, class Plaintiffs alleged a fraudulent scheme to market and sell Neurontin for a variety of uses not approved by the U.S. Food and Drug Administration (FDA). The defendants sought to market the drug for several off-label uses in a variety of ways, including through false or
misleading statements to physicians, according to the suit. The third-party payers involved in the action include insurance companies, health care benefit providers, union health and welfare plans and others. The class Plaintiffs have sought preliminary approval of the settlement and certification of the class for settlement purposes. They have asked for date for a final approval hearing.

The class Plaintiffs are represented by the following lawyers: Thomas M. Sobol of Hagens Berman Sobol Shapiro; Thomas Greene; Elizabeth J. Cabraser of Lieff Cabraser Heimann & Bernstein; Don Barrett of Barrett Law Office; Daniel Becnel Jr. of the Law Offices of Daniel Becnel Jr.; and James Dugan of Dugan & Browne. They did a very good job in this case.

Source: Law360.com

GLAXO SMITH KLINE TO PAY WEST VIRGINIA $22 MILLION TO SETTLE DRUG LAWSUIT

Drug giant GlaxoSmithKline has agreed to pay the state of West Virginia $22 million to settle a lawsuit that alleged the company illegally promoted its Avandia diabetes medicine. The British drugmaker had initially announced the settlement with West Virginia and seven other states in a regulatory filing in July 2013. West Virginia Attorney General Patrick Morrisey has now signed off on the settlement, announcing it last month. The Attorney General said GlaxoSmithKline’s $22 million payment is one of the largest pharmaceutical lawsuit settlements in his state’s history. He had this to say:

This settlement is a significant victory for the state, its agencies and the people. We are pleased that we were able to recoup some of the money spent on these products. Our citizens have the right to know the risks and possible side effects of the medication they are taking.

The lawsuit we filed in Wayne County Circuit Court in 2012. It was alleged that GlaxoSmithKline failed to disclose side effects of Avandia, which the company marketed as a diabetes drug that would lower patients’ blood sugar and decrease risks of heart problems. However, as we have previously reported the drugs have been linked to heart attacks and strokes. Avandia was pulled from the market in Europe, and its sale is now heavily restricted in the United States. Avandia once was the world’s best-selling diabetes drug, generating $3 billion

in sales, according to a Bloomberg News report.

In November 2012, GlaxoSmithKline agreed to pay $90 million to settle Avandia-related lawsuits in 37 states. Significantly, West Virginia was one of eight states that opted out of that multi-state agreement, a decision that seems to have paid dividends. All too often, a state attorney general will follow another state’s attorney general into a settlement without doing their own due diligence on a proposed nationwide settlement. For example, in this case, states that settled their lawsuits in 2012 each received payments of about $1.5 million to $3 million. It’s quite evident that West Virginia did much better by filing its own lawsuit and not accepting the global settlement amounts. Regardless of how one does the math, $22 million is a whole lot more than the amounts received by the states that participated in the 2012 settlement.

In late March, the federal Centers for Medicare and Medicaid Services agreed not to try to recoup any of the $22 million that West Virginia received from the settlement with GlaxoSmithKline. The suit was filed on behalf of West Virginia’s Medicaid program and the state Public Employees Insurance Agency (PEIA) with PEIA to receive $10.5 million from the $22 million settlement. The next-largest share, $4.6 million, will pay outside lawyer fees and expenses. West Virginia’s Medicaid program will receive up to $3.7 million. Also, Attorney General Morrisey’s Consumer Protection Division will receive $3 million—money that will pay the division’s operating expenses for three years.

As you may recall, in 2012, GlaxoSmithKline agreed to pay $3 billion and pled guilty to criminal charges in one of the largest health-care fraud cases in U.S. history. The settlement included charges of failing to provide the U.S. Food and Drug Administration with clinical safety data about Avandia.

West Virginia is represented by the following firms: Greene Ketchum Farrell Bailey & Tweel; Heard Robins Cloud; and Baron & Budd. The case was filed in the Circuit Court of Wayne County, WV. These lawyers did a very good job in the case and made the state of West Virginia and its taxpayers the real winner in relation to the global settlement in 2012.

Source: Eric Eyre at ericeyre@wvgazette.com

GSK PAYS $105 MILLION TO SETTLE STATES’ OFF-LABEL MARKETING SUITS

GlaxoSmithKline PLC (GSK) has agreed in another settlement to pay $105 million to 44 states and the District of Columbia. This settlement resolves allegations that the company improperly marketed and promoted the asthma drug Advair and the antidepressants drugs Paxil and Wellbutrin. The violations of state trade practices laws are similar to the matters settled with the federal government in 2012, which resulted in a $3 billion settlement.

New York Attorney General Eric Schneiderman alleged in the suit that GSK engaged in deceptive and misleading practices when it marketed Advair, Paxil and Wellbutrin for off-label uses and concealed risks associated with Paxil. It was alleged, among other things, that GSK promoted Advair for treatment of mild and intermittent asthma even though it was approved by the FDA only for treatment of more serious asthma conditions.

It also alleged that GSK promoted Wellbutrin for treatment of weight loss and sexual dysfunction through its “happy, horny, skinny pill” campaign, even though these were unapproved uses. GSK was said to have concealed and misrepresented clinical studies that demonstrated Paxil’s ineffectiveness in treating children and adolescents with major depressive disorder, as compared to a placebo group, and that demonstrated a connection between Paxil’s use and an increased risk of suicidal thoughts and acts in adolescents. Attorney General Schneiderman made this observation in a statement:

When pharmaceutical companies advertise drugs to consumers, their claims should be backed by the best available science, not just slick marketing.

The Attorney General’s office, in a statement, had more to say about the settlement. The statement said the agreement does the following:

- It prohibits GSK from making any claim that is false, misleading or deceptive about any GSK product.
- The drug manufacturer was also prohibited from making promotional claims not approved or permitted by the FDA that a GSK product is better, more effective, safer or has less serious side effects or contraindications than has been demonstrated by substantial evidence or substantial clinical experience.

JereBeasleyReport.com
• It prohibits the company from presenting favorable information or conclusions from a study that is inadequate in design, scope or conduct in any promotional materials, and from providing samples of GSK products to health care professionals who are not expected to prescribe the sampled GSK products for an approved use.

• It bars GSK from disseminating information describing any off-label use of a GSK product, unless such information and materials are consistent with applicable FDA regulations and FDA guidelines for the industry.

• It requires GSK to continue its Patient First Program through March 2019, which reduces financial incentives for sales representatives to engage in deceptive marketing by removing individual sales targets and begins the process of ending direct payments to health care professionals for speaking engagements and attendance at medical conferences.

GSK now says it’s the first pharmaceutical company to commit to stopping payments to doctors to speak about its products, stopping payments to doctors to attend medical conferences and cutting the tie linking the pay of its sales representatives who call on prescribers in the U.S. to the number of prescriptions issued. That is most significant and hopefully GSK has started a trend in the industry. The company said in a statement that it was “rolling out this innovative compensation model in the rest of the world.”


Source: Law360.com

V. COURT WATCH

HIGH COURT REJECTS GENON’S STATE POLLUTION CLAIMS APPEAL

A recent decision by the U.S. Supreme Court is very important on the issue of federal preemption. The high court denied GenOn Power Midwest LP’s request to reconsider a Third Circuit ruling. The appeals court had ruled that the Clean Air Act doesn’t preempt certain state law claims brought by property owners. GenOn had argued in a petition for writ of certiorari to the Supreme Court that the appeals court erred in reviving a proposed class action. It was alleged in the suit that GenOn’s Springdale, Pa.-based coal-fired power plant released damaging toxic emissions. The company contended that the Third Circuit’s ruling conflicts with the Clean Air Act’s goal of ensuring a level of uniformity and certainty in the application of air emissions standards nationwide.

GenOn claimed that if the appeals court’s decision was allowed to stand, it would create a dangerous precedent under which companies that are in full compliance with the Clean Air Act would face a continuing risk of being held liable under emissions standards established by state courts or juries. It’s significant that when Congress enacted the modern Clean Air Act in 1970, it left in place the historic availability of state common law as the main source of redress for folks whose health was impaired or their property harmed by air pollution.

Kristie Bell filed her suit in April 2012, claiming that GenOn’s operation, maintenance, control and use of the Cheswick Generating Station caused property damage, the inhalation of odors and the deposit of coal dust. The case was removed to federal court later that year, and a U.S. District Judge found the Clean Air Act preempted Ms. Bell’s state law claims.

In August, the Third Circuit revived the proposed class action, finding in a predecisional decision that the Act’s language and Supreme Court precedent dictate that lawsuits making state law claims—when a source of pollution is located within the state—are not preempted. The appeals court relied extensively on the high court’s 1987 ruling in International Paper Co. v. Ouellette, which also dealt with the Clean Water Act. In that case, the Plaintiffs argued that the Act’s savings clauses indicated “that Congress intended to preserve the right to bring suit under the law of any affected state.”

GenOn claimed in its petition to the Supreme Court that the Third Circuit’s reliance on Ouellette was misguided, rejecting the appeals court’s finding that the savings clauses of both the CAA and CWA are “indistinguishable.” GenOn contended that the plain language of the CAA’s savings clause preserves only state law claims seeking to enforce an emissions standard through a statute or regulation, not claims under state common law. Ms. Bell is represented by Sean H. Donahue and David T. Goldberg of Donahue & Goldberg; Adina Rosenbaum of Public Citizen Litigation Group, Peter W. Macuga of the Detroit, Mich.-based firm Macuga Liddle & Dubin and James E. DePasquale, a Pittsburg, Penn., lawyer. They did an outstanding job in this important case.

Source: Law360.com

HIGH COURT SAYS POM WONDERFUL LLC CAN SUE COCA-COLA UNDER LANHAM ACT

The U.S. Supreme Court last month reversed the Ninth Circuit’s ruling that federal regulations preclude Pom Wonderful LLC’s Lanham Act claim against The Coca-Cola Co. It had been alleged that Coca-Cola had misleadingly named a competing juice product. The Supreme Court found that U.S. Food and Drug Administration (FDA) rules can coexist with the federal false advertising statute. In a unanimous opinion, Justice Anthony Kennedy wrote that neither the Lanham Act nor the Federal Food, Drug and Cosmetic Act (FDCA) explicitly restrict claims under the Lanham Act over labels regulated by the FDCA. Justice Stephen Breyer, who recused himself from the case, did not participate in the opinion.

The high court pointed out that the two statutes have coexisted since the passage of the Lanham Act in 1946. Justice Kennedy wrote for the court in the opinion:

“In consequence, food and beverage labels regulated by the FDCA are not, under the terms of either statute, off-limits to Lanham Act claims. No textual provision in either statute discloses a purpose to bar unfair competition claims like Pom’s.

There has been a long-running disagreement between the FDA and that agency’s technical rules on how a product should be labeled and the Lanham Act. This federal false advertising law can offer more protection to companies from their competitors’
advertising claims and that’s what led to this dispute between the beverage giants.

The high court notably also disagreed with the U.S. government’s argument that the Lanham Act is precluded where federal regulations authorize the disputed aspects of the label. In its amicus brief, the government argued that FDA regulations specifically permit the names of juice blends, but do not necessarily bless the other disputed aspects of the label, including the relative sizes of the wording on the label. The court rejected that argument, saying the FDA did not make any explicit policy decision that conflicts with Pom’s Lanham Act claims. Justice Kennedy, writing for the court, said:

The government asks the court to preclude private parties from availing themselves of a well-established federal remedy because an agency enacted regulations that touch on similar subject matter but do not purport to displace that remedy or even implement the statute that is its source. Even if agency regulations with the force of law that purport to bar other legal remedies may do so, it is a bridge too far to accept an agency’s after-the-fact statement to justify that result here.

In this case, Pom argued that Coca-Cola misleadingly labeled a product that is more than 99 percent apple and grape juice as a pomegranate-blueberry blended juice. The Ninth Circuit found that no matter how misleading Coca-Cola’s marketing might be, Pom’s claims under the Lanham Act are precluded by the FDCA. Coca-Cola argued that the Nutrition Labeling and Education Act (NLEA) of 1990 narrows the scope of the Lanham Act, which bars misleading advertising claims. The NLEA, which is more specific than the Lanham Act as to food and juice naming and labeling, overrides the Lanham Act, the company said.

The high court in January granted Pom’s request to review the case. Pom filed the suit in 2008 accusing Coca-Cola of falsely naming and labeling its “Minute Maid enhanced pomegranate blueberry flavored 100 percent juice blend” to misleadingly suggest that the drink contained mostly pomegranate and blueberry. A California federal district court judge rejected Pom’s claims, and a three-judge Ninth Circuit panel said that FDA regulations authorized the name of the product and allowed Coca-Cola to describe the beverage using the name of a flavored juice, even when it contained only a small amount. The U.S. Supreme Court reversed the appeals court and now the Lanham Act will have much broader authority.

VI. THE CORPORATE WORLD

A LOOK AT THE TRADING OF INTEREST RATES

Big banks and corporations don’t just trade money, they trade interest rates. Does that sound odd? How can you trade in something so intangible as an interest rate? This practiced is called an interest-rate swap, or rate swap. Assume two people each take out a $50 loan. One of them has a variable interest rate and the other a fixed rate. Both of them want to try to put themselves in a better position. The person with the variable rate thinks the interest rate is going to go up, so he would prefer a fixed rate, even if that rate is higher than the currently applied variable rate.

Assuming the variable rate increases, a fixed rate would result in lower total interest payments. Ultimately, he would pay less to settle his debt. The one with the fixed rate thinks the interest rate is going to decrease, meaning his fixed rate is set too high, resulting in more interest charged to his debt than if he had the variable. They would like to trade, but since the principal amounts on their loans are the same, there is no reason to exchange the $50. They agree between themselves to pay the interest on the other’s loan.

That, in its simplest terms, is an interest-rate swap. It takes place on much larger scales and usually only involves sophisticated borrowers and investors, but is essentially the same thing. The parties to a rate swap both hedge their money on an expected increase or decrease in interest rate.

Two great examples that hit close to home for lawyers at Beasley Allen et al, deal with the Baldwin County Sewer Service LLC (Baldwin Sewer) and the bankruptcy filed by Jefferson County, Ala. Baldwin Sewer serves almost 15,000 customers in southern Alabama. From 2002 to 2007, Baldwin Sewer borrowed about $42 million through variable-rate debt, working with Regions Bank’s predecessor, AmSouth Bank. It also entered into three swap agreements from 2005 to 2007. In 2006 and 2007, the swaps worked as intended, saving the utility money.

During the recession in 2008, however, the variable-rate market crumbled. Prior to that, many municipal borrowers, expecting the usual interest rate increase, entered into rate swap agreements. But after 2008, the Federal Reserve maintained the variable, benchmark overnight rate close to zero in the hopes of encouraging economic growth.

After its swaps, Baldwin Sewer, like other municipal borrowers, was stuck with a much higher fixed-rate. Baldwin Sewer ended up paying $7.4 million in swap payments instead of achieving the expected, and promised, savings. Seeking to reverse the swap agreement, Baldwin Sewer sought help through arbitration.

In March this year, an American Arbitration Association panel ruled for Baldwin Sewer against Regions Bank when it found “a continuing but hidden fraud” when the rate swap backfired. The arbitrator found “a pervasive failure of the bank to communicate the true risks” of the swap and “active misrepresentations of the financial obligations” the utility faced.

While not the only factor leading up to Jefferson County’s bankruptcy, costs incurred from rate swaps that went sour certainly did not help. According to Bloomberg, other municipal borrowers (ranging from cities to universities) have paid at least $5 billion in fees when the swaps they purchased similarly failed. Others are considering legal recourse. In Los Angeles, for example, at least one city council member is pushing to reverse the swaps that cost the city $65 million. Not every borrower will succeed in getting back his or her losses as Baldwin Sewer did. Instead of continuing to pay the high, fixed rates, many are choosing to terminate the swap agreements and are paying exit fees. Detroit, for example, is paying $85 million to end the rate swaps it entered into.

It should be noted that rate swaps are not always bad. In fact, in certain cases they can be beneficial. As the early days of Baldwin Sewer’s swaps show, municipal borrowers can save money. But, as with all investments, there are risks. Few experts anticipated the 2008 recession and the effects it would have on variable interest rates and the economy in general. Investors should at least be familiar with the concept and be fully aware of all the terms and risks before entering into a rate swap agreement. 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.bloomberg.com; and www.primco.com
Regions Bank has agreed to pay a $51 million penalty to end an inquiry by regulators that led the Securities and Exchange Commission (SEC) to charge three former senior bank executives with fraud. In the previously announced joint investigation, the SEC, the Federal Reserve Board and the Alabama Department of Banking found that three Regions executives committed fraud by “intentionally missclassifying loans” in 2009. As a result, according to the SEC, the bank overstated its income and earnings per share.

According to the SEC, former Regions executives Thomas A. Neely Jr., Jeffrey C. Kuehr and Michael J. Willoughby circumvented internal accounting controls “and improperly classified $168 million in commercial loans as performing so Regions could avoid recording a higher allowance for loan and lease losses” in 2009. Neely Jr. was head of Regions Bank’s risk analytics group, Kuehr was head of special assets, and Willoughby was chief credit officer. Kuehr and Willoughby settled the charges by paying $70,000 each in penalties and agreeing not to serve as officers or directors of public companies. The SEC said its Division of Enforcement will continue to litigate its case against Neely.

Source: Associated Press

VII. WHISTLEBLOWER LITIGATION

DEPARTMENT OF JUSTICE INTERVenes IN WHISTLEBLOWER SUIT AGAINST CA, INC.

Recently, the Justice Department joined a False Claims Act (FCA) case against software vendor CA, Inc. (CA), filing a complaint in intervention on March 24, but the case remained under seal until May 27. CA manufactures and sells information technology products. The FCA suit alleged that the vendor is overcharging the government for software licenses and maintenance. The allegations are that CA provided the General Services Administration (GSA) with incomplete and inaccurate pricing information during contract negotiations. The allegations in the lawsuit stem from a qui tam case brought by whistleblower Dani Shemesh, a former CA employee, in 2009.

CA entered into a contract in 2002 with GSA to provide software licenses, maintenance, training, and services to government agencies. The contract is a Multiple Award Schedule (MSA) contract. This means that GSA pre-negotiates prices and contract terms for subsequent orders by some government agencies. CA breached its agreement that it would give the government the same prices that it was giving its commercial customers. GSA Acting Inspector General Robert C. Erickson said:

Companies doing business with the federal government on a GSA schedule must disclose current, accurate, and complete commercial discounts, so that GSA can get the best prices on behalf of American taxpayers. We will continue to investigate all allegations indicating that the federal government may have been overcharged by a contractor.

The suit claims that the licensing and maintenance portions of the contract were defectively priced because they did not give the current and most accurate pricing information. Additionally, the suit claims that CA provided false statements regarding the pricing and discounting policies. The company was required to monitor and compare discounts for commercial companies; however, the suit alleges that CA failed to disclose higher discounts being offered to commercial customers.

The Department of Justice explained in a recent press release their commitment to prosecuting fraudsters under the False Claims Act. GSA Acting Inspector General Robert C. Erickson reinforced his commitment to investigate reports from whistleblowers regarding fraud committed by government contractors. Ronald C. Machen, Jr., the U.S. Attorney for the District of Columbia, stated that “too many federal contractors think they can get away with overcharging the government.” He resolved to vigorously prosecute and recover taxpayers’ dollars because of the FCA suit initiated by whistleblower Dani Shemesh.

As we have written previously, and it bears repeating, the False Claims Act was created to allow private citizens with evidence of fraud to sue on behalf of the government and seek recovery of the monies defrauded. To compensate the whistleblowers for recovering the government’s money, a portion of the amount recovered is awarded to the whistleblower. This amount varies from case to case between 15 and 30 percent. When the case is filed, it is kept under seal so that the U.S. Justice Department has the opportunity to investigate and decide whether it wants to join the action. The case will remain sealed for at least 60 days, but most seals are extended and can remain sealed for a few years.

Lawyers in the Consumer Fraud Section at Beasley Allen continue to vigorously investigate fraud against both the federal and state governments and encourage anyone who knows of fraudulent activities to step forward. Potential whistleblowers have the right to not be retaliated against for doing the right thing and reporting the fraud they have witnessed. Any person considering doing the right thing and blowing the whistle is urged to seek legal advice before doing so. Our lawyers in the Consumer Fraud Section are very familiar with the federal False Claims Act and its state counterparts and can guide whistleblowers through the process. If you have any information that should be reported and would like to speak with a lawyer, contact Andrew Brashier, a lawyer in our firm’s Consumer Fraud Section, at Andrew.Brashier@beasleyallen.com, or at 800-898-2034 or 334-269-2343.


NEW GUIDANCE ON THE POTENTIAL FOR FRAUD IN INDEPENDENT CHARITY PATIENT ASSISTANCE PROGRAMS

Independent Charity Patient Assistance Programs (PAPs) can serve as a valuable resource for financially needy patients by providing cost-sharing assistance for prescription drugs. However, PAPs that subsidize Medicare Part D amounts have increased risks of fraud, waste and abuse. In May of this year, the Office of the Inspector General (OIG) issued a Supplemental Bulletin to the 2005 OIG Special Advisory Bulletin on Patient Assistance Programs, focusing on the problematic features of PAPs with respect to the anti-kickback statute, the Civil Monetary Penalties Law that prohibits inducements to Medicare and Medicaid beneficiaries, and potentially the

BeasleyAllen.com
Financial support to copayments of patient needs assistance is not an appropriate measure of financial need. Generous financial need criteria, it reiterated the need to consistently define, the fund covers only a single product or products made by a single manufacturer donor to the fund. The OIG makes clear that a PAP cannot function as a conduit for payments or other benefits from the pharmaceutical manufacturer to patients and cannot impermissibly influence beneficiaries’ drug choices. Thus, in order to avoid statutory violations, disease funds should be appropriately defined and cover a broad range of products.

The OIG also addressed the criteria used to determine beneficiary eligibility in PAPs. Some PAPs choose to operate funds that provide financial assistance solely to federal health care program beneficiaries. While the OIG approves of funds that are limited to federal health care program beneficiaries, it reiterated the need to consistently use a reasonable, verifiable and uniform measure of financial need. It emphasized that the cost of the drug for which the patient needs assistance is not an appropriate stand-alone factor for determining financial need. Generous financial need criteria could be evidence of intent to fund a substantial part of the copayments for a particular drug for the purpose inducing the use of that drug, especially in funds that are limited to a subset of available drugs or limited to drugs of a major manufacturer donor.

Lastly, the OIG focused on the conduct of donors as opposed to the PAPs. Actions by donors to correlate their contributions to PAPs with support for their own products may be indicative of the donor’s intent to steer its financial support to copayments of its own products in violation of the anti-kickback statute. While the OIG continues to support PAPs as valuable resources when properly structured, it also recognizes the serious potential for fraud, waste and abuse in these programs. It is imperative that these PAPs stay truly independent, and that pharmaceutical manufacturers do not exert direct or indirect influence over these programs. If you need more information on this subject, contact Leslie Pescia at 800-898-2034 or by email at Leslie.Pescia@beasleyallen.com.


SEC MAKES $875,000 AWARD TO A WHISTLEBLOWER

The Securities and Exchange Commission (SEC) has announced a whistleblower award of more than $875,000 to be divided evenly between two individuals who provided tips and assistance to help the agency bring an enforcement action. The SEC’s whistleblower program, which is authorized by the Dodd-Frank Act, rewards high-quality, original information that results in an SEC enforcement action with sanctions exceeding $1 million. Whistleblower awards can range from 10 percent to 30 percent of the money collected in a case.

By law, the SEC must protect the confidentiality of whistleblowers and cannot disclose any information that might directly or indirectly reveal a whistleblower’s identity. “These whistleblowers provided original information and assistance that enabled us to investigate and bring a successful enforcement action in a complex area of the securities market,” said Sean McKessy, chief of the SEC’s Office of the Whistleblower. “Whistleblowers who report their concerns to the SEC perform a great service to investors and help us combat fraud.” A total of eight whistleblowers have been awarded through the SEC’s whistleblower program since it began in late 2011. For more information about the whistleblower program and how to report a tip, visit www.sec.gov/whistleblower.

MEDITRONIC SETTLES FEDERAL SUIT FOR $9.98 MILLION

Federal prosecutors in Sacramento have negotiated a $9.98 million settlement with Medtronic Inc. The medical-device company improperly paid doctors to implant the company’s pacemakers and defibrillators. The settlement, announced by U.S. Attorney Benjamin Wagner, stems from a five-year-old lawsuit filed by a former Medtronic employee. The U.S. Justice Department eventually took over the case. The employee, Adolfo Schroeder, will receive $1.7 million of the settlement under the whistleblower provisions of the federal False Claims Act. The settlement covers 24 states and the District of Columbia.

Medtronic induced doctors to use its products by paying them to speak at events, giving them tickets to sporting events and developing marketing plans for them at no charge. “Improper financial incentives have the potential to compromise physician medical judgment,” said Stuart Delery, assistant attorney general, in a prepared statement.

Medtronic paid $130 million in 2007 to settle consumer lawsuits alleging defects in its defibrillators. The company agreed to another $268 million settlement in 2010 over allegations that faulty defibrillators caused the deaths of 13 patients.

Sources: Sacbee.com and Bloomberg News

SEC SETTLES FIRST-EVER WHISTLEBLOWER RETALIATION CASE FOR $2.2 MILLION

The Securities and Exchange Commission (SEC) has settled its first whistleblower retaliation case since financial reforms introduced under the 2010 Dodd-Frank Act strengthened whistleblower protections. According to the SEC’s Office of the Whistleblower, Paradigm Capital Management, an Albany, N.Y.-based hedge fund advisory firm, and its owner Candace King Weir, “engaged in prohibited principal transactions and then retaliated against the employee who reported the trading activity to the SEC.” Ms. Weir and her firm agreed to pay $2.2 million to resolve the charges.

The whistleblower alleged that Ms. Weir conducted transactions between Paradigm and a broker-dealer that she also owns while trading on behalf of a hedge fund client. “Such principal transactions pose conflicts between the interests of the adviser and the client, and therefore advisers are required to disclose that they are participating on both sides of the trade and must obtain the client’s consent,” the SEC said in a statement. “Paradigm failed to provide effective written disclosure to the hedge fund and did not obtain its consent as required prior to the completion of each principal transaction.”

A Commission rule adopted in 2011 under the Dodd-Frank Act authorized the SEC to bring enforcement actions against companies and individuals for retaliating
against whistleblowers who report violations of securities laws. The SEC said that after Paradigm found out that its head trader had reported the company’s misconduct to federal regulators, it “engaged in a series of retaliatory actions that ultimately resulted in the head trader’s resignation.” Andrew J. Ceresney, director of the SEC’s Enforcement Division, stated:

**Paradigm retaliated against an employee who reported potentially illegal activity to the SEC. Those who might consider punishing whistleblowers should realize that such retaliation, in any form, is unacceptable.**

Sean McKessy, who serves as the head of the SEC’s Office of the Whistleblower, made this reassuring observation:

*For whistleblowers to come forward, they must feel assured that they’re protected from retaliation and the law is on their side should it occur. We will continue to exercise our anti-retaliation authority in these and other types of situations where a whistleblower is wrongfully targeted for doing the right thing and reporting a possible securities law violation.*

Retaliation against persons who become whistleblowers can’t be tolerated. They must be protected so that the threat of retaliation is removed once and for all. Source: U.S. Securities and Exchange Commission

**VIII. PRODUCT LIABILITY UPDATE**

**Explosive Airbags Is The Next Hidden Danger Lurking On The Horizon**

Recently, a lawyer from another firm told us of an airbag case he was working on involving a young woman who had been severely injured in what should have been a minor car accident. The woman’s car had been bumped from behind in stop-and-go traffic. This caused her car to bump the vehicle in front of her. There was not as much as a scratch on her vehicle as a result of impact. But the car’s airbag exploded during the fender-bender. And we use the term “exploded” in its literal sense. Instead of the airbag deploying as designed, it actually exploded, propelling hundreds of shards of metal fragment with fierce velocity into the driver’s face and other parts of her body.

Greg Allen, our most experienced Product Liability lawyer, viewed the car in Birmingham. He saw what should have been a minor accident turned into a full-blown tragedy. The exploding airbag caused serious physical and permanent injury to the driver. We now know the exploding airbag that injured this young woman was not an isolated incident. Instead, millions of vehicles on the road today have defective airbags that can explode and cause serious injury and even death.

NHTSA is currently investigating a number of vehicles equipped with Takata-brand air bags. The supplier’s bags are used by at least seven car companies on their U.S.-market vehicles. The Takata defect has resulted in the automakers recalling several million vehicles beginning in 2008 and continuing to the present. NHTSA describes the problem as bag “rupture.” The car companies describe it more like shrapnel blowing into the occupant as the defective airbag inflator deploys the airbag with too much force. The government’s preliminary investigation listed Honda, Nissan, Mazda, Chrysler Group, BMW and Toyota as being very likely to have defective bags. GM also has indicated it has similar problems.

It’s quite obvious that Japan’s Takata Corp., the world’s second-largest maker of auto safety parts, is now involved in a crisis that has been building for more than a decade. The problems are just now receiving nationwide attention and they will grow further as automakers recall their vehicles. The disappointing aspect of the problem is that there was virtually no reporting of the issue. We are very interested in finding out what a number of automakers knew about Takata’s safety problems and when they knew it. Due to the previous recalls, they will have some answering to do.

In order to work, airbags need to inflate in 40 milliseconds on the passenger side, according to Takata. That’s in less than half the time it takes to blink an eye. For that to happen, requires the use of powerful and potentially dangerous explosives in inflators. This requires careful handling and precise calibration. Takata uses ammonium nitrate, an explosive compound, that is volatile and highly sensitive to moisture, in its inflators. Takata has identified several manufacturing problems with its inflators, including some at a plant in Moses Lake, Wash., and at Monclova, where the ammonium nitrate was exposed to too much moisture inside the air-conditioned plant. The manufacturing glitches meant the inflator propellant could burn too fast and blow apart the metal casing surrounding it, sending out hot gas and shrapnel.

Sean Kane, president of Safety Research and Strategies, says it’s clear that past Takata recalls, which began in 2008, have fallen far short. Mr. Kane says, “What’s very troubling is that they haven’t resolved this thing once and for all.” Because reports on the exploding airbags problems are still coming out daily, I am not going to write much more on the subject until the August issue. Things are moving much too fast for us to keep up in this issue on the exploding airbag problem. There have been lots of recalls and there will be more covered on this subject in the August issue—stay tuned!

*Source: Claims Journal*

**NHTSA MAY ANNOUNCE TIRE AGE RULEMAKING**

Last month, I wrote about the National Traffic Safety Board’s (NTSB) decision to study tire safety related issues in more detail during the next year. One of the issues that the NTSB announced that it was going to study is the effect of aging on tire durability. Since that time, the National Highway Traffic Safety Administration (NHTSA) has announced that it could decide as early as next spring whether to pursue rulemaking on tire aging. NHTSA officials informed an audience at the 30th annual Clemson University Tire Industry Conference that tire “age” rulemaking could be an important part of long awaited tire labeling and consumer information rules.

For well over a decade, consumer advocates have argued for a better means for consumers to determine tire age and establish an “expiration date” for tires. Most consumers have no idea how to determine the age of their tires and do not understand the dangers of using older tires, even ones that have never been used. While NHTSA has studied the issue of tire aging, it still has not adopted long-needed consumer-friendly labeling and aging rules and guidelines for consumer safety.

Since 2002, NHTSA has run five separate phases of tire aging tests on light vehicle tires beginning when agency crash data suggested a trend of higher rates of failure among older tires. Based on its studies, NHTSA confirms that the material properties of tires degrade over time and can compromise a tire’s structural integrity. NHTSA has also found that the relationship between tire age and tire failure seems par-
Automobile manufacturers are almost united in adopting a six-year age limit for tires. Most tire manufacturers set limits of 10 years. Service centers that place older tires on vehicles that later fail and cause injury often point to the lack of NHTSA rulemaking as a defense. We have seen too many clients hurt because of tire aging failures. Hopefully, NHTSA will finally take the appropriate steps and adopt aging rules similar to the car makers as a benchmark for consumer safety. If you need more information on this subject, contact Rick Morrison, a lawyer in our firm's Personal Injury/Products Liability Section, at 800-898-2054 or by email at Rick.Morrison@beasleyallen.com. Rick has been handling cases involving this issue and is quite knowledgeable on the subject.

**SIXTH BABY DIES IN RECALLED INFANT RECLINER**

The Consumer Product Safety Commission (CPSC) issued a statement recently reporting that a sixth baby has died from the use of a Nap Nanny infant recliner. According to the CPSC, an 8-month old girl from Hopatcong, N.J., was found hanging over the side of the Nap Nanny recliner, trapped between the chair and a crib bumper.

In June 2013, Baby Matter LLC, the manufacturer of the Nap Nanny infant recliner products, voluntarily recalled all of its infant recliner models after 92 incidents and four fatalities had been reported. Following the recall, two more infant deaths have been reported. Also, Baby Matters LLC has gone out of business. The manufacturer is no longer accepting returns or providing refunds for its defective recliner, which costs around $130. Various retailers including Amazon, Buy Buy Baby, Toys R Us/Babies R Us and Diapers.com have refunded the purchase price of the Nap Nanny products sold from their stores.

But the real danger of defective baby products such as this infant recliner is the lack of regulation. During the development of the Nap Nanny recliner, there were no federal or industry safety standards that applied to an infant recliner. The Nap Nanny showcases the federal government’s inability to keep up with the baby product industry. Nancy Cowles, the Executive Director of Kids in Danger, discussed the dangers of the Nap Nanny and baby products in general and warned parents that they should not assume that every product on the market has been tested for safety.

In addition to the lack of regulation on baby products, there is also a lack of enforcement on recalls as baby products are routinely available through garage sales, auctions, and second-hand use through family and friends. The CPSC is urging parents to dispose of all Nap Nanny recliners even if that parent has had no issue with the product. It is now illegal under federal law for any person to sell, offer for sale, manufacture, distribute in commerce, or import into the United States any model of the Nap Nanny recliner. If you need more information on this subject, contact Stephanie Monplaisir, a lawyer in our firm’s Personal Injury/Products Liability Section, at 800-898-2054 or by email at Stephanie.Monplaisir@beasleyallen.com.

**JURY RETURNS A $55 MILLION VERDICT AGAINST HONDA IN SEATBELT DEFECT CASE**

A Philadelphia returned a $55 million verdict last month against Honda Motor Co. in a lawsuit involving a seatbelt defect. The jury ruled in favor of plaintiff Carlos Martinez, who became a quadriplegic after his 1999 Acura Integra rolled over in an accident. The seatbelt didn’t keep the plaintiff’s head from hitting the top of the car as the car rolled over, causing his paralysis. It appears Honda knew about the defect as early as 1992, but did nothing to fix it. Neither did the automaker disclose the defect to vehicles’ owners.

The verdict includes $25 million for the plaintiff’s noneconomic damages such as pain and suffering. It also included $14.6 million for future medical expenses, $15 million for his wife’s loss of consortium and $720,000 for lost future earnings. The plaintiff was represented by Stewart J. Eisenberg and Daniel J. Sherry Jr. who are with Eisenstein Rothweiler Winkler Eisenberg & Jeck. They did a very good job in this case, which was tried in the Court of Common Pleas, Philadelphia, Pa.

Source: Law360.com

**FDA ADDS BLOOD CLOT WARNING TO TESTOSTERONE PRODUCTS**

In a related matter, the U.S. Food and Drug Administration (FDA) is requiring manufacturers to include a general warning in the drug labeling of all approved testosterone products about the risk of blood clots in the veins, encompassing the risk of injuries such as deep vein thrombosis and pulmonary embolism. The FDA previously...
required warnings about the possible consequence of polycythemia, an abnormal increase in the number of red blood cells, that sometimes occurs with testosterone treatment. Due to increased reports of blood clot injuries unrelated to polycythemia, the FDA is requiring a change to drug labeling of all testosterone products to provide a more general warning regarding venous blood clots and to ensure this risk is described consistently in the labeling of all approved testosterone products. Additionally, the FDA continues to investigate the possible risk of stroke, heart attack, and death in patients taking testosterone products.

As stated above Beasley Allen lawyers are currently representing men who have been injured by their use of testosterone drugs. If you have any questions about the MDL or any aspect of the testosterone litigation, contact Matt Teague to discuss this litigation. Matt can be contacted at 800-898-2034 or by email at Matt.Teague@beasleyallen.com.

Source: http://www.fda.gov/drugs/drugsafety/ucm401746.htm

ST. JUDE RIATA DEFIBRILLATOR LEAD RECALL

As you may recall from reports in previous issues, the U.S. Food and Drug Administration (FDA) issued a St. Jude Riata recall in December 2011. The action was taken in response to several warning letters sent by St. Jude to doctors about reports of problems with the insulation surrounding the wire, which can become worn and allow the heart defibrillator wires to become externalized. Approximately 227,000 St. Jude Riata wires were sold worldwide before it was removed from the market, and estimates suggest that approximately 79,000 of the leads remain active in patients in the United States.

Because the process of removing the lead is very risky, doctors usually recommend keeping the recalled lead in place unless there is evidence that it has failed. In August 2012, the FDA issued a safety communication in response to concerns among individuals who still have one of the recalled St. Jude Riata or Riata ST leads, recommending that individuals undergo x-ray or other imaging exams to monitor the condition of the leads.

The FDA has ordered the company to conduct additional studies on the potential risk of insulation failures and problems with the defibrillator leads, including the newer versions sold under the Riata ST Optim and Durata names. A growing number of individual St. Jude Riata lead

lawsuits have been filed throughout the country by individuals who have experienced problems. A class action lawsuit filed on behalf of St. Jude Riata lead recipients seeks compensation for medical monitoring and other damages caused, even if the lead has not malfunctioned.

A recent study published in the medical journal Heart Rhythm suggested that about 11 percent of the St. Jude Riata leads may suffer insulation failure after five years. For more information on this subject, you can contact Melissa Prickett, a lawyer in our firm’s Mass Torts Section, at 800-898-2034 or by email at Melissa.Prickett@beasleyallen.com.

Source: AboutLawsuits.com
http://www.aboutlawsuits.com/st-jude-riata-class-action-lawsuit-recalled-icd-leads-45200/#bash#7aA.dpuf

X. BUSINESS LITIGATION

ANTI-TRUST CASE AGAINST BLUE CROSS WILL PROCEED

Our law-firm is currently involved in a most important case in an Alabama federal court. The anti-trust lawsuit filed against Blue Cross companies for conspiring in Alabama and across the country to illegally stifle competition will be allowed to proceed to U.S. District Judge David Proctor, on June 18, denied motions filed by Blue Cross/Blue Shield Plans, which are independent companies across the United States, to have the anti-trust case dismissed.

The lawsuit is a Multi-District Litigation (MDL) case that was sent to Birmingham by the MDL panel of seven Judges (of which now Judge Proctor is a member, but was not at the time of the transfer to his Court) and assigned to Judge Proctor. Our law firm is one of the firms handling the case in the MDL. Judge Proctor appointed Dee Miles, who is the Section Head for the Consumer Fraud/Commercial Litigation section of our firm, to help prosecute those claims.

The case was originally filed in 2012 by an Alabama Chiropractor and consolidated with similar suits is being brought by Blue Cross subscribers and health care providers against about three dozen of the Blue’s competitors, including Blue Cross and Blue Shield of Alabama, which has the largest market share in a single state of any insurer in the country. The lawsuit alleges a violation of the federal anti-trust laws through a “complete lack of meaningful competition” within the markets across the United States where Blue Cross businesses sell insurance. These Blue Cross businesses, although independently run, are linked by an association with a Board of Directors that sets up the anti-competitive agreements, according to the allegation of the lawsuit.

Blue Cross filed the Motion to Dismiss the lawsuit in October claiming that the Plaintiffs’ failed to make a viable claim on a number of allegations. However, Judge David Proctor stated the following in his Order:

The Court has not attempted to reference (much less address) all of the details regarding plaintiffs’ allegations about the alleged scheme...But the contentions...make clear that plaintiffs have alleged a viable market allocation scheme. If that scheme is proven, it may subject defendants to anti-trust liability.

In addition, this past January, 14 law professors from around the country filed a “friend of the Court” brief in opposition to the Blue Cross Motion to Dismiss the lawsuit. Despite the Judge’s June 18 ruling denying Blue Cross’ Motion to Dismiss and the helping support of the academic world for the lawsuit, Blue Cross Blue Shield maintains that the anti-trust lawsuit is without merit.

This lawsuit is a very important step toward improving competition in our health care industry in this country. Judge Proctor’s Order is the first step toward improving our health care system, which will benefit health care providers, as well as consumers. We are honored to be a part of this lawsuit and to be prosecuting the claims on behalf of consumers and health care providers against Blue Cross Blue Shield in hopes that it will provide a fair and honest marketplace for everyone associated with health care. If you need additional information on this litigation, contact Dee Miles, the lawyer who heads up our Consumer Fraud Section, at 800-898-2034 or by email at Dee.Miles@beasleyallen.com. We will continue to report the progress of this case as it occurs.

AMERITOX AWARDED $15 MILLION IN MILLENNIUM DRUG-TESTING KICKBACK LAWSUIT

A Florida federal jury returned a verdict of almost $15 million in a suit brought by Ameritox Ltd. against Millennium Laboratories Inc. over alleged false advertising and unfair competition in the drug-testing
market. The jury found Millennium giving physicians drug-test cups violates anti-kickback and other laws. The jury awarded Ameritox more than $2.75 million for actual damages and $12 million for punitive damages. The court issued a follow-up civil judgment in accordance with that finding. The court further rejected all of Millennium’s counterclaims against Ameritox in the suit.

Scott Walton, chief executive of Ameritox, said that Millennium should stop providing doctors with point-of-care cups. He said in a statement:

“All Ameritox wanted was a level playing field, and we’re pleased that the jury rejected Millennium’s practice of providing free point-of-care test cups to physicians. The ruling underscores our belief that the significant health care challenges facing our country require steadfast adherence to the highest compliance standards, ethical business practices and quality of service.

The jury verdict in favor of Ameritox is the most recent development in the action, coming about two months after U.S. District Judge Susan C. Bucklew granted summary judgment to Millennium on Ameritox’s claim that providing physicians with urine cups containing drug-testing strips amounted to a violation of the Lanham Act. Baltimore-based Ameritox sued its San Diego-based rival in early April 2011, accusing Millennium of, among other things, improperly inducing referrals by giving doctors free supplies to secure business. Millennium responded with allegations that Ameritox did out kickbacks to physicians and interfered with its business relationships.

According to Ameritox, Millennium gave its customers at least 750,000 free point-of-care test cups in 2013 alone—totaling millions of dollars in giveaways. Millennium provided one Florida clinic with more than 8,000 free test cups, according to the Plaintiff. The jury on Monday concluded that the provision of free point-of-care cups under a so-called cup agreement, in exchange for business, violates federal Stark Law and anti-kickback laws. Michael R. Osterhoff of Perkins Coie LLP, a lawyer for Ameritox, told Law360:

The jury repudiated Millennium’s practice of inducing business by providing doctors with free supplies. The jury rightly found that Millennium violated both the Stark and anti-kickback laws. This verdict will be instrumental in leveling the playing field.

Millennium said the decision doesn’t affect the majority of its customers, who either buy cups and seek reimbursement or choose not to perform point-of-care testing at all. Millennium said it has voluntarily agreed to suspend the program nationwide and will take immediate action to ensure full compliance while it appeals the jury’s decision. Millennium said: “We hope the decision on appeal will be favorable, and we will continue to vigorously defend ourselves.”

Ameritox is represented by Patrick M. Collins, Michael R. Osterhoff, Adam L. Marchuk, Heather A. Boice and Mark T. Smith who are with Perkins Coie, and Margaret D. Mathews and Richard H. Martin, lawyers with the firm Akerman. They did a very good job in this matter. The case was tried in the U.S. District Court for the Middle District of Florida, Tampa Division.

Source: Law360.com

XI.
AN UPDATE ON SECURITIES LITIGATION

WHO REALLY WON IN THE HALLIBURTON CASE?

In an earlier edition of the Jere Beasley Report, we outlined the basics—pardon the play on words—of the Halliburton Co. v. Erica P. John Fund, Inc., case and the possible outcomes. To summarize: this term in Halliburton, the Court was asked to reverse the seminal securities case, Basic Inc. v. Levinson, that allows a fraud-on-the-market presumption of reliance in securities class actions. Under Basic, the publicly traded market is presumed to be efficient, meaning that a court will assume that whatever misrepresentations the Defendant is accused of making had an effect on the market price of the Defendant’s stock. It is further presumed that the Plaintiff relied on those misrepresentations in making a decision to purchase the Defendant’s stock during the damages period (the time between when the misrepresentation should have been disclosed and when it actually was disclosed).

We noted earlier that there were several options available to the Supreme Court for dealing with Basic at this juncture. The Court could either:

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

Other than the final choice, which nobody really expected, the Court chose the most conservative option. In a unanimous judgment and a 6-3 opinion, 1 the Chief Justice chose to uphold Basic in its entirety, but saw no reason why a Defendant should be forced to wait until the merits stage to rebut the presumption with direct evidence.

So, what does the Halliburton decision mean going forward? Not much, at least as far as initial pleadings go. There is no change to the Plaintiff’s requirements; the Basic presumption is intact. As Justice Ginsberg noted in her concurring opinion, this should be a minimal change for the parties, but would allow more discovery at an earlier stage in the litigation. Halliburton Co. v. Erica P. John Fund, Inc., 573 U.S. ___ (J. Ginsburg, slip op. concurring, at 1) (2014).

But, if a Defendant exercises the option to rebut the reliance presumption at class certification, which they will, the Plaintiff will then have to counter that evidence. Halliburton tried to convince the court that one way to defeat the presumption is to demonstrate that the members of the class would have still purchased the stocks had they been aware of the misrepresentations—that class members did not actually rely on the misrepresentations. The Court disagreed, reasoning that even “value investors,” an example provided by Halliburton, presumably try to estimate how undervalued or overvalued a stock is and that estimation is still “skewed by a market price tainted by fraud.” Halliburton, 573 U.S., (slip op., at 12). The only option remaining to a defendant is to attack price impact; a defendant can present direct evidence to show that the misrepresentations had no effect on the market price.

1 Justice Ginsberg filed a concurring opinion joined by Justices Breyer and Sotomayor (all of whom also joined the majority), and Justice Thomas penned an opinion concurring in the judgment and was joined by Justices Scalia and Alito.
Technically, Halliburton won this round—the Court reversed the Fifth Circuit’s decision. Halliburton has not won its case yet; on remand, the court is to reconsider class certification in light of Halliburton’s evidence regarding the lack of price impact. But, the real takeaway here, though, is that the Plaintiff in a class action securities case premised on 10b-5 does not need to do anything new.

At class certification, at least, the burden is on the Defendant to demonstrate an absence of price impact; it is not on the Plaintiff to prove the existence of price impact. The Court’s decision is probably the best result that investors could have gotten. If you need more information about 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.

**The SEC is Letting Banks Avoid Misconduct Penalties**

U.S Senator Sherrod Brown has sharply criticized the U.S. Securities and Exchange Commission (SEC) for allowing huge financial institutions to escape mandatory penalties despite being found guilty of serious misconduct. In a letter to SEC Chairwoman Mary Jo White, Sen. Brown, who chairs a Senate banking subcommittee, said recent decisions by the commission that waived punishments for Credit Suisse Group AG and the Royal Bank of Scotland Group PLC imply that the policy makes the reprieves “the rule rather than the exception.” The Senator’s letter stated:

_I hope that the SEC will reconsider and revise a process that has now been questioned by the public, lawmakers, and a sitting SEC commissioner. Removing privileges enjoyed by large firms will promote better behavior, increase accountability, and demonstrate to the financial markets that certain firms do not enjoy special treatment by virtue of their size._

Senator Brown was referencing a recent $2.6 billion settlement between Credit Suisse and the U.S. Department of Justice, announced on May 19. As part of the settlement, Credit Suisse pled guilty to a massive tax evasion scheme in which prosecutors said it concealed customers’ transactions by limiting withdrawal amounts and using offshore debit and credit cards to repatriate money, deliberate subversion of disclosure requirements and destruction of bank records.

Even though U.S. Attorney General Eric Holder called the scheme an “extensive and wide-ranging conspiracy,” the bank was still allowed an exemption from an SEC rule that would have stripped it of its ability to act as an investment adviser. The RBS case is in regards to an April decision in which the SEC voted to allow the bank to maintain its regulatory privilege status as a “well-known seasoned issuer” despite one of its subsidiaries being convicted for its role in rigging the London Interbank Offered Rate (LIBOR) earlier this year. That status confers several significant advantages to banks offering securities under the Securities Act.

The decision also created dissent in the SEC’s own ranks, as commission member Kara M. Stein said it drew attention to “a structural problem with [the agency’s] policy” that implied large financial institutions with global reach were essentially immune from many of the agency’s rules. Senator Brown cited Commissioner Stein’s comments in his letter, and asked Chairwoman White to hand over a comprehensive list of waiver provisions available to banks under federal securities laws, and to clarify whether the SEC has specific policies that guide decision on whether to grant waivers.

Sen. Brown has also requested that White inform whether she has examined the agency’s policies regarding the reprieves since taking over as chair last year. If you need additional information on this matter, contact Clay Barnett, a lawyer in our firm’s Consumer Fraud Section, at 800-898-2034 or by email at Clay.Barnett@beasleyallen.com.

Source: Law 360

**XII. INSURANCE AND FINANCE UPDATE**

**Placement Agents Are Making Millions Off Government Pension Funds**

Placement agents, intermediaries that make millions of dollars from public pension plans, can be best described as “just people with connections.” Essentially, they are brokers hired by investment companies to make contact with and find investors. Specifically, they aim to connect public pension funds with investment professionals who want to manage the billions of dollars controlled by a public pension. The process lets investment companies avoid paying salaried employees for the time it takes to track down investors.

Instead, investment companies charge a higher fee against the incoming revenues, the money that a client invests, calling them management or placement agent fees. Those higher fees are then passed along to the placement agent as payment for bringing in the new investor. There is no cost to the investment company. That’s because the fee is charged to the principle of the investor, and is not deducted from the standard management fee the company receives under the contract.

While that may sound like a great business plan for investment companies, the interplay between the higher fees and pension funds for government employees has caused quite a stir recently. For starters, a class action lawsuit filed this June by the City of Fort Wright, Ky., alleges that the board of trustees for the City’s pension fund breached its fiduciary duty, among other things, by putting the fund’s money in high-priced, low-yield alternative investments. The largest aspect of damages alleged in the complaint stems from fees paid by the board for the opportunity to be included in these alternative investments. Fees, like management and placement agent fees, are alleged to have exceeded $50 million in just five years. For example, the pension fund ended up paying around $2 million to a placement agent when the City connected with Arrowhawk Durable Alpha Fund. Absent the actions of the placement agent, the City probably would not have invested in the fund. Interestingly, it was a startup fund with no track record prior to the investment, and the fees, New York City just announced that the five boards in charge of the City’s $150 billion pension system agreed with the City Comptroller to ban placement agents from all transactions involving public pension funds. In 2009, New York City put in place a lesser ban on placement agents dealing with certain types of investments made by the City’s pension funds. But it contained some loopholes that have since been exploited by placement agents.

The 2009 ban was the result of an investigation conducted by then New York Attorney General Andrew Cuomo. That investigation uncovered a "national
network” that “victimized states and taxpayers all across the country” and shows “the inherent risks” that placement agents pose. Interestingly, at one time, the SEC considered a ban restricting placement agents’ dealings with pension funds. But it appears that the SEC yields to political pressure and abandoned the plan.

It should be noted that public pension plans hold more than $2.2 trillion of assets and represent one-third of all U.S. pension assets. As one specific example, Blackstone, a Wall Street investment firm, has around $111 billion in its investment pool. Of that, $37 of every $100 comes from state and local pension plans. That means there are likely several other public pension funds that may be mishandling the funds of their current and future retirees by paying large placement agent fees, knowingly or unknowingly.

Investors should be aware of these excessive fees and talk to their board to discourage participating in those types of investments. The impact these fees have on a pension fund can cause drastic effects on the retirement prospects of public employees. 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: http://pando.com and http://globenewswire.com

**Dental Services Being Wrongfully Denied**

Lawyers in our firm’s Consumer Fraud Section are investigating reports of consumers having various dental services denied coverage under their dental insurance policies. Essentially, when the nation transitioned into the new health care system (Obamacare) every American had the option to either sign up under a government-sponsored health insurance plan or obtain a new plan from a private insurance company. It appears that insurance companies have placed a waiting period in these new policies for various dental procedures. The waiting periods vary on the type of dental services sought. For example, basic services including fillings, crowns or extractions have a waiting period of six months while major services have a waiting period of 12 months.

Lawyers in the Consumer Fraud Section at Beasley Allen are interested in speaking with anyone who has been denied coverage for a dental procedure by their private insurance because of these waiting periods. If you have any information or have been denied coverage for a service under your dental insurance policy and would like to speak with a lawyer on this subject, contact Andrew Brasher, a lawyer in the Section, at Andrew.Brasher@beasleyallen.com, or at 800-898-2034 or 334-269-2543.

**REALTY SOUTH ORDERED TO PAY $500,000 FOR IMPROPERLY STEERING CUSTOMERS TO ITS OWN TITLE COMPANY**

RealtoSouth, the state’s largest residential real estate company, will pay $500,000 to settle claims that it improperly steered homeowners to use the company’s own title insurance and closing agency. RealtoSouth stipulated and consented to the issuing of the consent order. The settlement comes after the Consumer Financial Protection Bureau (CFPB) identified violations of the Real Estate Settlement Procedures Act (RESPA).

The CFPB ordered RealtoSouth to pay a $500,000 civil penalty to the bureau within 10 days of the consent order’s effective date, which is May 28. Specifically, the consent order states:

RealtoSouth strongly encouraged its agents and, in certain instances told them they were required to use, RealtoSouth’s family of services, in particular, TitleSouth.

RealtoSouth and TitleSouth are wholly owned by the same company, HomeServices of America, an affiliate of Berkshire Hathaway. The consent order further states that “from March 2011 until May 2012, RealtoSouth had a preprinted purchase contract that explicitly directed title and closing services for which consumers would pay a charge to TitleSouth.” In 2012, a new contract included a checkbox list to allow customers to choose between “TitleSouth” or “Other” when selecting the source of the title insurance policies. Although RealtoSouth did include the required “Affiliated Business Arrangement Disclosure Statement” in its contracts, the consent order states that the format did not meet RESPA requirements and it “included marketing statements touting the benefit and value of the affiliated entities.”

The CFPB ordered RealtoSouth to make changes to its ABA Disclosure Statement in keeping with RESPA. The consent order said RealtoSouth did so after it was informed of the violations. The consent order also commands that RealtoSouth include training of its agents within the next 30 days to “emphasize that agents cannot require the use of any affiliate in real estate transactions.” While having an affiliated title company isn’t illegal, specific steps have to be taken to make consumers aware of the affiliation, the estimated costs and their freedom to shop around for another company to provide that service.

Richard Cordray, Director of the CFPB, said in a statement:

Disclosures give consumers the power to make informed financial decisions, and buying a house is among the biggest financial decisions most people ever make. The Consumer Bureau will continue to take action against companies that attempt to modify disclosures and keep consumers in the dark.

RealtoSouth and TitleSouth agreed to the issuance of the order. The two companies agreed that “the facts set forth in (the order’s findings and conclusions) shall be taken as true.” If you need additional information on this subject, contact Rebecca Gilliland, a lawyer in our Consumer Fraud Section, at 800-898-2034 or by email at Rebecca.Gilliland@beasleyallen.com.

Source: ALcom

**Blue Cross Sues Takeda And Eli Lilly Over Actos Cancer Costs**

Blue Cross and Blue Shield of Massachusetts Inc. has filed a number of subrogation actions in the Louisiana multidistrict litigation (MDL) over the bladder cancer risks carried by Takeda Pharmaceuticals Co. Ltd. and Eli Lilly & Co.’s diabetes drug Actos. The company seeks to recoup the cost of medical bills for hundreds of alleged victims. Standing in the shoes of its insureds, Blue Cross and its subsidiary Blue Cross and Blue Shield of Massachusetts HMO Blue Inc., filed more than 10 lawsuits asserting that Takeda and Eli Lilly should shoulder health care costs incurred by its subrogees’ personal injuries.

It’s alleged in the lawsuit that the defendant—Asia’s largest pharmaceutical company and its Indianapolis-based marketing partner—negligently or fraudulently concealed the link between Actos and bladder cancer. The suit states:

*By virtue of its payment for injuries sustained by an insured member as a direct result of the allegations herein, BCBSMA is subrogated to the rights of their insured members to recover from the person(s) or entity(ies) responsible for said injuries.*

The complaints include claims for negligence, breach of express and implied warranties, fraud, misrepresentation, and
violations of Massachusetts law. Blue Cross also requested that the MDL court send the cases back to Massachusetts federal court. Like the more than 6,000 personal injury cases pending together in the same court, Blue Cross is contending that before Takeda applied for approval from the U.S. Food and Drug Administration (FDA), it knew from the results of animal testing that Actos could cause bladder cancer.

When epidemiological studies in the 2000s reinforced the link, Takeda ignored the results and failed to alert consumers, regulators and the medical community about the dangers of taking Actos. The same Louisiana court recently oversaw the first federal jury decision in Actos product liability litigation, a $9 billion punitive verdict coupled with $1.5 million in actual damages to Plaintiffs Terrence and Susan Allen.

While the very large award is likely to be reduced at some point, it has already prompted a “public kerfuffle” between the two co-defendants over which is responsible for the $3 billion portion of the verdict that fell on Eli Lilly. Takeda developed Actos and partnered with Eli Lilly to promote the drug from 1999 to 2006. After the Allen verdict, Eli Lilly publicly said that Takeda is responsible for providing indemnification for the damages by virtue of the companies’ marketing contract. Takeda countered that it was reserving its rights to contest Eli Lilly’s claim.

The verdict was likely due in some measure to U.S. District Judge Rebecca Doherty’s devastating evidence destruction findings against Takeda. Those findings resulted in tough sanctions that allowed the jury to take into account the drugmaker’s apparent spoliation of relevant documents, emails and other evidence. The companies also face actions in state courts across the country.

Actos represented more than a quarter of Takeda’s total sales in 2011, at its peak. In June of that year, the FDA alerted the public that use of the drug for longer than a year could cause bladder cancer and discouraged doctors from prescribing it to patients with active bladder cancer. If you need more information on the Actos litigation, contact Andy Birchfield, the lawyer who heads up our firm’s Mass Torts Section, at 800-898-2034 or by email at Andy.Birchfield@beasleyallen.com.

Have you been a victim of force-placed flood insurance by Chase?

Lawyers at Beasley Allen in our Consumer Fraud Section are currently representing Plaintiffs who have been cheated by JP Morgan Chase Bank’s (Chase) practice of force-placing flood insurance on borrowers with home equity lines of credit and home equity loans. We have filed a class action lawsuit against Chase and its preferred flood insurance vendor, American Security Insurance Company, which does business as “Assurant.” The suit alleges that Chase and Assurant engaged in a scheme to wrongfully force-place flood insurance, charge excessive premiums, pay and accept unlawful kickbacks, and force-place more insurance than necessary or required.

Claims under the Racketeer Influenced and Corrupt Organizations Act (RICO), the Real Estate Settlement Procedures Act (RESPA), and the Truth in Lending Act (TILA), are alleged in the suit. We also allege common law claims. Damages in this case have the potential to be substantial.

The federal government will very likely file suits against banks and other mortgage servicers to recover its losses from insurance kickbacks that may have cost government-controlled mortgage grants Fannie Mae and Freddie Mac hundreds of millions. The suit would be filed by the Federal Housing Finance Agency. If any of you had either a Chase Home Equity Loan or a Home Equity Line of Credit and flood insurance was force-placed by Chase prior to January 1, 2010, and you need help, contact Archie or Andrew Brasheir by at 800-898-2034 or by email at Grubb Archie.Grubb@beasleyallen.com or Andrew.Brasheir@beasleyallen.com. If any of our lawyer-readers have clients who had an experience such as those described above, and need additional information, contact Archie or Andrew, who are lawyers in our Consumer Fraud Section. They will be glad to work with anyone on this important litigation.

AIG and Allied pay $60 million to settle wildfire coverage dispute

Two American International Group Inc. (AIG) units and Allied World National Assurance Co. have agreed to pay $60 million to settle claims that they failed to properly cover a California water district in a $69 million award in lawsuits blaming the district for property damage from a 2008 wildfire. Under the settlement agreement, AIG units Insurance Co. of the State of Pennsylvania (ICSOP) and Lexington Insurance Co., along with Allied, agree to pay $52.5 million and $7.5 million, respectively, to resolve and end the litigation.

In July 2012, a California state court judge entered a $69 million judgment against the Yorba Linda Water District (YLWD). This arose from the Freeway Complex Fire, which swept through several communities in Orange County, Calif., in November 2008 and caused hundreds of millions of dollars in property damage. It appears that ICSOP first indicated that it would cover the district in the aftermath of the fire, but then changed its decision, relying on the inverse condemnation exclusion. In 2011, the water district and the Association of California Water Agencies Joint Powers Insurance Authority, which had banded together to purchase insurance, sued ICSOP demanding coverage on the $19 million excess policy. Later, Lexington and Allied were added as Defendants in intervenor complaints filed by private citizens whose property was damaged.

The YLWD was accused by the intervenor Plaintiffs of failing to make water available to fight the wildfire and of intentionally designing a water supply system with insufficient water pressure and water quality that did not meet minimum legal requirements. In August, a California federal judge reversed a colleague’s decision to dismiss a bad faith claim against ICSOP. In March 2013, summary judgment was entered in its favor and against YLWD on its claim for bad faith denial of coverage in the case.

The federal judge who made the decision later recused himself from the case because his former law firm was hired to represent one of the insurers. His replacement, U.S. District Judge Cormac J. Carney, issued an order granting the water district’s motion for reconsideration of the bad faith claim, citing new evidence obtained in depositions of two of ICSOP’s employees and its underwriter. ICSOP first indicated that it would cover the district in the aftermath of the fire, but then changed its decision, relying on the inverse condemnation exclusion.

ICSOP contended that two separate exclusions contained in the policy automatically barred coverage. It was claimed that the water district allegedly ran afoul of one such exclusion because it chose not to install a gravity-fed water system in the area, even though, according to ICSOP, it knew the risks of having a pump-based system during a wildfire.
XIII. 
PREDA TORY 
LENDING

**Suntrust Settlement Announced**

Some Alabama borrowers will receive mortgage relief as part of a $550 million joint state-federal settlement with Suntrust Mortgage Inc. As part of the settlement, Alabama borrowers will receive direct payments for past foreclosure abuses and loan modifications and other relief. In addition, Suntrust will be subject to new mortgage servicing standards and oversight from an independent monitor.

According to Alabama Attorney General Luther Strange, approximately 572 Alabama borrowers will be eligible for a payment from the national $40 million fund for payments to borrowers. To be eligible, borrowers must have had loans serviced by Suntrust, lost their home to foreclosure from Jan. 1, 2008, through Dec. 31, 2013, and encountered servicing abuse. Eligible borrowers will be contacted about how to qualify for payments.

Suntrust will provide some Alabama borrowers with loan modifications, including principal reductions and refinancing for underwater mortgages. While Suntrust will decide how many loans it will modify, I understand that it will have to meet certain minimum targets. The settlement will provide relief to borrowers that will exceed the overall minimum amount.

The settlement creates several new consumer protections and standards on how SunTrust services mortgage loans and handles foreclosures. Also, the National Mortgage Settlement’s independent monitor, Joseph A. Smith Jr., will oversee Suntrust agreement compliance. The three-year settlement includes 49 states, the District of Columbia, the U.S. Department of Justice, the U.S. Department of Housing and Urban Development and the Consumer Financial Protection Bureau. The agreement’s mortgage servicing terms largely mirror the 2012 National Mortgage Settlement reached in February of that year between the federal government, 49 state attorneys general, and the five largest national mortgage servicers.

Source: Bizjournal.com

XIV. 
PREMISES LIABILITY UPDATE

**Settlement Reached Between Bender Shipbuilding and Caterpillar Over 2008 Engine Fire That Destroyed Vessel**

Bender Shipbuilding and Repair, a company that is now defunct, has reached a settlement agreement with Caterpillar Marine worth $46 million. The settlement involved resolution of a lawsuit over a failed engine that burst into flames while under construction on the Mobile River. Bender was under contract to build six anchor handling tug supply vessels for Houma, La.-headquartered Seacoar Marine. The M/V Sherman was the fourth under construction.

The May 2008 blaze burned for close to 24 hours at Bender’s facility. It should be noted that Signal Ship Repair now resides at that location after acquiring Bender in 2010. Bender sued Caterpillar Marine, a business unit of Peoria, Ill.-based Caterpillar Inc., in January 2010.

The $27 million ship, the M/V Sherman, exploded in May 2008 when one of its engines broke a rod, causing a fire that lasted 24 hours and burned the Sherman to its hull. The Plaintiffs claimed the engine was missing an oil plug about the size of a nickel in its crankshaft. Now-defunct Bender Shipbuilding & Repaid Co. Inc., entered bankruptcy in 2009. The lawsuit was filed in an Alabama state court. Caterpillar will pay Bender $12 million and Seacoar Marine LLC, an international ship operator, $22 million. A motion was filed by Bender seeking approval of the settlement in Alabama bankruptcy court.

Another $12 million from the settlement will go to six insurance companies, including St. Paul Fire and Marine Insurance Co., which underwrote the ship and had a subrogation claim.

The bankruptcy court has approved the settlement. Lucy E. Tufts of Cunningham Bounds, one of the lawyers for the Plaintiffs, said discovery revealed the Caterpillar engine was missing one of its eight oil plugs, depriving part of the engine of oil. The lack of lubrication caused added heat, which ignited oil vapors and exploded the engine, she said. Lucy said that it was pretty incredible that they found “such a tiny piece was missing and that the absence of such a tiny piece could cause such catastrophic damage.” GE Energy Power Conversions USA Inc. and Thompson Tractor Co. Inc., which were also defendants in the case, did not contribute to the settlement fund, but they will be dismissed from the suit.

The Plaintiffs were represented by George W. Finkbohner, Lucy E. Tufts and Steve Olen of the Mobile firm of Cunningham Bounds; Victory T. Hudson and William W. Watts of Pipes Hudson & Watts; and Craig Wolfe of Sheppard Mullin Richter & Hampton. These lawyers did an outstanding job in this very complicated case and got a tremendous result.

Sources: Mobile Press Register and Law360.com

**Jury Returns $20 Million Verdict In Explosion Lawsuit**

A California jury last month returned a verdict of $19.8 million against Southern California Gas Co. (SoCal Gas). The verdict was in a personal injury action brought by a man who suffered severe burns and brain injuries after his rental home exploded as a result of SoCal Gas’ negligence. The jury found that SoCal Gas was negligent and that its negligence was a substantial factor in causing harm to the 24 year old Plaintiff.

A SoCal Gas employee activated an illegally uncapped gas line running into the Plaintiff’s home. His room filled up with natural gas and exploded into flames when he tried to light a cigarette.

The Plaintiff continues to suffer from painful and life-altering injuries brought on by the “extremely traumatic event.” The jury verdict was said to be the largest personal injury jury verdict in history against SoCal Gas. It included about $17 million for past and future pain and suffering, $2 million for past and future medical expenses and $657,100 for past and future loss of earnings.

In 2011, a former SoCal Gas employee named Simon Youde opened a gas valve that activated a gas line running to the back house where Diao was sleeping. Youde left the property without ensuring it was leak-free, ultimately leading to the explosion, according to the Plaintiff’s counsel.

Diao received second- and third-degree burns on more than 20 percent of his body and was taken to a burn unit where he remained for about two weeks and had numerous surgeries. Diao was also diagnosed with a traumatic brain injury that left him with permanent cognitive deficits, according to court documents. SoCal Gas admitted fault in the incident but sought to impose some liability on the property owner. The company challenged the severity of the Plaintiff’s injuries and told the

JereBeasleyReport.com
The Plaintiff is represented by Kevin R. Boyle, Rahul Ravipudi and Robert S. Glassman of Panish Shea & Boyle. The case was tried in the Superior Court of the State of California, County of Los Angeles, Central District.

Source: Law360.com

In short, the defendants placed their ability to turn a profit above the well-being of children. We are neither offended nor surprised by the jury’s conclusion. The jury could rightly find such actions outrageous.

The Plaintiffs asserted claims against the three partners separately, seeking to hold each liable based on its conduct during its ownership of the plant. They also sued Fluor under an additional theory of "domination," claiming it exercised pervasive control over its subsidiaries that were part of the ownership structure. The appeals court vacated the punitive damages against Fluor on the grounds that the claim was based on an improper application of agency law surrounding Fluor’s parent-subsidiary relationship with two subsidiaries, DRHI and Leadco. The appeals court wrote:

The children here sought to hold Fluor liable under traditional agency principles merely because of its domination of and control of its subsidiaries. This is insufficient. Therefore, we hold that a principal-agent relationship was not established, and thus the parent company, Fluor, cannot be held liable for the actions of its subsidiaries under an agency theory purely on the basis of domination and control.

The panel rejected several challenges to the trial proceedings, upholding the lower court’s handling of expert testimony and jury instructions. The appeals court also affirmed that the sizable punitive awards did not violate the Defendants’ due process rights. The Plaintiffs are represented by Newman Bronson & Wallis, the Law Offices of James R. Dowd and the Smoger Law Firm. Thus far they have done a very good job in this case.

Source: Law360.com

MASSACHUSETTS BUS DRIVER MAY HAVE BEEN USING CELLPHONE AT TIME OF CRASH

A veteran driver whose bus crashed through a guardrail, leaving the front end hanging over the Massachusetts Turnpike, appeared to have a cellphone in her hand at the time of the crash, according to an investigative report. The report from the Massachusetts Bay Transportation Authority (MBTA) said that the 42-year-old driver, Shanna Shaw, told investigators after the crash at about 7:30 a.m. on May 18, a Sunday morning, that she was being both-
ered by allergies and a sneezing fit caused her to close her eyes, fall to the floor and lose control of the bus.

But it appears there may have actually been another contributing factor. Investigators who reviewed video surveillance from the bus said the driver “had an item in her left hand, consistent in size and shape, with a cellular telephone.” The driver and seven of the nine passengers on the bus received medical treatment.

Ms. Shaw at first said she did not have a phone, but an investigator heard a phone ring in her purse at the hospital. She later admitted, according to the report, that she did have a phone. MBTA bus drivers, as well as trolley and train operators, are barred from carrying cellphones on the job. Ms. Shaw allowed police to check the phone’s history, which showed no text messages or phone calls sent or received since 5:30 a.m. that day, according to the police. Shaw is charged with obstruction of justice, operating to endanger, speeding and impeded operation. She was removed from service and the investigation is ongoing. This tragic incident is just another reminder of why driving and either talking on a cell or texting don’t mix. The consequences can be horrific.

Source: Claims Journal

NEW MEDICAL EXAM REQUIREMENT FOR COMMERCIAL DRIVERS

An important regulation recently passed by the Federal Motor Carrier Safety Administration (FMCSA) seeks to make a positive impact on the trucking industry. All U.S. Department of Transportation (USDOT) physicals must now be performed by a qualified health professional listed on the National Registry of Certified Medical Examiners. The regulation took effect on May 21. The FMCSA reiterates the importance that every commercial truck and bus driver be qualified, alert and focused while they are driving, and this new requirement is made in an effort to improve the safety of travelers and the health of commercial drivers.

The program sets baseline training and testing standards for medical professionals who perform commercial driver physicals and for tracking of driver medical certificates. The individuals who are part of the National Registry have a thorough understanding of DOT fitness standards and will be able to ensure that the drivers meet the health requirements necessary to operate on our highways and roads. So far, there are approximately 22,000 medical profession-als who have completed the coursework and testing and are already listed on the National Registry. There are another 27,000 who have begun the certification process. These individuals will be required to take part in periodic training and recertification testing to maintain their qualifications, otherwise they will be removed from the National Registry for failure to maintain federal standards.

All interstate commercial truck and bus drivers are required to pass a USDOT medical examination at least every two years in order to obtain a valid medical certificate, maintain their commercial driver license (CDL) and legally operate a commercial motor vehicle. The medical examination focuses on a wide range of conditions to assess a driver’s ability to safely operate a commercial vehicle, including cardiovascular disease, respiratory and muscular functions, vision and hearing. Those commercial drivers who currently hold medical certificates will continue to be valid until the expiration date shown on the card. At that time the driver will need to seek a certified medical examiner to perform a new examination. To assist drivers, http://nationalregistry.fmcsa.dot.gov has been set up so drivers can easily search for a Certified Medical Examiner in their area.

This newly implemented program is taking aim at enhancing the medical oversight of interstate drivers and preventing commercial vehicle-related crashes, injuries and fatalities. Chris Glover, one of the lawyers in our firm who handles commercial truck cases, can be reached at 800-898-2034 or by email at Chris.Glover@beasleyallen.com.

LAWYERS SHOULD NOT OVERLOOK BROKER AND SHIPPER LIABILITY IN 18-WHEELER CRASH CASES

In cases where a commercial carrier or driver is responsible for a crash that injures or kills other drivers, it’s important for lawyers who are investigating the crash not to overlook the possibility of broker liability. Broker liability is important when there are very serious injuries and limited liability insurance coverage and/or limited assets for the Defendant. By examining this aspect of a case, a lawyer can help a deserving client receive the maximum recovery for his or her injuries and losses. When evaluating an 18-wheeler crash, remember there are several factors working in tandem:

- The product / load that must be delivered;
- The truck that carries the load, and its driver; and
- A broker or brokerage company that matches the trucking company to the load.

About 40 percent of truck accidents involve a broker of the cargo. The question when that occurs is whether the broker is liable for the loss in your case. Most brokers believe that they cannot be considered a carrier because they do not own or lease trucks. That belief is simply wrong. The Federal Motor Carrier Safety Act at 49 U.S.C.A § 301 et seq., makes no such requirement. Likewise, a broker, who also has motor carrier authority, cannot guarantee delivery of a load and still maintain its status as a broker. A broker who is also authorized as a motor carrier runs a significant risk when it guarantees the load under 49 C.F.R. § 371.2.

The broker or shipper can be held liable based on their own conduct. The general rule is that a party is not liable for the negligence of its independent contractors. One exception, however, is that a broker may be liable for the negligent hiring of the motor carrier. Restatement Second of Torts § 411 provides that shippers and brokers are liable for “physical harm to third persons caused by failure to exercise reasonable care employ a competent and careful contractor (a) to do work which will involve a risk of physical harm unless it is skillfully and carefully done, or (b) to perform any duty which the party owes to third persons.”

Lawyers in our firm have successfully handled several cases involving broker liability. For more information about evaluating 18-wheeler accidents involving a broker, or if you need more information about heavy truck cases in general, contact Chris Glover, a lawyer in our Personal Injury/Products Liability Section, at 800-898-2034 or by email at Chris.Glover@beasleyallen.com.

XVI. ENVIRONMENTAL CONCERNS

OBAMA ADMINISTRATION PROPOSES RULE TO REDUCE CARBON EMISSIONS BY 30 PERCENT TO FIGHT CLIMATE CHANGE

President Barack Obama has caused another political uproar in Congress by taking a stand on an issue that has been
largely ignored by Congress. His Administration has announced a plan to fight pollution and slow global warming and it should be given a chance. At least it should be carefully stated and debated. The Environmental Protection Agency (EPA) proposed a rule to reduce carbon emissions from existing power plants 30 percent by 2030 from levels established in 2005. Supporters believe the move is critical to slow the effects of global warming that most all scientists believe are affecting our climate and weather. Critics of the proposal call it a “job-killer” for the coal industry, and say it will raise utility rates. Unfortunately, science is not on their side.

It’s undisputed that existing power plants are the single-largest source of carbon pollution in the United States. Almost one third of America’s carbon emissions come from electricity generation. The EPA says taking action now will help prevent up to 6,500 premature deaths from pollution-related diseases, eliminate waste, and spark innovation and job creation. It estimates the regulation will reduce pollutants that contribute to soot and smog that make people sick by more than 25 percent.

The U.S. Energy Information Administration says currently coal supplies 37 percent of U.S. electricity, while natural gas supplies 30 percent. Another 19 percent comes from nuclear power plants, with 7 percent from hydropower generation and 5 percent from renewable sources like wind and solar energy. With the new EPA rules, by 2030 just a little more than 30 percent of U.S. electricity would come from coal, with an almost equal amount coming from natural gas; while wind, solar and other alternative sources would supply 9 percent. The reduction would be equal to removing two-thirds of cars and trucks from American roads, according to EPA estimates.

While EPA officials acknowledge the proposed new rules could come at a cost of around $8.8 billion a year, the agency says the move will actually help Americans save money on their electric bills by increasing energy efficiency and reducing demand in the electricity system. In fact, the EPA says Americans could see their bills reduced by an average of 8 percent. Some measures to reduce carbon emissions are already being implemented, such as changing how long power plants operate each day and working to increase sources of alternative energy like wind and solar power.

While opponents say the plan is setting out to kill the coal industry, EPA officials say it actually takes into account, at the state level, the impact of the coal industry on the economy. They say the plan is structured to allow states to develop their own plan to meet goals and limits set out by the EPA. Each state will be assigned a target for reducing its pollution, and will have the flexibility to design a plan that works best with its economy and resources. The New York Times reports options available to states include closing coal plants, installing wind and solar energy technology, or enacting state taxes on carbon pollution.

The EPA says the state-by-state plan takes into account those state economies that are dependent on coal production, requiring them to reduce emissions by a lesser amount than other states whose economies are not so reliant on coal power production. For example, a state like Kentucky, whose economy is heavily coal-dependent, would be called on to reduce its carbon emissions by 18 percent. Meanwhile, Washington State, which has just one coal-fired power plant, would be required to cut its emission rate by 84 percent. States will have until June 30, 2016, for submitting plans to achieve their reduced emissions target. States may submit a working plan and ask for an extension of up to two years to finalize it.

Carbon pollution has been increasing since the industrial revolution of the 19th century. Scientists say these carbon emissions correspond to the warming of the global climate, which will have potentially catastrophic effects worldwide. In May, the White House released a report detailing effects of rising global temperatures including extreme weather, seasonal allergies and rising oceans. The Obama administration hopes that by promoting a global viewpoint, it can encourage other nations to follow America’s lead and adopt cleaner energy policies, particularly in emerging economies in China and India. White House spokesman Jay Carney said:

_The U.S. has to lead, first of all, and this is an indication that the United States will lead on this very important challenge posed by climate change and global warming._

The proposed regulations must go through a public comment period before taking effect, and it is expected to be challenged in court and in Congress. However, Obama has enough votes to veto any opposing legislation. Some states are expected to sue the EPA over the rule.

On June 14, in a commencement address at the University of California at Irvine, President Obama reinforced his commitment to curbing carbon emissions. He said in his talk that the scientific debate on climate change is over, stating: “The climate change deniers suggest there’s still a debate over the science. There’s not.” While lots of folks simply don’t like the president and oppose whatever he presents as a program, this is not an issue to oppose simply because the president is for it.

This is an issue that must be considered, debated and acted on. If there are options available to solve the problem that are actually better, then let’s look at them. But our leaders both at the national and state levels can no longer continue on our current course. We have largely ignored climate change and have let the polluters set the entire agenda in this area of concern. We owe it to our children and grandchildren to do the right thing on the climate change issue and protect their future well-being.


**The Oversight Of Chemical Plants Is Lacking**

I was surprised—but not shocked—to learn that the government has no way of fully knowing which U.S. chemical facilities stock ammonium nitrate, the substance that exploded April 17, 2013, at a West, Texas, fertilizer plant and killed 14 people. President Barack Obama pledged to stiffen enforcement following the explosion. Outdated federal policies, poor information sharing with states and a raft of industry exemptions point to scant federal oversight, says a new Government Accountability Office (GAO) report obtained by The Associated Press (AP).

The GAO report found regulatory gaps in environmental and worker protections and urged broad changes to U.S. safety rules. Without improved monitoring, federal regulators “will not know the extent to which dangerous conditions at some facilities may continue to exist,” concluded the report.

The GAO found that the Homeland Security Department’s database captured only a fraction of the ammonium nitrate storage facilities in the U.S. The federal database shows that 1,345 facilities in 47 states store ammonium nitrate. But spot checks of similar state records found that the federal list missed as many as two-thirds of the storage sites, according to the report. GAO urged Congress to eliminate an annual budget provision that exempts from safety inspections facilities with 10 or fewer employees, which make up about four percent of the 1,345 locations.

About half of the facilities that are in the federal database were located in six states: Alabama, Georgia, Kentucky, Missouri, Tennessee and Texas. They include chemical plants or any location that stores ammo-
nium nitrate, a widely used fertilizer, such as farm supply retailers or fertilizer distribution warehouses. The government audit tracked a monthlong reporting effort last year by the AP that drew upon public records in 28 states. The AP investigation found that schools, nursing homes and hospitals were within the potentially devastating blast zones of more than 120 facilities storing ammonium nitrate.

The GAO faulted the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) for decades-old chemical safety regulations that have failed in large part to cover ammonium nitrate. Facilities that store ammonium nitrate are rarely inspected by OSHA, including the one that blew up in Texas, in part because the agency relies on EPA regulations that do not list ammonium nitrate as a hazardous material. OSHA put in place some requirements for storing the fertilizer back in the 1970s, but GAO found the industry often viewed the rules as applying only if the material were used to make explosives.

The audit said the agency may be unwisely granting exemptions to retailers that store and blend fertilizer for direct sale. As a result, prior to last year’s explosion, OSHA had cited just one facility for violations of its ammonium nitrate storage requirements in its more than 40-year history, the report said. That was in 1997 in Florida, following an employee complaint.

The EPA, OSHA and the Homeland Security Department generally agreed with the findings. They emphasized new efforts to improve coordination will be spelled out in a report expected later this month from the federal working group task force established by Obama that will outline ways to improve oversight. OSHA officials also said they were reevaluating ways to target high-risk facilities for inspection, even with limited resources. “We believe that we have already made significant improvements to reduce the likelihood of ammonium nitrate incidents,” wrote David Michaels, an assistant Labor Department secretary for occupational safety and health.

A group of lawmakers called the U.S. safety lapses “unacceptable.” They urged President Obama in a letter to take action to address GAO’s findings. Signing the letter were chairs or senior members of the relevant congressional committees on labor, environment, or the budget including: Rep. George Miller; Sen. Barbara Boxer; Rep. Joe Courtney; Sen. Bob Casey and Sen. Patty Murray. The lawmakers said in their letter:

Almost every state has communities that are at risk of experiencing a similar disaster. Last year’s devastating ammonium nitrate fertilizer explosion in West, Texas, is a tragic example of what can happen when there are inadequate protections.

This is an issue that must be addressed in Washington and further delay is unacceptable. It’s an area, like many others, where Congress all too often allows the “tail to wag the dog,” and that must change!

Source: Claims Journal

EPA IMPOSES RECORD FIFRA FINE FOR PESTICIDE ADVERTISING

The U.S. Environmental Protection Agency (EPA) has ordered a Milwaukee pesticide manufacturer to pay a $738,000 penalty for making unapproved claims about its Rozol Prairie Dog Bait and failing to label it as a “restrictive use” pesticide. This is the largest penalty ever imposed for violations of the Federal Insecticide Fungicide and Rodenticide Act (FIFRA). Chief Administrative Law Judge Susan Biro ordered Liphatech Inc. to pay the civil penalty after finding it liable in March for more than 2,100 violations of FIFRA from 2007 to 2008.

According to the EPA, Liphatech advertised its highly toxic Rozol Prairie Dog Bait without identifying its “restricted use” classification and made false claims about the product that overstated its effectiveness and safety. Cynthia Giles, assistant administrator of EPA’s Office of Enforcement and Compliance Assurance, said in a statement:

Restricted use pesticides can be dangerous to wildlife, public health and the environment. Today’s record penalty underscores the seriousness of these violations, and supports EPA’s commitment to ensure pesticides are handled safely, as required by law.

In 2010, the EPA filed an administrative action against Liphatech alleging it violated FIFRA by illegally distributing, selling and advertising the pesticides. The agency labeled the Rozol Prairie Dog Bait, which is used to control black-tailed prairie dogs in the states where they are present, as a restricted-use pesticide because of its potential to harm other animals, including endangered species and vulnerable wildlife. Rozol is approved for use by state pesticide applicators in Colorado, Kansas, Montana, North Dakota, Nebraska, New Mexico, Oklahoma, South Dakota, Texas and Wyoming. The EPA and agricultural agencies in Colorado, Kansas, South Dakota and Wisconsin investigated the case.

In June 2011, a Washington federal judge ruled that the EPA violated the Endangered Species Act and FIFRA by failing to consult the Fish and Wildlife Service before registering Rozol in 2009. However, the judge did not block the chemical’s use. The Natural Resources Defense Council, Audubon of Kansas and Defenders of Wildlife brought the suit over concerns about the pesticide. The active ingredient of Rozol is chlorophacinone, which disrupts the body’s blood-clotting ability over an extended period of time and can cause affected animals to exhibit weakness, disorientation and other signs of illness, according to court documents.

Source: Law360.com

$23 MILLION CITGO SETTLEMENT OVER MTBE POLLUTION REJECTED

A New York federal judge has rejected a $23 million settlement to cover Citgo Petroleum Corp.’s liability in a proposed class settlement over methyl tertiary-butyl ether (MTBE) groundwater contamination at service stations and refineries in New Jersey. U.S. District Judge Shira A. Scheindlin said the agency proposing the settlement arrived at its calculation arbitrarily. Judge Scheindlin denied the New Jersey Department of Environmental Protection’s (DEP) motion for approval of a judicial settlement over concerns about the agency’s settlement with Citgo. The figure calculated by the Plaintiffs was found not to account for Citgo’s portion of liability. Judge Scheindlin found further that the DEP’s calculation wasn’t properly supported by evidence.

Judge Scheindlin found the inconsistencies with the Plaintiffs’ list of sites used as the basis for their damages estimate to be most troubling. Though there are 498 sites on the list, seven of the 10 sites at which discovery was conducted aren’t on the list, according to the judge. There was at least one site where the Plaintiffs conducted no discovery at all on the list. Judge Scheindlin wrote. He wrote in his ruling:

Plaintiffs offer no explanation for these inconsistencies, which raise doubts about the reliability of the entire list. With such an incomplete record, it is impossible for me to determine whether the settlement is reasonable and fair.
The suit is part of a larger multidistrict litigation (MDL) over the groundwater contamination. MTBE was used in U.S. gasoline at low levels starting in the late 1970s to replace lead as an octane enhancer, helping prevent engine knocking. Known to be carcinogenic to animals and possibly to humans, the chemical was at higher concentrations in some gasoline to fulfill the oxygenate requirements set by Congress in the 1990 Clean Air Act Amendments, but was partially phased out following the new renewable fuel standards of the 2005 Energy Policy Act.

The chemical makes water taste unpleasant even at low levels of contamination, rendering large quantities of groundwater nonpotable once the MTBE leaks. The New Jersey DEP proposed that Citgo pay $23.25 million. Judge Scheindlin found that estimate to be somewhat arbitrary, according to his ruling. Citgo had admitted that if its share of liability were 4 percent of total damages, it would be liable for $88 million, the judge wrote. That certainly made the proposed censored order suspect.

Judge Scheindlin wrote that the Plaintiffs estimated their total damages for the 5,045 sites in question at between $1.99 billion and $3.32 billion. He said the total damages estimate did not have to be precise. But Judge Scheindlin wrote that the Plaintiffs’ estimate spans $1.3 billion. Even though Citgo was identified at more Plaintiff-selected evidence sites than any other defendant, Citgo’s payment would amount to only 0.7 percent of a maximum $3.32 billion judgment, Judge Scheindlin noted.

It’s most encouraging to see a judge deal with a proposed settlement that may not be in the best interest of a government agency and the people of New Jersey and require more proof that the settlement is a good one.

Source: Law360.com

Duke Energy and Two States Reach an Agreement to Clean Up Coal Ash Spill

Duke Energy Carolinas LLC and environmental officials in North Carolina and Virginia have reached an agreement calling for the cleanup of a February disaster in which 82,000 tons of coal ash were dumped across 70 miles of the Dan River. The electricity company said in a securities filing that it would pay reasonable past and future costs incurred by the U.S. Fish and Wildlife Service, North Carolina Department of Environment and Natural Resources, and Virginia Department of Environmental Quality over claims regarding natural resource damages.

The spill occurred in early February when a broken 48-inch stormwater pipe at a shuttered Duke coal-fired power plant released enough coal ash from its Dan River Steam Station to fill up to 32 Olympic-size swimming pools. Duke’s 8-K form said it couldn’t estimate the costs to comply with the funding and participation agreement but that the total costs to remediate the Dan River Steam Station ash basin release would not be material.

John Skvarla, secretary of the North Carolina Department of Environment and Natural Resources, said in a statement that the settlement was “another important step in our efforts to hold Duke Energy accountable for their ash spill and to return the Dan River, as closely as possible, to the condition it was in before the ash spill.” The deal announcement comes less than three weeks after Duke and the U.S. Environmental Protection Agency (EPA) reached a separate deal in which the federal agency will oversee the cleanup of the spill along with the Fish and Wildlife Service.

Coal ash at the site contains arsenic, copper, lead, mercury and other substances that the Superfund law deems hazardous, according to the EPA. Duke said Monday that it couldn’t estimate costs related to the Dan River Steam Station release, including regulatory orders, natural resources damages and other costs. Officials said Monday that they are evaluating the impact of the Dan River coal ash spill on natural resources and how to restore them through a Natural Resource Damage Assessment and Restoration Process that will not result in costs to taxpayers.

The officials added that they will develop a proposed restoration plan that will be made available to the public for their review and comment. Their statement said:

Our ultimate goal is to restore the Dan River’s natural resources and the public’s enjoyment of them. To that end, public participation will be an essential component moving forward with natural resource damage assessment and restoration.

Perhaps to be expected, not all North Carolina residents are satisfied with the settlement. Citizens living near the coal ash sites are concerned about health effects. At press time, it was uncertain how this would affect the settlement. Those are concerns that should be addressed.

Source: Claims Journal

XVII. THE REAL STORY ON PHARMACY BENEFIT MANAGERS

Who Really Controls the Cost of Medicine?

I am hopeful that in this issue we can bring to the public's attention a very serious problem. First, I wonder how many of our readers know what a Pharmacy Benefit Manager (PBM) is. Then the question is—of those of you who know what a PBM is—do you really know how the PBMs are operating and for whose benefit? Regardless of your answers, I believe you will be surprised at the real story concerning PBMs. Because I don't believe many people realize how they are being ripped off. I am going to spend more time on this subject. Hopefully, our readers will read all of this information and then check things out for themselves to see how truly bad things are.

PBMs have been involved in the health care industry since the 1960s. In the early years, PBMs performed the administrative work involved with the claims administration—they processed paperwork dealing with insurance claims for prescription drugs. As prescription drug coverage became more prevalent, insurance companies were faced with a big logistical problem. Prescription drug claims were relatively small in dollar amount, but massive in quantity.

As more and more Americans use maintenance drugs, prescriptions taken on a daily basis, the number of claims continues to grow. As the number of claims increased, and to save money, most insurers utilized PBMs to handle the paperwork. It was cheaper to hire a PBM to process the claims than to allocate their own workers to perform those duties. But then something happened in Congress that changed the role of PBMs dramatically.

Once Congress passed Medicare Part D and it came into existence, PBMs boomed. PBMs also handle processing for other plans. In fact, PBMs handle nearly every prescription drug insurance plan in the United States. With increasing numbers of Americans signing up for Medicare, and with the increasing number of people with insurance through the Affordable Care Act, the power of PBMs has grown. No longer are PBMs just the administrative processing...
companies they used to be. They grew into “middlemen” and were able to market their services as cost-saving. They also touted their ability to use corporate customers’ combined purchasing power to negotiate lower costs from pharmaceutical manufacturers. All of this sounded good since it appeared drug costs would be reduced sharply.

Today, the top PBMs are as big as or bigger than their clients. Express Scripts generated $94 billion in revenues in 2012 after merging with Medco, putting it at No. 24 on the Fortune 500. Its annual profits have grown from $250 million a decade ago to $1.8 billion in the 12 months ended in June, according to S&P Capital IQ. The company now manages benefits for more than 100 million Americans. Total industry revenues exceed $250 billion, according to J.P. Morgan analyst Lisa Gill. The big prescription managers—Express Scripts, CVS Caremark, and OptumRx control about 70 percent of all U.S. prescriptions—have become some of the most potent players in health care.

There is a long-standing misconception in the health care industry that PBMs save money; that they somehow lower costs for everyone. What they really do is negotiate deals for themselves through rebates with pharmaceutical manufacturers and miniscule payments to pharmacies. One example, taken from the experiences of Meridian Health Systems and published in Fortune last October, demonstrates one way PBMs are profiting. Meridian Health Systems, a non-profit that provides prescription coverage for its 12,000 employees and has in-house pharmacies, compared the price it was charged by the PBMs with the price its pharmacy was reimbursed for one drug.

Meridian was billed $92.53 for a prescription for generic amoxicillin filled at an outside pharmacy. Meanwhile, Express Scripts paid $26.91 to Meridian’s own pharmacy to fill the same prescription. That meant a spread—the difference between the cost a drug is purchased at and the price a pharmacy is reimbursed—of $65.62 on one bottle of a generic antibiotic. Meridian isn’t the only employer that is paying such spreads. Susan Hayes, who has audited more than 100 PBM contracts for her auditing and consulting firm Pharmacy Outcomes Specialists, says: “The nation’s employers are being taken for a ride.”

Until recently, last year in fact, PBMs were not subject to the requirements of the Federal False Claims Act (FCA). That meant PBMs had practically zero oversight and carte blanche when it came to Medicare Part D reimbursements and costs. They were making a financial killing at the expense of the American people and the very businesses they were supposed to be helping.

Another money-making scheme for PBMs involves Medicare. Medicare can be a bit complicated unless you are one of the few who is actively involved in the system. At its most basic level, Medicare functions through teamwork between a plan sponsor, the federal government, pharmacies and PBMs. A plan sponsor is a private insurance company that submits a bid to the Center for Medicare and Medicaid Services (CMS) estimating the cost to provide prescription drug coverage on a per beneficiary/per month basis. If the bid is approved, the plan sponsor can market the plan to American citizens to get beneficiaries to sign up for coverage.

As part of that bid, the sponsor is required to submit a “negotiated price.” The negotiated price “must be the amounts ultimately paid to the pharmacy.” It should include all price concessions and rebates, even those that a PBM negotiates for itself. As it turns out, PBMs have not been passing along the rebates to the plan sponsor, who would then be able to provide a lower negotiated price to the government. The lower the negotiated price, the lower the government costs. Lower government costs equal lower monthly premiums and copays for beneficiaries. By not passing along those rebates and keeping the money for themselves, PBMs have been defrauding not only the government, but also every citizen paying a higher premium and copay. You may wonder why our elected officials are letting this happen.

Unfortunately, that isn’t the end of the story. Recently, last year in fact, PBMs became subject to the Federal False Claims Act and now have to report the amount of their rebates to CMS. Reporting rebates means the PBM can no longer keep that money. Instead, the PBMs have started charging that money back to the pharmacies as “network access fees,” “administrative fees,” “technical fees,” or “service fees.” Technically, those fees also have to be included in the plan sponsor’s bid to CMS and CMS has proposed rules to make that requirement clear.

For right now, thanks to the extra fees, pharmacies are reimbursed less than what their costs are on some drugs. But the PBM keeps the extra fees and no cost-savings are passed back to the government. This is absolutely a rip-off—it can’t be justified and it’s costing consumers a bundle. Again, why are our elected officials letting this happen?

A 2012 report by the Kaiser Family Foundation calls the PBM assertions of Medicare savings “overstated” and says the reduced cost probably stemmed from incorrectly high predictions of prices (because true negotiated prices were not included in the bid) and from brand drugs going generic (which has nothing to do with PBMs).

If you were to ask a PBM how they are doing, they would claim they are saving their customers money. There is much debate about the truth of that claim. But even if it is true, bear in mind that pharmacies and American citizens are not their customers. PBMs work for the plan sponsors and the money a PBM “saves” is not a reduction in cost. Neither is this a reduction in expenses through increased efficiency. Instead, it is money the PBMs have charged someone else. Those “somebodies” are:

• Your neighborhood pharmacist who may be forced out of business because he can’t pay his employees.

• The company you work for because they are paying more for the drugs themselves so the PBM can keep the difference in price as a profit.

• You or someone you know who is insured by a Medicare plan using a PBM because you have higher premiums than you would if the actual prices paid to pharmacies, the true “negotiated price,” were reported.

As it functions right now, the health care industry is at the whim of the PBMs. Those in the pharmaceutical industry, with the help of politicians who created this monster, knew exactly what they were doing. Maybe the politicians were just totally in the dark when they did it. Putting the matter in perspective, consider that the PBMs:

• determine where patients fill their prescriptions by creating preferred pharmacy networks (incidentally, the preferred pharmacies are generally charged a fee for participation, further reducing their reimbursements).

• decide what drugs people will take by creating preferred drug lists.

• arbitrarily set how much pharmacists will get reimbursed for dispensing those drugs.

• shift patients to generic drugs by mandating generic substitution.

• require patients fill basic prescriptions at the PBMs’ vast mail-order pharmacies.
With some 30 million Americans expected to gain prescription-drug coverage through the Affordable Care Act, PBM use is likely to continue increasing. Thankfully, several states are looking to pass legislation that would require more transparency with PBMs. Unfortunately, Alabama is not one of them. You may want to ask our elected officials in Alabama why they haven’t joined in.

CMS is continually evolving its rules and regulations in an attempt to get ahead of the PBMs, but it is a constant game of catch-up. Nobody is arguing that PBMs should not make a legitimate profit, but they should have to do it in the manner intended—by being more efficient. The way the system works now, the wrong people are paying the cost so that PBMs can make billions.

If you need more information on this very important 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. I also suggest that you check with your local pharmacists and ask about the PBM problem.


XVIII.
THE CONSUMER CORNER

TARGET MDL IS NOW UNDERWAY

We previously reported in last month’s edition that Dee Miles, head of our firm’s Consumer Fraud Section, had been named to the financial institution cases Steering Committee for the Multi-District Ligation (MDL) surrounding the Target Data Breach Class Actions. Dee was appointed by U.S. District Judge Paul A. Magnuson, who is overseeing the MDL in the United States District Court, District of Minnesota. Additional assignments have been made in that case and Dee and the firm have now been appointed to co-chair the Settlement Committee, chair the Special Operations Committee, and serve as a member of the Damages Committee. These are very important Committees to the Target case and we are honored to serve in these roles in the MDL.

The trial Court held its first hearing on June 25, 2014, to map out such things as the trial schedule, enter Protective Orders, as well as schedule briefing for particular issues concerning the case. The Court has set a trial date for the case for January 2016 for both the consumer side and the financial institution side of the case. Needless to say, this is a very ambitious schedule that Judge Magnuson has put in place, but the Court has also gone to extraordinary lengths to select a talented pool of lawyers who are more than capable of meeting the Court’s deadlines as well as the January 2016 trial schedule.

Target Corporation, which is headquartered in Minnesota, suffered a massive data breach that is believed to have taken place primarily between November 27 and December 15, 2013. It was originally believed to have affected about 40,000 Target shopper accounts, including credit card and debit card information. However, after further investigation, Target officials revealed that hackers stole not only information from cards used by shoppers at the point of sale machines, but that other information was compromised, including names, phone numbers, and email and mailing addresses from more than 100 million of its 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 the Alabama State Employees Credit Union as lead Plaintiff representing credit unions, banks, and other financial institutions. Financial institutions are burdened with the extravagant cost of closing accounts, and reissuing debit and credit cards as a result of Target’s failure to secure its data.

We are pleased that the case is now off and running and we are thrilled to be part of the leadership that is prosecuting the claims in this case against Target. We will keep you posted on any new developments that occur with important litigation. If you need additional information on this litigation, contact Dee Miles, the lawyer who heads up our Consumer Fraud Section at 800-898-2034 or by email at Dee.Miles@beasleyallen.com.

SUNLAMPS AND TANNING BEDS ARE RISKIER THAN THE FDA THOUGHT

The U.S. Food and Drug Administration (FDA) has heightened its warnings for the use of tanning beds and booths. Under new regulations, the agency will require them to undergo premarket testing and carry warnings that they’re not safe for people younger than 18. Under the new regulations, the FDA is changing its regulation of sunlamp products and UV lamps intended for use in sunlamp products by reclassifying these devices from Class I, or low risk, to Class II, or moderate risk. The change was based in part on risk information and recommendations from experts at an FDA Medical Device Advisory Committee meeting, according to the agency.

Sunlamp products, which include tanning beds and tanning booths, emit ultraviolet radiation that may cause skin cancer, the FDA said. It said that according to the American Academy of Dermatology, people who have been exposed to UV radiation from indoor tanning experience a 59 percent increase in the risk of melanoma, the deadliest type of skin cancer, and the risk increases each time they use a sunlamp product. Jeffrey Shuren, director of the FDA’s Center for Devices and Radiological Health, stated:

The FDA has taken an important step today to address the risk to public health from sunlamp products. Repeated UV exposure from sunlamp products poses a risk of skin cancer for all users—but the highest risk for skin cancer is in young persons under the age of 18 and people with a family history of skin cancer.

Manufacturers of sunlamp products must comply with the regulations for medical devices and radiation-emitting products, the FDA said. Because the FDA can exert more regulatory control over Class II devices, once the reclassification is effective, sunlamp products will have to undergo a premarket review by the FDA and comply with requirements relating to performance testing, software validation and biocompatibility.

User instructions and promotional materials for sunlamp products and UV lamps intended for use in sunlamp products will include the warnings that the product is contraindicated for use on persons younger than the age of 18 years; the product must not be used if skin lesions or open wounds are present; the product should not be used on people who have had skin cancer or a family history of skin cancer; and people repeatedly exposed to UV radiation should be regularly evaluated for skin cancer. Ogden says:

We believe the reclassification will not only strengthen oversight of sunlamp products, but also help consumers be better informed about, and protected from, this sort of exposure.

BeasleyAllen.com
This is another industry where regulation must be both stronger and more effective. So far neither appears to be happening.

Source: Law360.com

Americans Are Using Skin-Care Ingredients That Are Banned In Other Countries

I have to wonder how many of our readers pay much attention to how the soaps, lotions, and shampoo products they use affect their health. When folks put lotion on their face or shampoo in their hair, I believe most of them believe the products are safe and certainly not unhealthy. I suspect most believe that the ingredients in skin-care products sold in the United States must be proven to be safe and healthy. The surprise will come when they find out there is no such requirement.

The U.S. Food and Drug Administration (FDA) has no authority over skin-care products or cosmetics. The fact is, many ingredients in the products Americans use are banned in other countries. U.S. cosmetic companies are allowed to use virtually any raw material in their products they see fit to use, with the exceptions of color additives and ingredients classified as drugs. No government approval is needed. More than 500 cosmetic products sold in the U.S. contain ingredients that are banned in Japan, Canada, or Europe. Nneka Leiba, a senior analyst at the Environmental Working Group (EWG), a consumer organization, stated:

Many of these chemicals are considered safe in low doses by themselves. What we are concerned about is the damage they can cause repetitively over time and synergistically with each other. There is no research or data for this.

Ms. Leiba urges consumers to be “vigilant and read labels.” The EWG has a database of more than 80,000 popular cosmetics, ranking them 0-10 in terms of hazardous ingredients. Go to: www.ewg.org/skindeep. The following are six common skin-care ingredients that are used in the U.S., but banned in other nations:

• Formaldehyde: This chemical is used as a preservative and also includes a group of substances known as “formaldehyde donors,” which effectively release formaldehyde into a product. One of the most controversial of these donors is quaternium-15, which until recently was found in the popular Johnson & Johnson’s baby shampoos. The American Academy of Dermatology warns that formaldehyde can cause severe allergic reactions. Canada has banned it in personal care products.

• Petroleum distillates: The same oil refineries that pump out oil for heating and cars also produce petroleum that is often found in mascaras sold in the United States. Petroleum distillates are used as emollients and are also found in eye shadow, lotions, creams, hairspray, and foundation makeup. They’ve been banned in the European Union.

• Hydroquinone: This bleaching agent is often used to lighten dark patches of skin called hyperpigmentation, age spots, or liver spots. It has also been linked to lung irritation and tumors in mice. Canada and some Asian and African countries have banned the use of hydroquinone in skin products.

• BHA: Butylated hydroxyanisole (BHA) is used as a preservative in moisturizers, shaving creams, fragrances, and makeup, particularly lipsticks. It is linked to endocrine disruption and cancer, according to the International Agency for Research on Cancer. The EU prohibits its use in fragrances, and California requires a warning label on all products that contain BHA. On top of the human danger, it adversely affects the environment because it accumulates in water and kills wildlife.

• Parabens: These chemicals are used as preservatives in a variety of cosmetics. They are suspected endocrine disruptors and may interfere with male reproductive function. They’re commonly used in deodorants and antiperspirants and have been also linked to breast cancer. The EU banned parabens in 2012.

• Methyl cellosolve: This solvent is used in anti-aging creams, moisturizers, and serums. According to the EWG, methyl cellosolve is a neurotoxin that causes DNA mutation. It’s an obscure ingredient that is sometimes not explicitly listed on labels. It has been banned in Canada and restricted in the EU.

I believe it would be good for consumers of products to do their own due diligence before using any product. It’s important to find out as much as possible about the product. If the industry making the product is not regulated, I suggest that the chances of that product being defective, dangerous and unsafe are pretty good. If nothing else, persons using the product should read the product information that comes with the product and also should read the label.

Source: newsmaxhealth.com

Cinmar Agrees To $3.1 Million Civil Penalty

Cinmar LLC, of West Chester, Ohio, has agreed to pay a $3.1 million civil penalty, which has been accepted provisionally by the U.S. Consumer Product Safety Commission (CPSC). The settlement resolves CPSC staff’s charges that the firm knowingly failed to report to CPSC immediately, as required by federal law, a defect involving Frontgate foldaway two-and-three-step ladders made of mahogany wood and designed for use in walk-in closets. Cinmar sold the ladders nationwide between November 2005 and July 2010 for $90 to $150.

CPSC staff charged that the steps could break unexpectedly, posing a fall hazard to consumers. Cinmar did not file its full report with CPSC until July 29, 2010. By that time, more than 1,200 consumers had returned their ladders to Cinmar, most citing breakage, and others citing cosmetic problems. Additionally, by that time, Cinmar had received notice of at least two dozen injuries, one requiring surgery and another necessitating hospitalization.

On Jan. 20, 2011, Cinmar and CPSC announced the recall of 38,000 wooden step ladders.

Federal law requires manufacturers, distributors and retailers to report to CPSC immediately (within 24 hours) after obtaining information reasonably supporting the conclusion that a product contains a defect that could create a substantial product hazard, creates an unreasonable risk of serious injury or death, or fails to comply with any consumer product safety rule or any other rule, regulation, standard, or ban enforced by CPSC.

In addition to paying a monetary penalty, Cinmar has agreed to implement and maintain a compliance program designed to ensure compliance with the safety statutes and regulations enforced by the Commission. Cinmar has also agreed to maintain and enforce a system of internal controls and procedures designed to ensure that:

• information required to be disclosed by the company to the Commission is recorded, processed and reported, in accordance with applicable law;

• all reporting made to the Commission is timely, truthful, complete and accurate; and
prompt disclosure is made to Cinmar management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to adversely affect, in any material respect, the company’s ability to record, process and report to the Commission.

Cinmar also further agreed to do the following: provide written documentation of such improvements, processes and controls, upon request of CPSC staff; cooperate fully and truthfully with CPSC staff; and make available all information, materials and personnel deemed necessary by staff to evaluate the company’s compliance with the terms of the agreement. Photos are available and can be viewed at http://www.cpsc.gov/en/Newsroom/NewsReleases/2014/Cinmar-Agrees-to-Civil-Penalty.

Source: www.CPSC.gov

XIX.
MORE AUTOMOBILE NEWS OF NOTE

The Top 15 Auto Safety Watch List Is Created

A new Top 15 auto safety watch list puts the 2012 Ford Focus at number one based on dozens of reported injuries in which drivers cited problems with the car’s steering. The early warning list of incident trends was created by safety experts working with Lance Cooper, the Atlanta lawyer who discovered the GM ignition defect that federal experts failed to realize from their own accident data until a large number of people died and others were injured. “They failed the public and they need help,” Lance told ABC News in a report that aired on June 24 on “Good Morning America.”

Lance correctly pointed out that investigators at the National Highway Traffic Safety Administration regularly fail to spot safety trends in the accident and complaint data they collect, citing the scandals involving Firestone tires, runaway Toyotas and gators at the National Highway Traffic

In the case of the 2012 Ford Focus, the country’s best-selling car, analysts working for Lance have examined some 45 reports involving accident injuries. The report noted that “there is no certainty” that any of the vehicles on the list had a safety-related defect, but said the unusual number of complaints warranted investigation. Sean Kane, whose non-profit The Safety Institute was hired to prepare the list, had this to say:

“These are issues that are trending that are outside of the ordinary that need to be examined.”

In addition to the accident reports the manufacturers turn over, other complaints filed directly with NHTSA reported complete loss of steering control. “I almost side-swiped cars in other lanes trying to maintain control,” wrote one Focus owner from Florida. “I had to hold on for dear life trying to keep it in the lane,” wrote another owner in Oregon. Ford would not directly address the questions raised about the Ford Focus steering issues.

The new Top 15 safety trend list has the support of Ken and Beth Melton, whose daughter Brooke was killed in an accident caused by the GM ignition defect. Mr. and Mrs. Melton are dedicated to making sure that the safety culture at GM is really changed and that the public is protected from cars allowed to be on the nation’s highways with defects known to the automakers. Beth Melton told ABC News:

“At some point, NHTSA knew about it from General Motors that there was a car stalling and they didn’t make it right. There were all these opportunities that came up and she died and she didn’t need to die.”

Ken Melton said he was “livid” when he realized the failure of NHTSA to spot the problem earlier and he added:

“The only way I know to overcome the pain and make the pain less is to do something positive like this and try to strive for doing something positive for someone else.”

If you need further information on any of the above contact Lance Cooper 800-317-2021 or by email at lance@thecooperfirm.net. Lance is the lawyer in this country who knows more about GM’s defective ignition switch than anybody. Also, Lance is just as dedicated to the cause of exposing GM and protecting the public as Mr. and Mrs. Melton and he has shown that dedication constantly since Brooke Melton was tragically killed. We are honored to be joined with Lance in the Melton case and in other GM litigation.

Source: ABC News

GM Safety Crisis Grows As Recalls Mount

General Motors’ safety crisis worsened on June 30 when the automaker added 8.4 million vehicles to its out-of-control list of cars recalled over faulty ignition switches. The latest recalls involve mainly older midsize cars and bring GM’s total this year to 29 million. This total is more than the 22 million recalled by all automakers last year. According to GM, the recalls are for “unintended ignition key rotation” and cover seven vehicles. Models included in Monday’s switch recall include the 1997-2005 Chevrolet Malibu, 1998-2002 Oldsmobile Intrigue, 1999-2004 Oldsmobile Alero; 1999-2005 Pontiac Grand Am; 2000-2005 Pontiac Grand Am; 200-2005 Chevrolet Impala and Monte Carlo and 2004-2008 Pontiac Grand Prix. A separate U.S. recall covers 554,328 vehicles: the 2003-2014 Cadillac CTS and 2004-2006 Cadillac SRX.

GM says it’s aware of three deaths, eight injuries and seven crashes involving the vehicles.

NHTSA began asking automakers and parts suppliers for information on the interrelated issues after GM’s small-car recall. NHTSA asked automakers and parts makers for information on switches and how long air bags will inflate after the keys are moved out of the “run” position to “accessory” or “off.” In many cases, the answer is less than a second.

These latest GM recalls bring this year’s total so far to more than 40 million for the U.S. industry. This far surpasses the old full-year record of 30.8 million from 2004. Ironically, the last GM recalls on the ignition switch problem came just hours after Kenneth Feinberg, the company’s “compensation consultant,” announced plans to pay victims of crashes caused by the defective small-car switches.

According to GM, victims in the newly recalled vehicles, even though the same defect is involved, won’t be included in the compensation fund that has been set up for the small-car claims. This is difficult to understand. Of the 29 million vehicles recalled by GM this year, 17.1 million have been over ignition switches. We have asked Feinberg by letter to include all of the recalled vehicles in the GM compensation fund. He has not had time to respond, but
As we have reported, General Motors kept totally quiet for more than seven years about design flaws that allowed keys in some Chevrolet and Saturn cars to be removed from the ignition while the engine ran. The automaker only told owners about the problem in April of this year. In April 23 letter sent to NHTSA, the automaker said it has determined that the defect exists in a range of vehicles stretching back to the early and mid-2000s, including Chevrolet Cobalts, Saturn Ions and Pontiac G5s. GM is recalling those vehicles for repair. GM had previously sent out a technical service bulletin to dealers alerting them to the defect.

GM had notice of the “key pullout” problem in 2005. It opened an internal engineering inquiry into the problem after it was observed in Saturn Ion and Chevrolet Cobalt vehicles, according to the April letter. That inquiry was closed in 2007 after GM claimed to have fixed the problem by changing the shape of the ignition cylinder in the affected vehicles.

GM said in the letter that it received hundreds of customer complaints about keys pulling out of the ignition while the car was in gear. The vehicles affected by the defect are 2005-10 Chevrolet Cobalts, 2006-11 Chevrolet HHRs, 2007-10 Pontiac G5s, 2006-10 Pontiac Solstices, 2003-07 Saturn Ions and 2007-10 Saturn Skys.

As a matter of interest, GM’s defective ignition components were made by a Chinese company. According to documents filed with NHTSA on June 20, GM said the components related to the latest recall were manufactured by Dalian Alps Electronics Co. Ltd., based in Dalian, China. Only one of the models included in the latest ignition-related recall is still in production. That is the previous-generation Chevrolet Impala, which is sold to daily rental fleets as the Impala Limited.

Source: Law360.com

**GM TELLS NHTSA IT KNEW OF OTHER IGNITION PROBLEM IN 2007**

**THIRTY YEARS OF GM LITIGATION TACTICS USING DECEPTION TO PROTECT PROFITS OVER SAFETY**

In the last few months, the world has watched with disbelief as the corporate structure of General Motors has slowly unraveled, revealing a corporate culture and a character plagued by fraud, deceit and cover-up. As we all now know, in February 2014, GM finally recalled 2.6 million vehicles related to the defective ignition switch.

After the recall, federal authorities launched an investigation to determine whether GM committed bankruptcy fraud by not disclosing the ignition switch defect. Finally, last month, GM CEO Mary Barra announced that after an internal investigation revealed a “deeply troubling” recall report, GM decided to fire 15 employees for incompetent handling of the ignition switch defect issue. All of these events showcase GM’s decision to place profits over safety. It also fails to reveal all at GM who should have been fired because of the massive cover-up of a very serious known defect.

While GM’s culture of cover-up may come as a surprise to many unsuspecting consumers, it comes as no surprise to lawyers who have litigated against this huge corporation in the past few decades. It was just 17 years ago that Plaintiffs lawyers were finally able to introduce another piece of evidence that showed GM’s commitment to profits before safety. For those who have forgotten or simply never knew about the “Ivey Memo,” I will discuss it here in detail.

In 1973, Ed Ivey, a young GM Engineer, wrote an infamous memo that determined it was cheaper for GM to pay damages for burn fatalities resulting from its defective fuel systems than to change the car’s bad design. This memo, known as the “Ivey Memo,” would be the subject of many discovery disputes. That’s because it was a smoking gun that GM viciously fought to conceal. Once word got out that this memo existed, GM lawyers misled courts and Plaintiffs lawyers as to its contents and distribution and kept the memo excluded from trials for almost 15 years. GM lawyers routinely used delaying tactics to conceal any documents related to the Ivey Memo until the case settled.

But, in the late 1990s, courts began forcing GM to produce the Ivey Memo and all related documents explaining Ivey’s reasons for writing the memo. It finally became clear that Ivey had written the memo at GM’s direction, that GM met with Ivey in the early 1980s to discuss the significance of his conclusions, and then suppressed those findings and all documents related to the Ivey Memo for 15 years. The Ivey Memo and its subsequent cover-up revealed two things about General Motors. First, it was obvious to Plaintiffs lawyers and to juries that GM placed its profits over the safety of its consumers, as the Ivey Memo concluded that it would be cheaper to pay for deaths than to change the design. Second, GM’s deceptive litigation tactics foreshadowed the corporation’s true character that the world is just now beginning to see.

While I hope that the Ivey Memo debacle is no indication of how GM and its lawyers will handle the ignition switch defect cases, I have to admit that it appears they will follow a similar plan. Plaintiffs and their lawyers must be diligent in their discovery requests and in the disputes that will surely come. GM has had three decades to perfect its deceptive litigation tactics. Plaintiffs now have the opportunity to expose GM and how it operates to the courts, the National Highway Traffic Safety Administration (NHTSA), Congress and the public.

Source: JereBeasleyReport.com

**GENERAL MOTORS FIRST HALTS SALES OF CRUZE SEDAN AND THEN ORDERS RECALL**

On June 25 General Motors ordered its dealers to stop selling the 2013 and 2014 versions of the Chevrolet Cruze sedan, its most popular car, because of a problem with air bags made by Takata, the Japanese supplier. Takata’s products are already the subject of large recalls of other vehicles. GM said about 33,000 Cruzes may have a faulty driver’s side air bag inflator reportedly caused by the wrong part being used. A Takata device are already the subject of a recall involving millions of vehicles made by Ford, Chrysler, Honda, Mazda, Nissan, Toyota and BMW. The Takata-produced inflator in those vehicles may contain propellant that can explode in certain situations. But it was reported that the problem GM most recently announced involved how Takata’s inflators are assembled. Based on our experience with GM, there may be more to the problem than has been admitted.

As we know, Takata has been a long-term supplier of GM. The Cruze is GM’s best-selling car, with 32,393 sold in May in the United States, up 41 percent from the previous year. GM issued a recall for the Cruze vehicles on June 26. Sadly, this is another case in which GM knew it had a safety problem, but did not act either promptly or decisively. The airbag problem appears to have been dealt with very much like the Colbalt ignition switch problem.

Source: Associated Press

**JereBeasleyReport.com**
NHTSA Probes 1.3 Million Chrysler Vehicles Over Ignition Switches

The National Highway Traffic Safety Administration has opened two investigations into possible ignition switch defects in approximately 1.25 million Chrysler Group vehicles, a similar problem to the defect that led to the massive General Motors recall that has caused hundreds of deaths.

The First Investigation

The first investigation was launched after NHTSA received at least 32 complaints alleging that a driver’s knee can inadvertently move the key fob, causing the ignition switch to turn off. The investigation covers an estimated 525,000 model year 2005 and 2006 Jeep Grand Cherokee SUVs and 2006 and 2007 Jeep Commander SUVs. NHTSA said in its notice:

This causes the engine to shut off, affects the power steering and brakes, and may potentially result in the vehicle’s air bags not deploying during a frontal crash that would normally warrant deployment.

The Second Investigation

The second investigation covered approximately 700,000 model year 2008 to 2010 Dodge Grand Caravan and Chrysler Town & Country minivans and Dodge Journey SUVs. The agency said it has received at least 23 complaints related to the ignition switch problem in these vehicles.

In 2011, Chrysler recalled 196,000 2010 Grand Caravans, Town & Country minivans and Journeys for the ignition switch problem, but NHTSA has continued to receive complaints from drivers of the 2008 to 2010 model year vehicles. On June 30, the 700 minivans were recalled. Hopefully, Chrysler’s ignition switch problem won’t be as bad as GM’s problems which get worse each week.

Regulators Probe Chrysler SUV Airbag Recall

U.S. safety regulators are also investigating Chrysler Group’s 2012 recall of 744,822 sport utility vehicles in the United States. This came after six consumers complained of inadvertent airbag deployments even after fixes were made. NHTSA said in documents filed on June 2 that it had opened a query into the recall of Jeep Liberty SUVs from model years 2002 and 2003, and Jeep Grand Cherokee SUVs from model years 2002 through 2004. NHTSA said it will study the effectiveness of the previous recall. It will follow up on this matter in August.

Source: Claims Journal

Documents Show GM Delayed Recall Over Brake Lights

All of the attention given lately to General Motors Co. has been on the defective ignition switch problems and that attention is certainly justified. But GM has other problems involving safety issues. For example, GM was aware of a brake light defect that has caused 13 crashes since 2008, but didn’t recall all 2.4 million affected vehicles until May 2014. The 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. The affected vehicles could have corrosion develop in the wiring harness for the body control module due to microvibration, which 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. GM said it is aware of several hundred complaints, 13 crashes and two injuries. But the automaker says there have been no fatalities as a result of the condition. In a letter to NHTSA, the company said that in response to an investigation by the regulator, it issued a technical service bulletin in December 2008 recommending the application of dielectric grease to the certain parts of the vehicles. Then in January 2009, about 8,000 model year 2005-2006 G6 vehicles were recalled, but none of the other models were.

Source: Law360.com

NHTSA Is Looking Into Reports Of Exhaust Fumes In Ford SUVs

The National Highway Traffic Safety Administration is looking into reports and complaints that exhaust gases, potentially including carbon monoxide, can build up on the inside of Ford Motor Co. model year 2011 to 2014 sport utility vehicles. NHTSA said it is aware of complaints involving the recent model year Ford Explorers from drivers who have said they are experiencing exhaust fumes or strange odors in the cabin. Thus far NHTSA has not yet initiated a formal investigation. The agency said in a statement that it “is reviewing all available data and will take appropriate action as warranted.

Angela Sanchez-Knutson, a Florida Ford Explorer driver, filed a proposed class action on June 9 in a Florida federal court. She alleged in her suit that the vehicles have a design flaw that exposed her and potentially other drivers to a serious safety hazard. The complaint says that Sanchez-Knutson and her daughter suffer headaches as a result of their exposure to carbon monoxide while driving a 2013 Ford Explorer.

Ford issued a technical service bulletin in 2012 that said it was aware that some 2011 to 2013 Explorer vehicles may exhibit an exhaust odor when the auxiliary climate control system is on. But it’s claimed in the Florida lawsuit that the automaker’s attempt to correct the problem has failed. There are also a number of complaints listed on the NHTSA website related to the issue. One complaint from June 2 said exhaust gas is getting into the cabin of the driver’s Ford Explorer when the car accelerates in excess of 3,200 to 3,500 rpm.

Source: Law360.com

Petition Seeks To Block CarMax Sales Of Unrepaired Recalled Cars

Nearly a dozen car-safety groups, joined by a U.S. senator, are asking the Federal Trade Commission (FTC) to investigate CarMax, the biggest seller of used cars nationally. In a petition filed with the FTC on June 24, the groups allege that CarMax engages in deceptive advertising by claiming every vehicle it sells passes a rigorous 125-point inspection. The groups said the inspection fails to look at whether a car has been recalled and repaired. Sen. Charles E. Schumer (D-N.Y.) stated:

Car dealers shouldn’t sell used cars that have a safety recall to consumers, period. Far too many times we have seen the tragic and often fatal consequences when deficient cars are allowed on the road, and it’s time for the FTC to do everything it can to put a stop to it.

The petition comes at a time when automakers are recalling more cars than ever. Automakers have recalled more than 53 million vehicles in the U.S. in the last 18 months, or about 20 percent of all vehicles on the road. They have recalled more than
late May and in June. If more information is
bile recalls. We have included some of the
there may some overlap involving automo-
gated several items in a special section on
safety-related recalls. We actually segre -
gated to contact Shanna Malone, the
Executive Editor of the Report. We would
and it has advised buyers to register a
vehicle with its manufacturer upon pur-
chase so that they are contacted for
future recalls.”

The National Highway Traffic Safety
Administration has ordered automakers to
provide safety recall data on their own
websites, updated at least every seven days
starting in August. Car owners would
An UPDATE ON
MORE RECALLS

We are again reporting a large number of
safety-related recalls. We actually segre-
gated several items in a special section on
automobiles in this issue. For that reason,
there may some overlap involving automo-
bile recalls. We have included some of the
more significant recalls that were issued in
late May and in June. If more information is
XX.
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 507,000 VEHICLES OVER AIR BAG AND WIPER DEFECTS

General Motors Co. has announced four more safety recalls covering
approximately 507,000 Corvettes, Sub-
urbans, Tahoes and other vehicles
with potentially defective air bag infla-
tors and windshield wipers, adding to
the car manufacturer’s mounting recall
woes. The biggest recall involves
pickup trucks and sport-utility vehi-
cles—392,459 in the U.S., 53,607 in
Canada and 20,874 in other coun-
tries—in which the transfer case might
electronically switch to neutral
without the driver telling it to do
so, GM said.

“If the vehicle is stopped or parked, it
may roll away if the parking brake is
not set,” the company said in a state-
ment. “GM is not aware of any crashes
or injuries related to this issue.”

Dealers will recalibrate transfer case
control module software in the
affected vehicles, which include four-
wheel-drive versions of the 2014-2015
Chevrolet Silverado and GMC Sierra,
the 2015 Chevrolet Tahoe and Subur-
ban, and the 2015 GMC Yukon and
Yukon XL, according to GM.

In the second-biggest recall
announced, GM is recalling 29,019
2013-2014 model year Chevrolet Cruze
sedans in the U.S. and 4,066 in Canada
over an airbag inflation defect that has
led to at least one injury, the company
said. The company had issued a stop-
sell order to its U.S. and Canadian
dealers over the vehicles, which
feature Takata Corp. air bags that
contain potential defects.

The inflator in the driver’s front air
bag may rupture, potentially sending
metal pieces of the inflator into the
vehicle cabin and seriously injuring
the driver or passengers, and the air
bag may not inflate during air bag
deployment. GM said it will replace
the air bags inflators in those vehicles.
Also, GM dealers will inspect and
potentially replace the windshield
wiper module assembly in 4,794 2013-
2014 model year Chevrolet Caprice
police cars and 2014 Chevrolet SS
sport sedans in the U.S. GM said “If the
motor gear teeth become stripped, the
wipers may not operate.”

In the fourth recall announced, the
affected vehicles—1,939 2014 model
year Chevrolet Corvettes in the U.S.,
33 vehicles sold in Canada and 82
exported elsewhere—possibly have
insufficient weld in the rear shocks
that could lead to a fracture and
reduce the shocks’ service life. The
company, which said it wasn’t aware
of any crashes or injuries related to
that potential malfunction, will
replace the FE1 or FE3 suspension in
those vehicles.

HONDA, MAZDA AND NISSAN RECALL 3 MILLION MORE CARS OVER AIR BAG
PROBLEMS

Japanese automakers Honda Motor Co.
Ltd., Mazda Motor Corp. and Nissan
Motor Corp. have recalled close to 5.7
million vehicles due to a defect with
air bags made by Takata Corp., increas-
ing the total number of recalled cars
affected by the problem to almost 10
million. The new recall came less than
two weeks after Toyota Motor Corp.
announced a recall of 2.3 million vehi-
cles because of the same problem that
can cause their air bags to fail to
inflate or explode. Last year, more
than 3.3 million Toyota, Honda and
Nissan vehicles were recalled for the
problem and Japanese and U.S. regula-
tors have said they are investigating
the defect.

Toyota Motor Corp. has recalled 2.27
million vehicles due to problems with
front passenger airbag inflators. The
company said that it is notifying
owners of vehicles involved in a 2013
safety recall, including 766,300 in the
U.S., to replace airbag inflators. The
automaker said it had missed some of
the affected devices due to incomplete
serial numbers from the supplier. The
company is notifying those with vehi-
cles involved in a 2013 safety recall,
including 766,300 in the U.S.,
to replace the inflators.

The inflators could cause fires in case
of a crash. Reuters is reporting that
650,000 vehicles being recalled are in
Japan, with 1.62 million being outside
of Japan. The recall involves about 20
Toyota models, including some Corolla
compacts and Tundra pickups made in
2003-2004 and 2002-2004 Lexus SC
430 coupes.
The inflators contained improperly made propellant that could cause them to work abnormally, and possibly cause fires, in case of a crash. Of the total number of vehicles affected by the current recall, 650,000 are in Japan and 1.62 million outside Japan. The recall involves about 20 Toyota models, including some Corolla compacts and Tundra pickups made in 2003-2004 and some 2002-2004 Lexus SC 430 coupes.

Honda’s recall on June 23 includes 2 million vehicles manufactured between April 2000 and October 2002, including the Civic, CR-V, Element and Odyssey in North America and the Civic, CR-V, Fit/Jazz and Stream in Europe. The 160,000 recalled Mazda vehicles include model year 2004 to 2008 RX-8, 2005 to 2007 Mazdas6, 2006 to 2007 Mazdaspeed6 and 2004 MPV.

Nissan’s recall of 755,000 vehicles includes certain model year 2001 to 2003 Maxima, Pathfinder and Sentra and Infiniti I30/35, QX4 and EX cars. Nissan said the recall supplements last year’s recall to replace Takata front passenger air bag inflators in certain Nissan and Infiniti vehicles.

**TOYOTA RECALLS MORE VEHICLES**

Toyota has recalled certain 2014 Highlander and Highlander hybrid vehicles in which the front passenger seat belt may not operate properly. Up to 50,000 vehicles are involved in the recall. You can read the recall documents on National Highway Traffic Safety Administration’s (NHTSA) website.

**FORD RECALLS VEHICLES**

Ford has recalled more than 740,000 Ford Escape and Mercury Mariner vehicles, model years 2008 to 2011, for a possible problem with the power steering assist. Ford also is recalling certain 2010 to 2014 Taurus vehicles in cold-weather states because road salt may corrode the license plate lamp assembly. More than 183,000 vehicles are involved. In addition, another 179,000 vehicles are being recalled by Ford. This recall is for the Ford Explorer, model years 2011 to 2013, and it also involves a potential flaw with the power steering system.

**CHRYSLER RECALLS VEHICLES**

Chrysler has recalled nearly 18,000 Ram ProMaster vehicles, model year 2014. The affected vehicles may experience circuit corrosion from water intrusion around the in-floor battery cover and door footwell trim. Also from Chrysler, more than 6,000 Dodge Durangos, Jeep Grand Cherokees and Jeep Cherokee, all 2014 models, are being recalled. The potential problem involves the cruise control and could lead to unintended acceleration. Chrysler also is recalling more than 4,000 2013 and 2014 Fiat 500e Battery Electric Vehicles. There is the possibility of a coolant leak that could result in a short circuit.

**PHIL&TEDS RECALLS INFANT CAR SEAT ADAPTORS FOR STROLLERS DUE TO FALL HAZARD**

phil&teds Travel System 26 infant car seat adaptors for strollers have been recalled by phil&teds, of Fort Collins, Colo. The plastic adaptors used to connect an infant car seat to a stroller can crack, become unstable and break during use, posing a fall hazard to infants. This recall involves phil&teds Travel System 26 (TS26) adaptors used to attach infant car seats to the following phil&teds stroller models, the Classic, Dot, Explorer, Hammerhead, Navigator, S3 and S4. Compatible car seats include the Maxi Cosi CabrioFix, Maxi Cosi Mico, Maxi Cosi Pebble and Cybex Anton. The adaptors are two pieces of black plastic, one for the left side and one for the right side, that connect the stroller to the car seat. “TS26,” “philandteds,” “L” for left, “R” for right and UPC “9 420015 7 4004” are printed on the adaptors. phil&teds has received two reports of the adaptors cracking and breaking when stored in freezing weather conditions.

The car seats were sold at baby product and specialty stores nationwide, and online at Amazon.com, Babiesrus.com, Diapers.com and phil&teds.com from April 2013 through March 2014 for about $40. Consumers should immediately stop using the recalled adaptor and contact phil&teds for free replacement adaptors. Contact phil&teds toll-free at 855-652-9019 from 9 a.m. to 5 p.m. MT Monday through Friday or online at www.philandteds.com and click on “Support,” then “Upgrades and Recalls” for more information.

**PRECISION SHOOTING RECALLS CROSSBOWS DUE TO INJURY HAZARD**

TAC Elite, TAC Ordnance, and Enigma model crossbows can unexpectedly fire an arrow. This poses a risk of injury to the user or bystander. Consumers should stop using this product unless otherwise instructed. It is illegal to resell or attempt to resell a recalled consumer product. This recall involves about 2,800 Precision Shooting Equipment’s TAC Elite, TAC Ordnance and Enigma crossbows.

The TAC Elite Crossbow is black with a 22-inch wide bow. The crossbow has split limbs made of fiberglass. Cam pulleys are mounted between the upper and lower halves of both limbs. “PSE Archery” is printed on the outer side of the upper and lower halves of both limbs. It has an aluminum rail/barrel, a pistol grip and an M-4 carbine style adjustable stock that allows the crossbow length to be extended from 41.5 inches to 45 inches. The PSE logo and the model name are on an emblem mounted above the trigger housing on the left side of the crossbow. The crossbow comes with a bipod, a scope and three arrows. TAC Elite crossbows with serial numbers 2097056 through 2134901 are being recalled.

The TAC Ordnance Crossbow is black with a 22-inch wide bow. The crossbow has split limbs made of fiberglass. Cam pulleys are mounted between the upper and lower halves of both limbs. “PSE Archery” is printed on the outer side of the upper and lower halves of both limbs. It is 34.75 inches long with aluminum rails and does not have a trigger housing or a stock. The PSE logo and the model name are on an emblem mounted near the rear of the left side of the crossbow. The crossbow comes with a bipod, a scope and three arrows. TAC Elite crossbows with serial numbers 2121938 through 2155384 are being recalled. Serial numbers for the TAC Elite and TAC Ordnance are engraved directly above the hand grip.

The Enigma crossbow is camouflage colored. It has a 20-inch wide bow with a black stirrup attached to the front. The crossbow has split limbs made of fiberglass. Cam pulleys are mounted between the upper and
lower halves of both limbs. It has aluminum rails, a pistol grip and a rifle style stock with an adjustable butt plate that allows the crossbow length to be extended from 40.5 inches to 44.75 inches. The PSE logo and the model name are on an emblem mounted above the trigger housing on the left side of the crossbow. The crossbow comes with a scope, a side-mounted quiver, a sling and a cocking rope. All Enigma crossbows are being recalled.

The bows were sold at Precision Shooting Equipment authorized dealers including Bass Pro Shops, Cabela’s, Kinsey’s Archery and Pape’s Inc. nationwide, online at PSE-archery.com and in catalogs from June 2013 through November 2013 for between $600 and $1,500. Consumers should stop using the recalled crossbows immediately and return them to Precision Shooting Equipment for a free repair. Contact Precision Shooting Equipment at 800-477-7789 from 7 a.m. to 3:30 p.m. MT Monday through Friday, or online at www.pse-archery.com, then select Support and click on “PSE 2013 TAC & Enigma Recall Information” for more information.

SUNBEAM RECALLS HOLMES CERAMIC HEATERS DUE TO FIRE HAZARD

About 151,600 Holmes Ceramic Heaters have been recalled by Sunbeam Products, Inc., of Boca Raton, Fla. The ceramic heaters can overheat, posing a fire hazard to consumers. This recall involves Holmes oscillating ceramic heaters sold in black, purple, red, blue and white. The rectangular heaters included in the recall are about 12 inches tall, 8 ½ inches wide and 5 ½ inches deep and have model number HCH1823M printed on a label on the bottom of the product. The “Holmes” logo is on the bottom front of the unit and two knobs controlling the fan and the thermostat are on the top. The heater adjusts between a high and low heat setting and a fan only setting. The firm has received 132 reports of units that unexpectedly stopped working and/or overheating, resulting in one report of smoke inhalation and ten reports of property damage involving burned flooring.

The heaters were sold at Fred Meyer, Target, Walmart and other retailers nationwide from August 2013 to March 2014 for about $30. Consumers should immediately stop using the recalled heater, unplug it and contact Sunbeam Products, Inc. for instructions on how to obtain a full refund at 800-834-0056 anytime, or online at www.holmesproducts.com and click on “Ceramic Heater Recall” for more information.

TRIDENT RECALLS ULTRAVIOLET SANITATION SYSTEMS FOR POOLS DUE TO FIRE HAZARD

Trident Series 2 Ultraviolet Sanitation Systems for pools have been recalled by Trident Ultraviolet Corp., of Marina del Rey, Calif. While this company is out of business it is handling this recall. Electrical arcing can cause the units to catch fire, posing a fire hazard. This recall involves all Trident Series 2 ultraviolet sanitation systems for pools. The sanitation systems are a gray tube that stands 32 inches high by 11 inches in diameter. They are plumbed into the pool's water circulation pipes and plugged in or hard-wired into an electrical system. The pool's water runs through the unit and is sanitized by ultraviolet lamps.

This is a secondary sanitation system used in conjunction with chemical sanitizers such as chlorine or bromine. “Trident Ultraviolet Corporation,” “Series 2” and “UV Ultraviolet Sanitation System” are printed on a black label on the front of the units. “Trident Series 2 Ultraviolet Water Treatment System” and a series of letters for the date code are printed on a black sticker on the units. Go to www.uvrecall.org to determine if the date code is included in the recall. There have been 38 reports of the sanitation systems melting and or catching fire, one burn injury to a consumer's hand and about $23,000 in property damage reported.

The systems were sold at pool companies nationwide from February 2009 through September 2013 for about $600. Consumers should immediately unplug the units from the outlet, or if hard-wired, the power source should be disconnected or turned off at the circuit breaker. Contact Trident for a free repair kit toll-free at 885-522-8200 from 8 a.m. to 5 p.m. PT Monday through Friday or online at www.uvrecall.org or email assistance@uvrecall.org.

MIRKA RECALLS COMPACT ELECTRIC RANDOM ORBITAL SANDERS DUE TO FIRE HAZARD

Mirka Abrasives Inc., of Twinsburg, Ohio, has recalled its random orbital Sanders. The sander can short-circuit, posing a fire hazard. This recall involves 5-inch and 6-inch Mirka CEROS compact electric random orbital Sanders. The Sanders are yellow and black with the Mirka logo on the front. A speed control lever is on the top of the Sanders and a vacuum hose connector on the rear. The recalled Sanders came with a carrying case, a 12-foot power cord, a DC transformer, a wrench, a multi-hole backup pad and assorted abrasives.

The 5-inch sander is model CEROS 550. The 6-inch sander is model CEROS 650. Model names are on a white sticker on the back of the sander housing beneath the hand grip. Serial numbers are engraved on the side of the sander housing just above the dust shroud. Sanders with serial numbers in the following ranges are being recalled. View serial numbers here: http://www.cpsc.gov/en/Recalls/2014/Mirka-Recalls-Compact-Electric-Random-Orbital-Sanders/. Mirka Abrasives has received three reports of electrical shorting incidents which included the Sanders sparking and smoking. No injuries or property damage have been reported.

The Sanders were sold at various distributors and independent retailers nationwide and at Amazon.com, Beaver tools.com and other online retailers from November 2013 to April 2014 for about $500. Customers should immediately stop using the recalled Sanders, unplug them and contact Mirka Abrasives for a free replacement. Contact Mirka Abrasives at 800-843-3904 from 8:30 a.m. to 5 p.m. ET Monday through Friday or online at www.mirka-usa.com and click on Recall for more information.

LITHONIA LIGHTING RECALLS EMERGENCY LIGHTS DUE TO FIRE HAZARD

Acuity Brands Lighting, of Conyers, Ga. has recalled about 1.7 million Quantum® ELM and ELM2 two-light emergency fixture. The circuit board can overheat and cause the fixture to melt, catch fire and ignite nearby items, posing fire and burn hazards to consumers. This recall involves the
Quantum® series ELM and ELM2 emergency light fixtures. They are about 12.5 inches wide, 5 inches high and 3.75 inches deep in white or black plastic and have two incandescent lights and a rechargeable lead acid battery. ELM or ELM2 appears on the label inside the fixture’s plastic housing above the battery. The recalled units have circuit boards that are green on both sides and either Rev B or Rev C printed in the top left corner. Emergency lights with circuit boards that are beige on one side and ELM2 LED, ELM2 SD and ELM2 WRS fixtures are not included in the recall. Lithonia Lighting has received 29 reports of circuit boards overheating and fixtures melting or catching fire, with one incident resulting in more than $100,000 of property damage to an office building. No injuries have been reported.

The fixtures were sold at Electrical distributors, The Home Depot, W.W. Grainger, Inc. stores and other retailers nationwide and online at grainger.com and amazon.com from March 2010 through February 2014 for between $35 and $55. Consumers should contact Lithonia Lighting to receive detailed instructions on how to locate the circuit board and series name and to order a free repair kit, which includes a new circuit board. Contact Lithonia Lighting toll-free at 888-615-4501 from 8 a.m. to 5 p.m. ET Monday through Friday or online at www.lithonia.com and click on “Quantum® ELM/ELM2 Recall Information” on the bottom of the page for more information.

**Children’s Pajamas Recalled by Empress Arts Due To Violation of Federal Flammability Standards**

About 1,400 Children’s Pajamas have been recalled by Empress Arts Ltd. of Valencia, Calif. The pajamas fail to meet federal flammability standards for children’s sleepwear, posing a risk of burn injuries to children. This recall involves Empress Arts 100 percent cotton children’s two-piece pajamas sets, sold in boys and girls sizes 12 mos. to toddler size 4. The pajama sets were sold in four styles: Blue Dot, Blue Stripe, Pink Dot and Pink Floral. “Empress Arts” is on a label at the back of the neck of the bottoms and the center back of the waist on the bottoms, which have an elastic waistband and drawstring.

The pajamas were sold at Children’s boutiques nationwide and online at www.empressarts.com from December 2012 to April 2014 for about $36. Consumers should take the pajamas away from children and return them to Empress Arts for a $36 online credit at www.empressarts.com plus free shipping. Contact Empress Arts toll-free at 844-295-8181 from 9 a.m. to 5 p.m. PT daily or online at www.empressarts.com and click on “Product Recall” for more information.

**Hamilton Beach Recalls Baby Food Makers Due To Small Parts Hazard**

Hamilton Beach Brands Inc. of Glen Allen, Va. has recalled its baby-food processors. Use of the slicing/shredding disc with the motor shaft adapter can cause the stainless steel pin in the food bowl lid to loosen and fall into processed food. This recall involves bébé brand baby-food makers manufactured by Hamilton Beach. The baby food maker is a small food processor. It has a white and gray motor base with an orange control knob, a clear plastic, five-cup food bowl and a gray-colored food bowl lid with a built-in food chute. “Hamilton Beach” and “bébé” are on the front of the motor base. The food maker comes with the following accessories: a chopping and mixing blade, a slicing and shredding disc, a removable motor shaft adapter, a food pusher, a three-cup steaming basket, 10 storage containers and two storage container caddies. Hamilton Beach has received four reports of the stainless steel pin in the food bowl lid becoming loose, including three in which the pin fell into processed food. There have been no reports of injuries or property damage.

The processors were sold at Buy Buy Baby stores nationwide, through specialty distributor Victor Co. Inc. and online at Buybuybaby.com, Hamilton-beach.com and Walmart.com from September 2013 through February 2014 for about $90. Consumers should immediately stop using the slicing/shredding disc and contact Hamilton Beach to receive a free replacement food bowl lid, motor shaft adapter and slicing/shredding disc. Consumers may continue to use the baby food maker for steaming, chopping and pureeing. Contact Hamilton Beach at 800-672-5872 Monday through Friday, 8 a.m. to 4 p.m. ET, or at www.hamiltonbeach.com and click on “Recall Info” at the bottom of the page for more information.

**250,000 Glass Knobs Sold By World Market Recalled Due To Cutting Risk**

More than 250,000 glass knobs are being recalled after customers complained that the knobs broke and cut their hands. The knobs were sold exclusively at Cost Plus World Market and World Market stores around the country between October 2010 and April 2014 for $2 to $4. The knobs come in blue, amethyst, pink, green, smoke and clear colors. They have bronze-colored screws. They can be used on cabinet doors or drawers. The Consumer Product Safety Commission says there have been five reports of cuts to hands or fingers. The CPSC says customers should stop using the knobs and return them for a refund.

Once again there have been a large number of recalls since the last issue. While we weren’t able to include all of them in this issue, we included those of the highest importance and urgency. If you need more information on any of the recalls listed above, visit our firm’s web site at www.beasleyallen.com/recalls. We would also like to know if we have missed any significant recall that involves a safety issue. If so, please let us know. As indicated at the outset, you can contact Shanna Malone at Shanna.Malone@beasleyallen.com for more information.

**XXI. FIRM ACTIVITIES**

**Employee Spotlights**

**MIKE ANDREWS**

Mike Andrews joined Beasley Allen in 1998, working in the Products Liability section. The majority of his practice deals with complex product liability cases involving serious injury or death. Mike has handled several cases against manufacturers of aircraft, light and heavy trucks, automobiles, and agricultural and construction equipment. He enjoys highly technical cases and has a particular passion for working on behalf of injured children.
Several of his cases have resulted in seven-figure settlements. Currently, Mike is working very hard on litigation related to the General Motors (GM) defective ignition switch.

Mike has a particular interest in cases involving Traumatic Brain Injury, (TBI), which results from a blow to the head. TBI can result from repeated concussions as well as severe head injuries. While the physical injury related to a head trauma may be diagnosed visibly, many people do not realize they are suffering from a TBI and may have what are often called “invisible symptoms.” These may include memory loss, depression, aggression, suicidal thought, even body temperature and sensation.

As an author and speaker, Mike has had the opportunity to share his experience in a variety of products liability cases. “Planes, Trains, Automobiles and Escalators” is one of the various publications Mike has authored. In that publication Mike discussed the alarming frequency of childhood injuries caused by poorly designed and maintained escalators. Having spoken in the past on the dangers of 15-passenger vans, Mike was invited to be a featured speaker at the annual Alabama Trial Lawyers convention, where his topic was the practical applications of electronic discovery in product liability cases.

Mike also is working on mesothelioma lawsuits. Mesothelioma is a deadly form of cancer caused only by exposure to asbestos. Mesothelioma most commonly affects the lining of the chest cavity and lungs but may also affect the lining of the abdomen or, more rarely, the lining of the heart. Unfortunately, many symptoms of mesothelioma (shortness of breath, severe cough, chest pain) do not appear for 20 or more years after asbestos exposure, making it difficult to diagnose early. For this reason, the cancer is often diagnosed in the later stages, making it difficult for proper treatment and survival. In fact, there currently is no known cure for mesothelioma.

Mike, an honor graduate of Thomas Goode Jones School of Law, currently serves on the University of Alabama at Birmingham (UAB) Transportation Safety Advisory Board, the Board of Directors for Houston County Girls, Inc., and Board of Directors for the Alabama Head Injury Foundation. Mike and his wife, the former Carol Benton, were reared in Dothan, Ala. They have three children: Shelby, David Michael II, and Jack. Mike and his family attend First Baptist Church in Dothan. Also of note, Mike is a photographer whose work has received both local and national awards. Mike is a very good lawyer who works very hard for his clients. He believes in their cases. We are blessed to have Mike with the firm.

JAKE JETER
Jake Jeter worked as a summer intern at Beasley Allen in 2009 and 2010 before joining the firm full-time in August 2011. Currently, he is a Staff Attorney in the Consumer Fraud section, working with other lawyers and staff researching various fraud cases. Some of Jake’s important work includes document review for the Toyota Sudden Unintended Acceleration litigation. After graduating high school from Bayside Academy, Jake attended Auburn University Montgomery (AUM) where he graduated with a B.S. in Finance in 2008. He earned his J.D. at Thomas Goode Jones School of Law in May 2011. While in law school, Jake served on the Honor Court from 2008-2011, and was the Honor Court Chief Justice from 2010-2011. Jake also participated as a regional finalist in the ABA Dispute Resolution and Mediation Competition in 2011.

Jake is a member of the Alabama State Bar, American Association for Justice, Montgomery County Association for Justice and the Montgomery County Bar Association. During his time at Jones, Jake and his service dog Phoenix were featured in a national advertising campaign for Milk-Bone, a major sponsor of the Canine Assistants program. Jake has a light sport pilot’s license and really enjoys flying. He and his father are building a Van’s RV-12 kit aircraft, which they hope to finish in the near future. Jake also enjoys hunting and fishing. He is a member of the Central Alabama Gun Club and recently started reloading ammunition. Jake is a very good lawyer and does excellent work for the firm. We are also blessed to have Jake with us.

ASHLEY LOCKLAR
Ashley Locklar came to the firm in April of 2009 as a temporary Legal Secretary. She was hired permanently later that year in August. After five years of employment, Ashley now serves in the firm’s Accounting department, as an Accounting Clerk. She handles maintaining all accounts payables for the firm’s Toxic Torts and Personal Injury departments and any other various tasks assigned to her.

Ashley graduated from Robert E. Lee High School in Montgomery in 2001. After graduation, she attended Troy State University of Montgomery, majoring in Criminal Justice. Ashley and her husband Chuck have one son, Cal Jaxan, who is 5 years old, and a little girl, Lola, due this October. It’s apparent after talking with Ashley that she really loves her family and considers them to be her most important accomplishment. It is also evident that she is very proud of the family she came from.

Ashley, whose favorite hobby is playing pool, enjoys cooking, entertaining/hosting events, anything adventurous, traveling and shopping. Ashley is a good, hard-working employee, who says she really enjoys her work. We are fortunate to have her with us.

TRACIE TAYLOR
Tracie Taylor, who has been with the firm since June of 2008, currently works in the Mass Torts Section as a Legal Assistant to Danielle Mason. She primarily works on the transvaginal mesh litigation. Tracie graduated from Prattville High School in 1985. She then attended South University where she graduated in 2000 Summa Cum Laude in A/S Paralegal Studies. Tracie continued her education at Faulkner University where she graduated in 2001 with a Bachelor of Science in Criminal Justice.

Tracie married Russ Taylor July 7, 2007, and they have four children, Mike Grant (wife Mary), Gina Grant Grier (husband Kith), Casey Taylor (17) and Carley Taylor (15). They also have four grandchildren, Robert Grant (5), Noah Grant (1½), Warren Grier (3), and Logan Grier (1). Tracie enjoys reading and gardening. Tracie is a very good, hard-working employee. She also says that she enjoys her work. We are fortunate to have Tracie with the firm.

TEMP TEMPLE
Temp Temple came to work at the firm in May of 2012 as a Communications Intern in the website development department. Temp had been attending Belmont University in Nashville, Tenn., majoring in public relations and communications. After finishing his summer internship, Temp was given the opportunity to stay with the firm on a full-time basis. He decided to stay in Montgomery, rather than return to Belmont, and he transferred to Huntingdon College. Temp continues his studies there at night while working full-time with the firm.

Temp has been a good addition to the firm. His position in the Web Department has included writing marketing letters and news stories for the firm’s various websites, including BeasleyAllen.com and Righting Injustice.com; uploading the articles to the Report’s website, JereBeasleyReport.com; helping with news conferences and the firm’s annual legal conference and expo; tracking the firm’s media coverage; and maintaining the firm’s YouTube account.

Temp was born and raised in Montgomery, graduating from Trinity Presbyterian
School in 2010, where he spent 13 years learning. He is now completing his undergraduate degree with Huntingdon College’s Adult Degree Completion Program during the evening. In his free time, he enjoys kickboxing at Metamorphosis Personal Training Studio, spending time with his Afghan Hound, Artemis (Art), and learning more about different languages and cultures.

Temp is a very good employee who works hard, wants to learn and get even better at what he does. He also wants to become more diversified. Temp does very good work in areas of importance to the firm. We are very glad to have Temp with us.

**Beasley Allen Lawyers Nominated For 2014 Public Justice Trial Lawyer Of The Year Award**

Four of our lawyers were selected as finalists for the 2014 Public Justice Trial Lawyer of the Year award for our work on litigation related to Toyota sudden unintended acceleration. The nominees are Cole Portis, Graham Esdale, and Ben Baker and this writer. Larry Tawwater of The Tawwater Law Firm in Oklahoma City, Okla., and Paul Martin of Martin Jean Jackson in Ponca City, Okla., our co-counsel, were also nominated. We led the charge against Toyota on behalf of the Bookout and Schwarz families. Bookout v. Toyota Motor Corp. was the first suit to go to trial against Toyota tying its electronic throttle control problems.

When thousands of Toyota Camrys were suddenly accelerating, the company reacted by blaming the incidents on individual parts of the car: first floor mats, then sticky pedals. But, according to Toyoda documents and testimony before Congress, these problems only accounted for 16 percent of the sudden unintended acceleration complaints. The problem was actually bigger: the software in the Toyota Camry system was poorly designed and did not conform to industry standards. One of those Camrys that suddenly accelerated was Jean Bookout’s. She was injured and her passenger Barbara Schwarz was killed in a September 2007 crash.

The jury’s October 2013 verdict in this landmark acceleration case—awarding $3 million in compensatory damages and finding that the Plaintiffs were entitled to punitive damages—not only led Toyota to try to reach a global settlement of the hundreds and hundreds of cases pending in multidistrict litigation proceedings.

The Public Justice Trial Lawyer of the Year award honors lawyers who take great risk and overcome incredible odds to advance the common law, to make new law, and to win justice for their clients and for the common good of the public. The finalists will be honored and the award presented at the annual Public Justice Gala at the American Visionary Art Museum in Baltimore, Md., on July 27. A full list of the nominees and more information can be found at www.publicjustice.net.

**LaBarron Boone Featured On ABC World Report**

LaBarron Boone, a lawyer in our Products Liability/Personal Injury section, recently worked with ABC News on a series of stories dealing with tire safety. Three national news stories resulted from this effort, with a goal of educating the public about tire age and the flawed recall process for alerting retailers and consumers about defective tires. Tire safety issues were addressed on Good Morning America, ABC World News, and Nightline Investigates, which also featured an interview with LaBarron and excerpts from depositions taken in a case involving a tire recall.

ABC News Chief Investigative Correspondent Brian Ross visited Montgomery to speak with LaBarron and his client, Carolyn Thorne, who LaBarron represented in a rollover crash case that left her paralyzed. While preparing her case, LaBarron found that retail giant WalMart had actually put a recalled tire on Ms. Thorne’s car. This resulted in her highway roll-over and her injuries.

As a result of the reports, the National Transportation Safety Board has launched a first-of-its-kind special investigation into the role of tires in hundreds of traffic accident deaths each year. You can watch the ABC Nightline report by visiting http://www.youtube.com/watch?v=NZ6S1xkL0Gg.

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Jay Wolf is the real deal. I have bad the opportunity to be with him both publicly and privately and he is the same person in all situations. What you see behind the pulpit on Sunday mornings is the same person you will see anytime and in any situation. He is the same on the inside as he appears on the outside and you can bank on his word… like David of old, Jay is a man after God’s own heart.

This sentiment is echoed by Jay’s daughter Alex. She says her dad is the same at the dinner table as he is behind the pulpit. Alex describes Jay, saying:
His loving kindness is authentic, his interest in others is earnest, and his humility never seems to end. He is exactly who he appears to be.

Authenticity and consistency are two descriptive words frequently used by those who know Jay best. Chip Colee as Minister of Music at First Baptist Church works closely with Jay on a daily basis. Chip marvels at Jay’s Holy Spirit-inspired consistency in every area of his life. Jay truly is a “Jesus man” through and through. Chip tells of the response of a friend who met Jay for the first time: “That man is in love with Jesus and wants you to experience that same love!”

Jay is a well-rounded man’s man. He’s an avid outdoorsman who loves hunting and fishing. He’s an athlete who enjoys golf, tennis, basketball, and racquetball—anything competitive! These varied interests are strategic. They afford him multiple connection points with many different people to share the good news offered in Christ alone. The following are Jay’s signature verses:

*Therefore, since we have so great a cloud of witnesses surrounding us, let us also lay aside every encumbrance and the sin which so easily entangles us, and let us run with endurance the race that is set before us, fixing our eyes on Jesus, the author and perfecter of faith, who for the joy set before Him endured the cross, despising the shame, and has sat down at the right hand of the throne of God.*

Hebrews 12:1-2

Jay’s life aligns with these verses. He has and continues to live life with consistency and authenticity because he keeps himself clean and pure before the Lord by keeping his eyes on Jesus.

Paul urged the church at Corinth to follow his example as he follows the example of Christ. That is a bold, daring statement. That same principle applies to Dr. Jay Wolf. In his life, with consistency and authenticity, he follows Jesus and provides a model for others. Jay’s life is a profile in devotion to Jesus that is worthy of emulation. I realize that this is rather lengthy, but I felt it important to let our readers know about Jay. His example is one that ties in directly to the last part of this issue. I am blessed to know Jay and have him as a real friend.

**XXIII. FAVORITE BIBLE VERSES**

Ted Meadows, a lawyer in our firm’s Mass Torts Section, furnished two verses for this issue. Ted says one of his favorite Bible stories is that of Joseph. Throughout his life, Joseph was betrayed by those closest to him—starting with his own family. Yet, God used those circumstances to put him in a position of power. When the right time came, Joseph was able to graciously and thankfully say to his betrayers, “You intended to harm me, but God intended it for good to accomplish what is now being done, the saving of many lives. So then, don’t be afraid. I will provide for you and your children (Genesis 50: 20-21).” The story of Joseph is a powerful story of perseverance and a reminder that there is no situation that God will not redeem. Ted says he suspects it was in the back of Paul’s mind when he wrote, “And we know that God causes everything to work together for the good of those who love God and are called according to his purpose for them (Romans 8:28).”

Beau Darley, another lawyer in our firm’s Mass Torts Section, also furnished two verses. Beau says whenever he gets stressed and has lots going on, he takes comfort in reminding himself that God is in control. Beau says God has a plan for each and every one of us and that it’s important for him not to think of himself of pray for what he wants to happen, and that he is reminded instead to pray that God will help him make decisions that will lead him down the path God has in place for him.

*For I know the plans I have for you, declares the Lord, plans to prosper you and not to harm you, plans to give you hope and a future.*

Jeremiah 29:11

*For we are God’s handiwork, created in Christ Jesus to do good works, which God prepared in advance for us to do.*

Ephesians 2:10

Liz Eiland, a lawyer in our firm’s Mass Torts Section, says Psalm 37 is her favorite. She says the psalmist writes an acrostic, attempting to shift his focus from the evil actions of “others,” back to his own responsibilities as a follower of God. Liz says the first reminder for the psalmist has also served as an important reminder for her.

*Trust in the Lord and do good; dwell in the land and enjoy safe pasture.*

Psalm 37:3

Billy Irvin, who serves as Director of Ministries at Faith Radio in Montgomery, sent in Psalm 142 and a verse from the New Testament for this issue. Billy says so often we get our wants and our needs confused, resulting in our looking in the wrong place for our provision. He says when we stop and pray, and do Psalm 142… (‘I cry aloud with my voice to the Lord; I make supplication with my voice to the Lord. I pour out my complaint before Him; I declare my trouble before Him. When my spirit was overwhelmed within me, You knew my path.’), then God will do Philippians 4:19. Billy says this same God who takes care of us will supply all of our needs from his glorious riches, which have been given to us in Christ Jesus.

Willa Carpenter, our Human Resources Liaison, furnished these timely verses for this issue. Willa is a perfect example of a person who “walks the walk” in her Christian faith.

*And my God shall supply all your need according to His riches in glory by Christ Jesus.*

Philippians 4:19

*We live by faith, not by sight.*

2 Corinthians 1:17

*Faith comes from hearing the message, and the message is heard through the word of Jesus Christ.*

Romans 10:17

*Let us fix our eyes on Jesus, the author and perfecter of our faith, who for the joy set before Him endured the cross, scorning its shame, and sat down at the right hand of the throne of God.*

Hebrews 12:2
XXIV.
CLOSING OBSERVATIONS

WHEN WILL ENOUGH REALLY BECOME ENOUGH?

I am going to write about a subject this month that is troubling to me and one that should be of concern for each of us. It is a subject that politicians “fear” because of the awesome power and influence of the National Rifle Association (NRA) and the gun manufacturers. On a weekly—if not daily—basis we hear and read news of mass killings by individuals who have no logical reason to possess a handgun and who surely don’t need an assault rifle, which has only one real purpose and that is to kill folks, not animals. Innocent victims (many of them children) are being killed in these mass murders, which are taking place in our schools, shopping malls and even in places of worship.

These tragic events have become so commonplace that it no longer shocks us to hear of another mass murder on the evening news. We may even reach the point where we consider “only” three being killed not quite so bad, since many of the victims number 10 to 20 in some instances.

I feel that the American people have almost become callous to these tragic events. During the primary elections in our state not one candidate to my knowledge even mentioned the need to control the access to guns or to even have a system whereby a person has to undergo a background check before being able to buy an assault rifle or handgun.

I have great difficulty with allowing the NRA to dictate policy in this area of concern. I say this, having dealt with guns since I was a teenager growing up in Barbour County. I have owned pistols, shotguns and hunting rifles and still do. But to this day, I cannot understand why a hunter would need an assault rifle, with a magazine holding 30 rounds, to shoot a feeding deer from a tree stand. I certainly would not object to a system that would be designed to implement reasonable gun control. I believe that law enforcement personnel would agree with that position regardless of what the NRA says. Hopefully, most Americans would also agree.

How many more mass murders will there have to be before we wake up? My prayer is no more. I have prayed for guidance on the subject of gun control and am convinced that we must take action to stop the mass murders. We must also address the mental health issues—the internet issues—the video-games issues—as well as the unlimited access to guns. Doing one without addressing all of the others simply won’t work. Reasonable people should be able to take reasonable steps and begin to solve a problem that has been neglected for far too long. It will take courage for our elected leaders to say to the NRA, “enough is enough,” and take action. But before that will happen, the American people will have to demand action!

SOME MONTHLY REMINDERS

I can do all things through Christ who strengthens me!
Philippians 4:13

If my people, who are called by my name, will humble themselves and pray and seek my face and turn from their wicked ways, then will I hear from heaven and will forgive their sin and will heal their land.
2 Chron 7:14

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

Woe to those who decree unrighteous decrees, Who write misfortune, Which they have prescribed. To rob the needy of justice, And to take what is right from the poor of My people, That widows may be their prey, And that they may rob the fatherless.
Isaiah 10:1-2

I am still determined to be cheerful and happy, in whatever situation I may be; for I have also learned from experience that the greater part of our happiness or misery depends upon our dispositions, and not upon our circumstances.

Martha Washington (1732—1802)

The only title in our Democracy superior to that of President is the title of Citizen.
Louis Brandeis, 1937
U.S. Supreme Court Justice

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

Vincent Lombardi

XXV.
PARTING WORDS

I am going to discuss two types of folks—role models and encouragers—in this section. Both are badly needed in our present circumstances. I don’t know of anybody who from time-to-time doesn’t need to have their “spirits” lifted. This can be because of mishaps that occur or simply because they get stuck in a routine. It can also be because of a supposed disconnect with God even though in reality God never leaves us. In any event, a word of encouragement can do wonders for us and that is true even when things are going well. In fact, it’s very important for us to thank folks for things done for us and to let our coworkers know when they have done something well.

There is also a definite need for role models in our society—persons to follow and emulate—and those role models should set the proper example. I have no doubt that youngsters began to look for role models very early in life. Usually the first place they look is in their family. For that reason, it’s important for parents to meet that responsibility and to be the very best role model possible for their children.

I have been blessed in my family to have a wife—Sara Baker Beasley—who has been the perfect role model for our children and grandchildren. She has never fallen short as a wife, mother, grandmother or even as a friend. Sara also most definitely has the gift of encouragement and that has helped hundreds of folks get through tough situations and to do better regardless of their situation or circumstances.

Unfortunately not all of our role models project an image that our young people should be exposed to. Many of the athletes, movie and TV stars, politicians and unfortunately parents in today’s world fail miserably when it comes to being the right sort of role model. The movies, TV shows and the internet tend to put those folks on sort of a pedestal and we are paying a price for it today. We should demand better!
My prayer is that we will all strive to be both encouragers and good role models (and we are role models in some respect regardless of what we do for a living) starting today. I know for a fact that if a person follows the example of our Lord and Savior Jesus Christ folks around that person will be much better off. You may not really believe this—but I challenge each of you to try doing so for about a week and then do a review. You may be surprised or in some case it might reach the level of shock. Let’s consider the following verses.

For to this you were called, because Jesus also suffered for us, leaving us an example, that you should follow his steps.

1 Peter 2:21

He who says he abides in Him ought himself also to walk just as He walked.

1 John 2:6

Therefore be imitators of God as dear children. And walk in love, as Jesus also has loved us and given Himself for us, as an offering and a sacrifice to God for a sweet-smelling aroma.

Ephesians 5:1-2

A new commandment I give to you, that you love one another; as I have loved you, that you also love one another.

John13:34

Nothing is impossible when we have Jesus with us and in us. He is the perfect role model for us in all areas of our life. If we trust Jesus to lead us in the right direction we will wind up in the right place and with the right mindset on any issue or with any problem large or small that we may encounter. Depending on Jesus’ direction will dictate what action we should take or whether we should act at all. We must have faith in God’s promises in every area of our lives. I will repeat the formula for dealing with life’s many problems and that is we must trust God and obey Him in every respect.

My words of encouragement for all of our readers this month are simply that God loves you and that is enough motivation for each person to become the Number One role model in their family, in their workplace, in their church, and really in every place they go or touch. When we follow the example of Jesus, without any doubt, we will be very good role models.

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Jere L. 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 175 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.