I. CAPITOL OBSERVATIONS

OVER 1,500 LAWYERS ATTENDED BEASLEY
ALLEN LEGAL CONFERENCE

Our law firm hosted its eighth annual Legal Conference & Expo last month at the Renaissance Montgomery Hotel & Spa at the Convention Center. This is the largest gathering of lawyers in Alabama each year. I am told that it’s one of the largest attended lawyer seminars in America. The conference has grown steadily each year, from about 400 lawyers in 2007 to more than 1,500 attending this year. One of the highlights of this year’s conference was Dean Charles Gamble who spoke at the prayer breakfast on Friday, and he let us all know how important it is to keep our focus on God’s promises.

The Beasley Allen Legal Conference & Expo also benefits the local economy, as lawyers and their spouses and guests stay and spend money in the area. Dawn Hathcock, Vice President of the Montgomery Area Chamber of Commerce Convention and Visitor Bureau notes that the conference gives the City an opportunity to shine as a meeting destination. Dawn had this to say:

This is the largest conference of its kind within the state of Alabama and not only showcases the city, but provides a huge economic impact in the River Region of roughly a million dollars. Events of this stature are extremely important, as we continue to market Montgomery as a true meeting destination.

The event provides a full 12 hours of continuing legal education (CLE) credits, including one hour of mandatory Legal Ethics, and is open to all Alabama lawyers in private practice. Practice areas addressed at the conference include Product Liability, Mass Torts and Fraud. Special programs this year included an update on General Motors (GM) ignition switch defect litigation, featuring special guest Lance Cooper of The Cooper Firm in Marietta, Ga., who uncovered the product defect that brought about the massive GM recall.

We also were honored to welcome three senior members of the Alabama Supreme Court. Justices Tom Parker and Michael Bolin spoke on the State of the Alabama Supreme Court and participated in a panel discussion and question-and-answer session with the audience. Although a schedule conflict prevented him from participating in the panel this year, Alabama Supreme Court Chief Justice Roy Moore stopped by the Conference and addressed the crowd assembled at the luncheon.

Governor Robert Bentley was a featured speaker on the first day and he did an outstanding job. He gave a state of the state address which was well received. Governor Bentley also discussed our firm’s work on behalf of the State on the BP oil spill litigation. In addition to representing Governor Bentley, we have represented more than 1,000 Alabama businesses on their BP claims. Many of those businesses are in the River Region. Attorney General Luther Strange and Dr. David G. Bronner, Chief Executive Officer, RSA, were also featured speakers this year. Dr. Bronner continues to amaze me with his tremendous insight into the issues facing our state and nation and how we should deal with them.

Lawyers from our firm discussed various kinds of cases that the firm is handling. This is very important for several reasons. Not only do lawyers get CLE credit, but they also learn about what is happening around the country in the courts. They also gain valuable inside information about “hot topics” in litigation. The post-conference responses from attendees have been very good and it is apparent that the event was a success and most helpful to them.

At the Legal Services Expo, vendors provided demonstrations of products and answered questions about how attorneys can best enhance their practice. Event platinum sponsors for 2014 were Jackson Thornton Valuation & Litigation Consulting Group and Freedom Reporting Inc. Legal and community groups including the Alabama State Bar Volunteer Lawyer Program, Alabama State Bar Lawyer Referral Program, Alabama Law Foundation, Alabama Civil Justice Foundation, Alabama Association for Justice and Jones School of Law also had an opportunity to share information about their programs with those in attendance.

This annual event is rewarding for our firm to host, and we hope that it is a benefit to the many lawyers who attend. This is a valuable opportunity for lawyers to make connections with their colleagues, and to learn more about the law and the types of cases that are developing nationwide. We appreciate very much the excellent participation by lawyers from all over the state.

II. THE ONGOING SAGA OF THE GENERAL MOTORS SAFETY PROBLEMS

THE DEADLINE FOR FRAUD CLAIMS EXTENDED

The deadline to file claims under the General Motors (GM) faulty ignition-switch compensation program has been extended until Jan. 31, 2015, which gives 30 additional days in which to submit claims. Notice of the

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BeasleyAllen.com
extension was sent to about four and a half million current and previous owners of eligible vehicles, according to Ken Feinberg, the fund's administrator. He said the extension of an additional month was being implemented “out of an abundance of caution.”

GM has agreed with the extension of the deadline. A more active approach to finding cases of injury or death was requested by a prominent car-safety advocate. Clarence Ditlow, executive director of the Center for Auto Safety, said in a letter to Feinberg that he should expand outreach efforts and scour federal car-safety databases for accidents in recalled vehicles to determine whether the switch was to blame for additional injuries or deaths. The program, which officially is the GM Ignition Compensation Claims Resolution Facility, began accepting claims on Aug. 1 and as of Nov. 7 had received 1,851 claims for deaths and serious injuries linked to the switch.

**The Massive Cover-Up By General Motors**

We are learning more about who all at General Motors (GM) knew about the serious problem with its defective ignition switch in GM vehicles and when they knew it. It is now very clear that a massive cover up by GM of a known defect took place. Our firm and the Cooper Firm in Marietta, Ga., all in the early stages of discovery in the case of 29-year-old Brooke Melton, who was killed in the 2010 crash of her Chevy Cobalt, caused by the defective GM ignition switch. For example, a chain of internal GM emails from December 2013 to February 2014—prior to the recall—reveals a GM employee ordering replacement parts from its supplier, Delphi, to fix what GM knew to be a known ignition switch problem.

Based on what we have learned from early discovery in the Melton case, and from other sources, I am convinced the General Motors cover-up is one of the most massive cover-ups in history by an automaker of a known safety related design defect. In this case, as a result of the cover-up, hundreds have been killed, with hundreds, if not thousands, of people injured. As one of the trial team that secured the landmark verdict against Toyota for its sudden unintended acceleration problems, I am all too familiar with the cover-up game the automakers play all too often. The General Motors cover-up is on a par with the massive cover-up by Toyota of its sudden acceleration safety problems. General Motors knew about the defect shortly after the ignition switch was designed—had actual knowledge of both test failures and real world failures and highway crashes—and did not report its findings to National Highway Traffic Safety Administration (NHTSA) or recall millions of affected vehicles.

By law, automobile manufacturers must inform NHTSA of a safety defect within five business days of discovering it and promptly submit a recall plan. GM has repeatedly denied it knew of the ignition switch defect before launching a recall in February. That’s simply not true. GM has repeatedly blamed the delay on a broken corporate structure and incompetence rather than willful neglect. We expect to prove in the Melton case that GM was guilty of both wanton conduct and a massive cover-up that was responsible for more than 300 deaths and several hundred injuries.

In a most interesting development, for the first time since General Motors’ ignition switch design flaw was announced, former GM engineer Ray DeGiorgio spoke to a New York Times reporter about his role in the cover up. As we have mentioned previously, there is no doubt that Mr. DeGiorgio lied under oath depositions in the Melton case before the case was settled. But there is no doubt that DeGiorgio was not the only person privy to the ignition switch change as far back as 2006. Thus far the Melton discovery efforts have been most helpful in our search for the real truth about the cover-up and there is more to come.

Anybody who believes that Ray DeGiorgio was a lone wolf or just a rogue engineer at General Motors who acted without supervision is badly mistaken. When the Melton case is tried, we will be able to prove that DeGiorgio’s actions, as well as his inactions, involving the defective switch were known to a good number of persons at GM. The massive cover-up of the safety defect that followed will include some very interesting folks at GM. It’s time for GM to come clean with the government, the courts and the American people.

GM’s defective ignition switch has prompted the recall of more than 17 million vehicles to date. As we all now know, the ignition switch problem can leave a vehicle without power and the driver unable to control the vehicle in sudden and dangerous situations. Investigations have revealed GM knew about the ignition switch defect for 11 years before disclosing it to safety regulators and the public. During that time over 300 innocent people were killed because of GM’s massive cover-up.

**GM Wants To Limit Discovery In The Melton Case**

There can be little doubt that the one case that General Motors is overly concerned with is the Melton case. GM told a New York federal court on Nov. 21 that it only wants to submit discovery documents that are related to claims that the automaker hid key details about its defective ignition switches, and not years of employee records. That was aimed directly at the Melton case which is progressing on schedule in a Georgia state court. Plaintiffs’ Ken and Beth Melton’s daughter Brooke died in a 2010 accident in which she lost control of her Chevrolet Cobalt when the key in her ignition switch shifted from the “run” position. The Meltons settled their original claims against GM last fall for $5 million, believing the automaker’s repeated insistence, including in depositions under oath, that it knew nothing about a change to the ignition switch that had apparently been made around 2006. That was a bald faced lie and GM knew it.

The Meltons offered to return the settlement money to GM and filed suit in May, asking for a rescission of the settlement agreement, because GM clearly negotiated the settlement by misleading them and hiding important evidence. As part of the renewed suit, the plaintiffs have asked for GM’s annual performance evaluation records for employees, from 2010 to the present. GM wants to produce only the records that refer to ignition-switch issues, while the plaintiffs want the complete truth about GM’s massive cover-up.

Lance Cooper’s work on the case with Florida engineer Mark Hood helped set off a chain of events leading to the GM’s historic recall of more than 17 million vehicles in 2014. This came after Lance discovered that the automaker had a new ignition switch under the old part number. Evidence was presented evidence of a switch change at a critical deposition in the Melton case last spring, but GM’s lead switch engineer, Ray DeGiorgio, testified under oath that he didn’t know about it. That was not true, since he signed off on the charge.

A congressional investigation in March found documents that confirmed that DeGiorgio personally signed off on the switch change in 2006. He is being made a scapegoat by GM. He was terminated by the automaker. GM stonewalled Lance’s efforts last year to obtain documents that would show if GM’s engineers approved the change. We have “good reason” to believe that persons at GM—above Dr. DeGiorgio’s pay grade—knew all about he changes. This information was withheld from the Meltons.

**GM Admits Ignition Switch Defect Led To 2004 Deadly Crash**

General Motors told a Texas state court on Nov. 24 that a 2004 Saturn Ion involved in a deadly crash should have been included in the massive ignition switch recall. This allowed a judge to overturn the conviction of a woman who had been accused of killing her fiancé by driving under the influence. The woman’s fiancé had been sitting in the passenger’s seat of the vehicle when she veered off the road and crashed into a tree.
The vehicle's air bags failed to deploy in the crash, which killed the passenger and left the driver seriously injured. It appears this is the first acknowledgement by GM of any specific individual who was killed due to the ignition switch defect. Unfortunately, there are many other innocent victims who were blamed for causing a highway crash. Now we know that GM was the real culprit. We also know that the automaker covered up their fault, causing untold misery and hurt to hundreds of people.

Source: Law360.com

III. THE TAKATA AIRBAG SAGA CONTINUES TO EXPAND

A COVER-UP THAT GOES BACK A DECADE

It is now well known that Takata executives suppressed information about the deadly air bag defect as far back as a decade ago. That’s a shocking revelation, but not to lawyers in our firm who handle auto product liability cases. Calls for a new criminal inquiry into the Japanese air bag supplier are beginning to be heard. There is much to be done to not only assist victims, but also to get thousands of vehicles with dangerous airbags off the highways.

Since 2013, ten automakers have recalled nearly 8 million vehicles to repair Takata air bag inflators that could shoot metal and plastic shards toward vehicle occupants after a crash. The National Highway Traffic Safety Administration and the automakers involved have been hard at work trying to ascertain the scope of the problem. The NHTSA investigation—opened in 2009, closed in 2010 and reopened this past July as fresh reports of air bag ruptures surfaced—has intensified in recent weeks.

Source: Autonews.com

8 MILLION CARS RECALLED FOR AIR BAGS

It appears that Honda Motor Co., Toyota Motor Corp. and other major automakers have fixed only a fraction of the almost 8 million cars recalled in the last two years to replace the defective Takata Corp. air bags. About 6 percent of affected vehicles recalled by nine carmakers have been remedied, according to Bloomberg News. Calculations by Bloomberg, based on figures provided to the NHTSA, arrived at that number. Honda and Toyota, which have the largest number of recalls, have confirmed that less than 6 percent have been repaired.

The low rate of repairs makes it very clear that owners who have yet to bring in their affected cars for repairs are at risk of injury and even death. NHTSA demanded automakers broaden their campaigns nationwide after months of allowing limited regional recalls. Takata said the expanded callback could risk lives by aggravating the shortage of replacement parts. The company’s faulty air bags have been linked to as many as six deaths in the U.S. and one in Malaysia, all occurring in Honda cars. Takata’s inflators have injured or killed motorists by deploying with too much force, breaking apart metal parts within the air bag module and shooting them at passengers.

Source: Insurance Journal

TAKATA TELLS SENATE PANEL IT DIDN’T COVER UP AIR BAG DEFECT

The unfolding saga of the defective Takata airbags continues. There is a new development almost daily. A Takata Corp. executive, speaking before a hostile U.S. Senate panel on Nov. 20th, denied reports that the company concealed defects in its air bags before issuing the massive set of recalls in 2008. Automaker executives have agreed to expedite the replacement of the Takata parts in their vehicles. Just two days after the National Highway Traffic Safety Administration called for an expanded nationwide recall of vehicles with air bags with a deadly defect that can cause them to explode during inflation, senators questioned Takata Senior Vice President of Global Quality Assurance Hiroshi Shimizu on recent reports that the auto supplier ordered technicians to destroy data including video and computer backups containing evidence of air bag defects, and that it had known about the defect since at least 2004.

Source: Law360.com

NHTSA PROBES HONDA’S REPORTING OF DEFECTIVE AIR BAGS

As we have reported the defective Takata airbags are in vehicles made by at least 10 automakers. The National Highway Traffic Safety Administration is investigating whether American Honda Motor Co. failed to report deaths and injuries related to the Takata Corp. air bags. This came shortly after several class action lawsuits were filed against the company over the defective air bags. NHTSA has ordered Honda to answer 38 questions under oath about how it reports the death and injury incidents and claims stemming from the air bags. The questions must be answered by Dec. 15. The investigation by NHTSA is probing the “extent and scope” of the car maker’s alleged failure to report deaths and injuries related to possible auto safety defects as required by the Transportation Recall Enhancement, Accountability and Documentation Act (TREAD).

NHTSA issued a special order requiring Honda to document every incident involving air bag ruptures alleged to have occurred and account for known deaths and injuries. It also asked what steps the automaker took to investigate quality control at Takata factories, as well as design standards dating back to 1998 and documents from product-liability lawsuits. The agency said in its order:

NHTSA has received information indicating that American Honda Motor Co. (Honda) failed to report incidents involving Takata airbags, which resulted in a death or injury, and for which claims were asserted against Honda.

Under the TREAD Act, car manufacturers must submit early warning reports including information on each death or injury from possible safety defects to the NHTSA every quarter. The investigation seeks information about Honda’s reporting procedures and how it plans to comply with the TREAD Act. NHTSA says that it “is also concerned that Honda’s reporting failures go beyond the Takata incidents described above.”

The investigation follows lawsuits filed in Florida and California federal courts against Takata and a number of automakers, including Honda. Those suits were the first class actions stemming from a 2013 recall of defective air bags. More than 14 million vehicles equipped with air bags supplied by Takata have been recalled worldwide because of a defect that causes the air bags to explode in humid conditions, with the majority of these recalls coming just in the past years.

The manufacturing defect in the air bags dates back to at least April 2000, Takata actually became aware of it as early as 2001, when it issued its first recall relating to the exploding air bags in Isuzu vehicles. Instead of protecting car passengers in a crash, the defective air bags explode and expel “lethal amounts of metal debris and shrapnel.” The automakers knew of the defect as early as 2008, when Honda first notified regulators of a problem with its Takata air bags. Instead, the automakers and Takata opted to not address the issue, leading to a number of deaths caused by from the defect. It was alleged in the Florida complaint:

Despite this shocking record, both Takata and Honda have been slow to report the full extent of the danger to drivers and passengers and failed to issue appropriate recalls. Both Honda and Takata provided contradictory and inconsistent explanations to regulators for the defects in Takata’s
Honda opened a third-party investigation into claims that the automaker had under-reported injuries and fatalities stemming from defects in Takata’s air bags. That action by the automaker came on the very same day a watchdog recommended the U.S. Department of Justice investigate Honda’s reporting practices.

Source: Law360.com

Beasley Allen Files Suit Against Honda and Takata Over Air Bags

Our firm, along with other law firms, has filed two huge class action lawsuits against Takata Corp., Honda Motor Co. and several other defendants over the defective air bags. One case was filed in California and the second in Florida. It was alleged in each suit that the two companies hid the air bags’ “explosive nature.” The California suit, filed on behalf of Luke Hooper and others, state “explosive nature.” The California suit, filed on behalf of Luke Hooper and others, state that Honda and Takata failed to alert customers about the air bag defect when it first became aware of the problem. The allegations in the Florida lawsuit are basically the same as in the California suit.

The Plaintiffs contend that Honda and Takata even had a secret program in 2007 to study the air bags at issue. It’s alleged that Honda dealers planned to replace faulty air bags in vehicles that had been brought in for unrelated problems. The Plaintiffs alleged further in the California complaint:

To make matters worse, Honda’s and Takata’s actions to bide the explosive nature of the defective air bags from 2004 onward from consumers and government regulators has resulted in a parts shortage; there are simply not enough replacement air bags to replace the defective air bags in older model cars.

In each case, the Plaintiffs are seeking to represent a proposed class of consumers in the United States who bought Honda vehicles with the Takata air bags at issue. Takata and carmakers have already faced a number of suits over the alleged defect. Some Plaintiffs have asked the U.S. Judicial Panel on Multidistrict Litigation (MDL) to consolidate five recent cases with Lieff, Cabraser, Heimann & Bernstein, LLP, Barrios, Kingsdorf & Casteix, LLP, and Weitz & Luxenberg, P.C. We are also working with respected Florida trial lawyer Sean Domnick in the Florida case.

As we have reported, more than 14 million vehicles with Takata air bags have been recalled worldwide because of a defect that causes the air bags to explode in humid conditions. Most of those recalls have come just in the past year. The automakers allegedly knew of the defect as early as 2008, when Honda first notified regulators of a problem with its Takata air bags. Instead, the automakers and Takata made a decision to not address the issue, leading to deaths stemming from the defect.

Dee Miles, Archie Grubb and Andrew Braisher from our firm are representing the Plaintiffs in the cases. We are handling both cases with Liess, Cabraser, Heimann & Bernstein, LLP, Barrios, Kingsdorf & Casteix, LLP, and Weitz & Luxenberg, P.C. We are also working with respected Florida trial lawyer Sean Domnick in the Florida case.

IV. More Automobile News of Note

Obama Nominates Mark Rosekind To Lead NHTSA

President Barack Obama has nominated transportation expert Mark Rosekind to lead the National Highway Traffic Safety Administration, the top U.S. auto safety regulator, which has come under criticism this year for a slow response to a number of major scandals. Rosekind, if confirmed by the Senate, would come to NHTSA after spending the past four years as a member of the National Transportation Safety Board (NTSB). The board is the agency that investigates major transportation accidents. The White House announced the nomination on the eve of a Senate hearing into how regulators and the automobile industry have handled a rapidly expanding recall of millions of defective air bags manufactured by Takata Corp. The air bags, which can rupture upon deployment and spray metal shards into cars, have been linked to at least six deaths.

Safety advocates have criticized NHTSA for not responding more quickly to years of evidence about the deadly defect. The agency was rightfully criticized for its slow response to more than a decade of evidence that millions of General Motors Co vehicles were equipped with a deadly ignition switch flaw.

NHTSA has been lacking a permanent head since David Strickland resigned in December 2013. Deputy Administrator David Friedman has been running NHTSA in the interim. According to the NTSB’s biography of Rosekind, he is “one of the world’s foremost human fatigue experts” and a founder of Alertness Solutions, a consulting firm that specializes in fatigue management. I agree with Clarence Ditlow, executive director of the Center for Auto Safety, who was surprised the nominee didn’t have a background in auto safety. He stated:

Given the GM ignition switch and now Takata I would have expected someone with more of a hands-on experience in vehicle safety.

Transportation Secretary Anthony Foxx called Rosekind “a leader ready-made for this critical responsibility,” and said he expects him to hold the auto industry accountable. I hope he is 100% correct.

Honda Failed to Report 1,729 Deaths And Injuries Since 2003

In a shocking revelation, it was reported that since 2003, Honda Motor Co. has failed to report 1,729 deaths and injuries to NHTSA. The company announced this information on Nov. 24 after it sent the results of a third-party audit to the agency. The audit attributes the under-reporting to “inadvertent” data entry and computer program errors, according to Honda. The report also revealed that Honda delayed notifying the federal agency about discrepancies and errors in the company’s death and injury reporting.

NHTSA had issued a special order on Nov. 3 directing Honda to explain its failure to fully report deaths and injuries related to possible auto safety defects, which is required under the Transportation Recall Enhancement, Accountability and Documentation Act. A summary of the audit said errors in Honda’s reporting were also attributed to inaccurately interpreting regulations.

Under the TREAD Act, car manufacturers must submit early warning reports including information on each death or injury from possible safety defects to the NHTSA every quarter. The 1,729 unreported injuries and deaths more than double the incidents Honda reported to the agency in the past 11 years, according to the early warning reports filed with the NHTSA.

Source: Law360.com

Honda Repair Deal In Faulty Side Air Bag Class Action

Honda North America Inc. won final approval last month in California federal court of its settlement of a class action alleging some Honda Accord side air bags deploy inadvertently. The automaker agreed to make repairs worth more than $6 million on thousands of affected vehicles. Named Plaintiffs Heather Gutierrez and Connie Kaupa alleged...
that Honda Accord coupes and sedans from model years 2003, 2004 and 2008 had a mechanical defect that caused their side air bags to deploy during normal driving.

At a fairness hearing in Pasadena, Ohio U.S. District Judge Jack Zouhary, sitting by designation in California's Central District, granted final approval to the settlement. The settlement requires Honda to provide free repairs for about 1,800 class members whose cars' air bags deployed but who never sought repairs. The repairs cost owners $3,000 to $5,000, according to the Plaintiffs' motion for settlement approval, putting the value to consumers at $6 million at a minimum. Honda has also agreed to provide repairs for Accord owners whose vehicles' airbags inadvertently deploy in the next two years. A small number of class members will be reimbursed for repairs they paid for out of pocket, as well.

The suit was filed in California federal court in August 2009, alleging the Accord models contained a common, inherent defect causing side air bags to deploy during normal driving. Honda was accused of refusing to take corrective action despite being aware of the defect, including failing to notify owners and telling customers there was nothing wrong with the side air bag system. The suit is unrelated to other litigation being brought against Honda and other carmakers over the Takata Inc. air bag defect.

Source: Law360.com

**Audi Air Bags May Not Fire When Ready**

A notice by Audi has been posted online by the National Highway Traffic Safety Administration (NHTSA) relating to the Audi A4 and S4 from the 2013 through 2015 model years. Volkswagen AG said that more than 100,000 late-model Audi cars need to be fixed. The company says that a software flaw means frontal air bags in the Audi A4 and S4 from the 2013 through 2015 model years may not deploy in crashes when the side air bags have already fired.

Reprogramming the software should take about 20 minutes at dealerships, according to Audi. Automakers should take all necessary steps to resolve defects before they escalate into major safety crises. Audi claims this flaw is different from the Takata defect, which involves air bags inflating with so much force they can explode, sending shrapnel toward front-seat passengers. Apparently, Audi discovered its air-bag software flaw in its cars during testing and “ongoing field observations” in August. That triggered analysis of crashes in Europe where air bags had deployed. Ingolstadt, Germany-based Audi decided on a U.S. recall in October after analysis and test simulations. It should be noted that Audi informed the U.S. government of the safety concerns.

Source: Bloomberg News

**AutoNation Halts Sales of Used Cars In Air Bag Recalls**

The head of the nation’s biggest car dealership chain has said it won’t sell used cars being recalled for exploding air bags due to conflicting advice from automakers and lack of direction from the government. The recalls are giving the auto industry a black eye because they are “confusing and incoherent,” AutoNation CEO Mike Jackson said in an interview.

Ten automakers have recalled more than 12 million cars with air bags made by parts supplier Takata Corp. The air bags can inflate with too much force, blowing apart metal canisters and sending shards flying at drivers and passengers. Safety advocates say that four people have died due to the problem.

Some automakers have limited recalls to a few Southern states with high humidity, while others have expanded them. Still others have done national recalls for similar problems. Dozens of models made by BMW, Chrysler, Ford, General Motors, Mazda, Honda, Mitsubishi, Nissan, Subaru and Toyota dating to the 2001 model year are covered by the recalls. Jackson said:

*You have 10 different manufacturers taking 10 different positions. How are we and the consumers supposed to figure out what is the right line?*

AutoNation, a 277-franchise chain that’s in 15 states, won’t sell any of the cars if they are being recalled under supervision of the National Highway Traffic Safety Administration (NHTSA). The cars can be sold once the recall repairs are done. About 40 cars in Southern states are affected. Interestingly, a spokesman has said the Fort Lauderdale, Florida-based retailer will sell models equipped with Takata air bags outside of the Southern states as long as they aren’t being recalled by NHTSA.

The industry needs to sit down and talk about standardizing the recalls, Jackson says. “I think there needs to be a process when a component fails across multiple manufacturers, that there’s a coherent, coordinated recall effort. We do not have that here,” he says. NHTSA, the government’s auto safety agency, should be coordinating and standardizing the effort, he said. But it doesn’t have a top executive. David Friedman has been serving as acting or deputy administrator since December of last year. The Obama administration has said to expect a new administrator within two weeks. “I don’t know why they leave these positions like that for so long,” Jackson said in an interview after the company posted quarterly earnings.

Government investigators believe that prolonged exposure to moisture in the air makes the air bag inflator chemicals burn too fast, creating too much pressure. They are still doing tests of inflators replaced by dealers to figure out how much humidity is enough to cause the problem. Depending on the results, the recall areas could be expanded. So far NHTSA says it hasn’t found problems outside of the following areas: Florida, Puerto Rico, limited areas near the Gulf of Mexico in Texas, Alabama, Mississippi, Georgia, and Louisiana, as well as Guam, Saipan, American Samoa, Virgin Islands and Hawaii. Lawmakers have called on NHTSA to do a national recall. But the agency says it doesn’t have data to support that. Plus, a national recall would divert a limited number of replacement parts from states where regulators say the need is most urgent.

Source: Claims Journal

**NHTSA Fines Ferrari $3.5 Million Over Safety Reports**

The National Highway Traffic Safety Administration (NHTSA) has fined luxury car maker Ferrari $3.5 million as a civil penalty for failing to submit certain early warning reports identifying possible safety issues with its vehicles. As part of a consent order filed in an agency administrative proceeding, Ferrari, which is affiliated with Fiat Chrysler Automobiles NV, admitted that it violated the law by failing to submit the safety reports to NHTSA over the course of three years through the second quarter of 2014 and failing to report three fatal crashes, according to the agency.

U.S. Transportation Secretary Anthony Foxx said in a statement:

“There is no excuse for failing to follow laws created to keep drivers safe, and our aggressive enforcement action today underscores the point that all automakers will be held accountable if they fail to do their part in our mission to keep Americans safe on the road.

NHTSA said that until Fiat, which has held Ferrari since 2011, purchased Chrysler, Ferrari was still a “small volume manufacturer” that did not need to file such regular reports and was not required to file quarterly early warning reports, according to the agency’s statement. But it added that Ferrari still had to report fatal incidents. NHTSA Deputy Administrator David Friedman made these comments in the statement:

*The information included in early warning reports is an essential tool in tracking down dangerous defects in vehicles.*

According to reports, Fiat Chrysler plans to spin off Ferrari into an independent company and list a portion of its shares as part of the newly merged company’s attempt to raise capital. This is in support of its more than $60 billion growth strategy. The Fiat Chrysler board projects that management should com-
pon the separation next year. After the transaction, public shareholders will hold a 10 percent stake in Ferrari, with existing Fiat Chrysler shareholders—including Fiat’s founding family, the Agnellis—taking the rest.

Source: Law360.com

**NHTSA PROBES HONDA ACCORD POWER STEERING ISSUES**

The National Highway Traffic Safety Administration has opened an investigation into the electric power steering of 2013 Honda Accord vehicles. This comes after reports of sudden power steering failure and subsequent increased steering efforts were reached by NHTSA. There have been complaints of at least four accidents occurring as a result of the problem. NHTSA’s Office of Defects Investigation says it has received 24 complaints about the power steering in the 2013 Accord model, leading it to initiate the investigation on Nov. 4. About 374,000 vehicles will be affected by the investigation, according to NHTSA.

A preliminary evaluation has been opened to assess the scope, frequency and safety consequences of the alleged defect. Honda Motor Co. told Law360 that the company “will cooperate with NHTSA through the investigation process” and that it is conducting an internal review of the available information. According to NHTSA, the complaints allege loss of power steering and sudden increase in steering effort in the affected cars. Each of the four crashes related to the issue occurred at speeds of less than 30 miles per hour, according to NHTSA.

NHTSA said that more than half of the complaints also indicated that a power steering warning message went off just as the failure occurred. Some of the complaints say that the condition was corrected by restarting the vehicle, with others saying the issue returned after the vehicle was restarted. Early warning reporting by Honda also detailed similar issues, according to NHTSA.

Source: Law360.com

**WRONGFUL DEATH LAWSUIT FILED AGAINST GENERAL MOTORS**

A lawsuit involving a Chevy Silverado has been filed against General Motors in a Texas federal court. The family of a man who was killed in his 2002 Silverado in South Dakota contends that the truck was improperly designed. The family of Brett McDaniel alleged that GM was negligent in designing the pickup truck and that his seatbelt “literally blew apart” during the crash. The deceased was driving the 2002 Silverado on Jan. 30 when his vehicle skidded on the icy road and he lost control.

The vehicle crossed into oncoming traffic, and McDaniel’s truck collided with another vehicle. McDaniel was killed, even though he had been properly seated and wearing his seatbelt. The family contends that the incident involving the decedent was foreseeable and took place during the normal use of the truck. It’s contended that the Silverado should have been able to protect the decedent during the crash.

It was alleged in the complaint that the vehicle failed to have torso or side curtain airbags and violated “principles of crashworthiness.” It’s contended that GM didn’t conduct adequate testing or a thorough engineering analysis. GM is accused of being “negligent in the design, manufacture, assembly, marketing and/or testing of the vehicle in question.”

The Silverado has been subject to several recalls for safety concerns, including recalls in May for tie-rod defects and retention clips that can come loose. There were also recalls for a base radio that doesn’t alert drivers when their doors are open or when their seatbelt isn’t buckled and for a transfer case that might electronically switch to neutral without the driver telling it to do so. In July, GM recalled more Silverado pickups for an incomplete weld on the seat hook bracket assembly. It will be interesting to see how the McDaniel case develops when discovery starts.

Source: Law360.com

**GENERAL MOTORS IS SUED BY ARIZONA FOR $3 BILLION OVER RECALLS**

Arizona has filed suit against General Motors, claiming that the automaker defrauded the state’s consumers of an estimated $3 billion. The suit is being described as the first major legal action against GM over its record number of recalls this year. It’s alleged in the complaint that the automaker intentionally misled consumers through its advertising, website and public statements. The suit says that some of GM’s top leaders were complicit in the alleged misdeeds. The Attorney General says in the suit that “New GM,” the term used for the company that emerged from bankruptcy in 2009, “was not born innocent.” The complaint said further:

*It is difficult to find a brand whose reputation has taken as great a beating as has the New G.M. brand starting in February 2014 when the first ignition-switch recall occurred.*

In filing suit, Arizona has broken from a group of 48 state attorneys general who have been pursuing a multistate investigation into GM for its handling of the ignition-switch defect. Attorney General Thomas C. Horne had been on the executive committee of that multisate inquiry, led by South Carolina and Ohio. He had this to say:

*We’re proceeding with our own suit because it’s the best way to protect the citizens of Arizona. General Motors represented that it was taking care of the safety of its cars, and in fact there were serious defects that it did not disclose to the public for years.*

The complaint offers precise calculations of the losses suffered by owners of GM vehicles, and suggests that “no reasonable consumer” would now buy a GM vehicle for the same price had “the brand continued to mean safety and success.” It was alleged that GM “manufactured and sold millions of vehicles that were not safe, including hundreds of thousands in Arizona, and it failed to remedy serious defects in millions of older GM-branded vehicles.” As examples, the Attorney General calculated that the 2010 and 2011 models of the Chevrolet Camaro had lost $2,000 in value, and the 2009 Pontiac Solstice had lost $2,900. The Arizona consumer penalty statute stipulates $10,000 per violation, which potentially could result in a $5 billion recovery for the state.

Source: New York Times

**KOREAN AUTOMAKERS HYUNDAI AND KIA AGREE TO RECORD U.S. SETTLEMENT FOR MILEAGE FRAUD**

Hyundai Motor Co. and its affiliate Kia Motors Corp. have agreed to a $350 million settlement with the U.S. government related to charges the Korean automakers overstated the fuel efficiency of their vehicles. The settlement is being touted by government officials as the largest of its kind. The settlement comes after an investigation determined Hyundai-Kia had overstated the mileage figures on an estimated 1.2 million of its 2012 model vehicles. The settlement was announced Nov. 3.

This latest settlement compensates the U.S. Environmental Protection Agency (EPA), U.S. Department of Justice, and the California Air Resources Board. The penalties were levied under the Clean Air Act. In December 2013, Hyundai and Kia settled a class action lawsuit brought by vehicle owners who claimed economic losses resulting from the mileage fraud for $395 million. As part of that settlement agreement, Hyundai and Kia agreed to amend the window stickers on its vehicles to reflect the correct miles-per-gallon (MPG) fuel usage. Most vehicles were off by 1- or 2-MPG, but some Kia models were wrong by as much as 6-MPG.

According to the terms of the latest settlement, Hyundai and Kia will pay a $100
million fine, will be required to spend $50 million to prevent future violations, and also will forfeit more than $200 million in EPA emissions credits. “This will send an important message to automakers around the world that they must comply with the law,” said Attorney General Eric Holder.

Sources: Reuters and Green Car Reports

V. A REPORT ON THE GULF COAST DISASTER

BP CHALLENGES GROSS NEGLIGENCE FINDING USING INTERESTING ARGUMENT

After suffering a significant defeat from the Phase 1 trial findings, BP is now up to its same bag of tricks in an attempt to avoid responsibility from Judge Barbier’s gross negligence and willful misconduct findings. At the heart of BP’s argument is a contention that the trial court considered evidence offered by expert Dr. Gene Beck that should have been excluded. However, it appears BP opened the door to the testimony, and the US Government along with Halliburton are openly criticizing BP’s attempt to exclude the evidence.

In response to BP’s motion for a new trial, Halliburton stated that “[i]n its cross-examination of Dr. Beck, BP itself explored the bases for Dr. Beck’s opinion that the...data indicates at least 140,000 pounds of compressive force on the production casing. Accordingly, BP’s cross-examination also opened the door to Dr. Beck’s further testimony on redact on the topic BP now contends was excluded.” The Department of Justice also objected to BP’s motion with similar claims as Halliburton. Halliburton argued that “[r]egardless of its precise nature...the improper cement placement resulted from multiple negligent acts by BP, including the four acts BP now seeks to cut from the chain of causation.”

The Phase 1 trial findings will play a major role in establishing BP’s liability in the Clean Water Act civil penalties trial. If those rulings remain intact, BP could face a civil penalty of up to $18 billion. Predictably, BP is doing everything in its power to avoid responsibility, and there is no telling what tricks the company will pull as we get closer to the penalty trial. We will report more as the trial draws closer.

Source: Law360.com

BP SPILL LEFT OIL SLICK ON SEA FLOOR THE SIZE OF RHODE ISLAND

The BP oil spill left an oily “bathtub ring” on the sea floor that’s about the size of Rhode Island, new research shows. The study by David Valentine, the chief scientist on the federal damage assessment research ships, estimates that about 10 million gallons of oil coagulated on the floor of the Gulf of Mexico around the damaged Deepwater Horizon oil rig. Valentine, a geochemistry professor at the University of California Santa Barbara, said the spill from the Macondo well left other splatters containing even more oil. He said it is obvious where the oil is from, even though there were no chemical signature tests because over time the oil has degraded.

“There’s this sort of ring where you see around the Macondo well where the concentrations are elevated,” Valentine said. The study, published in Monday’s Proceedings of the National Academy of Sciences, calls it a “bathtub ring.” Oil levels inside the ring were as much as 10,000 times higher than outside the 1,200-square-mile ring, Valentine said. A chemical component of the oil was found on the sea floor, anywhere from two-thirds of a mile to a mile below the surface.

The rig blew on April 20, 2010, and spewed 172 million gallons of oil into the Gulf through the summer. Scientists are still trying to figure where all the oil went and what effects it had. BP questions the conclusions of the study. In an email, spokesman Jason Ryan said, “the authors failed to identify the source of the oil, leading them to grossly overstated the amount of residual Macondo oil on the sea floor and the geographic area in which it is found.”

It’s impossible at this point to do such chemical analysis, said Valentine and study co-author Christopher Reddy, a marine chemist at Woods Hole Oceanographic Institute, but all other evidence, including the depth of the oil, the way it laid out, the distance from the well, directly point to the BP rig. Outside marine scientists, Ed Overton at Louisiana State University and Ian MacDonald at Florida State University, both praised the study and its conclusions. The study does validate earlier research that long-lived deep water coral was coated and likely damaged by the spill, Reddy said. But Reddy and Valentine said there are still questions about other ecological issues that deep.

Source: Law360.com

VI. DRUG MANUFACTURERS FRAUD LITIGATION

UNAPPROVED DRUGS IN U.S. MARKET

The FDA drug approval process provides a review of product-specific information that is critical to ensuring the safety and efficacy of a finished drug product. However, there are prescription drugs currently available in the marketplace even though they have not been approved by the FDA. Many health care providers are unaware of the unapproved status of some drugs that are illegally marketed by...
the pharmaceutical companies and unknowingly prescribe these drug products. The FDA has serious concerns that drugs marketed without required FDA approval may not meet modern standards for safety, effectiveness, quality and labeling.

Numerous pharmaceutical companies repeatedly deceived the Government by falsely certifying that their unapproved drugs had passed the requisite FDA tests for safety and effectiveness. In addition to the serious public health concerns, the pharmaceutical companies wrongfully received millions of dollars from the Government for unapproved drugs prescribed to Medicaid patients. Lawyers in the Consumer Fraud Section at Beasley Allen represent the State of Louisiana in a lawsuit against pharmaceutical companies that illegally marketed their unapproved drugs, certified that their unapproved drugs had passed the requisite FDA tests and met Medicaid drug approval standards. If you need additional information on this subject, contact Lance Gould at 800-898-2034 or by email at Lance.Gould@beasleyallen.com.

VII. COURT WATCH

**Foreclosure and Family Mediation Programs Provide Free Help To Those In Need**

Individuals and families facing legal problems resulting in foreclosure, or related to family law, have a resource in Alabama that can provide free help. The Alabama Center for Dispute Resolution, established in 1994 by order of the Supreme Court of Alabama, is designated as a 501(c)3 nonprofit agency. The Center, which is housed at the Alabama State Bar office in Montgomery, provides free mediation services statewide in the areas of foreclosure prevention and mortgage modification, as well as in areas of family law, in particular in cases involving children.

About a year ago, the Center was awarded grant funding to develop and implement a foreclosure prevention/mortgage modification mediation program as part of the national mortgage settlement with Attorney General Luther Strange. The program is available to homeowners in any stage of the foreclosure process. If the homeowner needs legal help, he or she will be referred to a lawyer. Some of the cases handled by the Center are in the pre-foreclosure stage (from default to the last couple weeks before foreclosure), others are in Circuit court (wrongful foreclosure, stay of foreclosure or ejectment), others in Bankruptcy Court (chapter 13 or dismissal), and others in the appellate courts.

Mediators assist both homeowners and servicers in their communication and document exchange, an area that seems to give homeowners the most difficulty. This can occur at any of the above stages, and it very helpful to lawyers with foreclosure clients because the mediators have been trained in the new servicer rules promulgated by the Consumer Financial Protection Bureau (CFPB).

The Center for Dispute Resolution currently has more than 50 mediators around the state engaged in mediating foreclosure cases. There have been more than 100 cases referred to the program since May 2014. The goals and types of resolution for these cases focus on either working with the homeowner and servicer on various options to secure a modification of the mortgage payment so homeowners can afford the mortgage, or helping homeowners have a graceful exit from the home.

The Center for Dispute Resolution also operates a Family Mediation Program, “Parents Are Forever,” which helps parents in conflict develop an action plan for raising their children. The program is open to families whose income is $85,000 or less. The primary goal is to reduce stress for children whose parents are going through a divorce. Parents work with a mediator to develop a parenting plan with parental responsibilities, support, and child time to present to a judge during proceedings.

This is essential to de-escalating conflict and helping children thrive after separation of the parents. Divorce lawyers cooperate with the mediators in representing their clients, but in collaboration, not litigation, in order to keep continued conflict in check. Judges always retain control of the case, and make sure the parenting plan is in the best interest of the children.

The Family Mediation Program was developed in 2012-13 as a partnership initiated by Roy Moore, Chief Justice of the Supreme Court of Alabama, in cooperation with Julia Weller, the Clerk of the Court. Chief Justice Moore wanted families who were in divorce or child support situations to have help as they continue to parent and guide their children after the parents are no longer together.

Because the Center has a statewide network of trained family mediators, the Court asked the Center to develop a program and provide free mediation to families with children who have limited means. With a small grant from the Court, the Center pays the mediators.

Mediators, in turn, are asked to accept less than their typical hourly mediation rate, and provide some pro bono time to each case. This has ranged anywhere from half an hour to several hours per case. Judith M. Keegan, Executive Director for the Alabama Center for Dispute Resolution, stated:

"We have seen such positive results in a short time, and the Center remains committed, along with the Court, to continuing the Program for Alabama families. Family law is the place we can all make a difference."

For more information about either the Foreclosure Mediation Program or the Family Mediation Program, contact the Alabama Center for Dispute Resolution at 334-269-0409. Free brochures and other mediator information also is available online at www.alabamediators.org. Lawyers can contact the Center to schedule a free mediation for their clients.

VIII. THE NATIONAL SCENE

**Consumer Accounts Are Not The Only Targets For Hackers**

There have been a large number of news reports in the last year dealing with cyber-hacking, but one recent case is not garnering as much attention as it probably should. U.S. Investigations Services (USIS), the government’s leading security clearance contractor, had its networks penetrated for months before the company noticed. For many people, the impact of the USIS break-in is dwarfed by recent intrusions that exposed credit and private records of millions of customers at JPMorgan Chase & Co., Target Corp. and Home Depot Inc. Despite the lack of direct effect on consumers, it is significant because the government relies heavily on contractors to perform background checks on U.S. workers in sensitive jobs.

The possibility that national security background investigations are vulnerable to cyber-espionage could undermine the integrity of the verification system used to review more than 5 million government workers and contract employees. “The information gathered in the security clearance process is a treasure chest for cyber hackers. If the contractors and the agencies that hire them can’t safeguard their material, the whole system becomes unreliable,” said Alan Paller, head of SANS, a cybersecurity training school, and former co-chair of the Department of Homeland Security (DHS) task force on cyber skills. In particular, this breach compromised the private records of at least 25,000 employees at the Homeland Security Department and cost the company hundreds of millions of dollars in lost government contracts.

Speaking on condition of anonymity, officials and others familiar with an FBI investigation and related official inquiries spoke with the Associated Press. According to them, the investigation is not only trying to
identify the perpetrators and scope of the stolen material, but has prompted concerns about why the internal detection alarms failed to notice the hackers for so long and whether the government agencies that hired USIS should have monitored the company’s practices more closely. In particular, former USIS employees have raised questions about why the company and the government failed to ensure that outdated background reports containing personal data were not regularly purged from the company’s computers, leaving the information vulnerable when it otherwise should have been deleted.

The workers told the Associated Press that company investigators sometimes stored old or duplicate background reports that should have been purged from their laptops. The reports contained sensitive financial and personal data that could be used for blackmail or to harm government workers’ credit ratings, the former workers said. Former USIS employees who worked with the federal personnel office said the system they used directed users to purge old reports. But the workers said USIS and Office of Personnel Management (OPM) rarely followed up with spot checks. Employees who worked on systems with the Homeland Security Department said these had no similar automatic warning function and spot checks were rare. The company insisted spot checks were regularly performed.

Recently, the leaders of the Senate Homeland Security and Governmental Affairs Committee, Tom Carper, D-Del., and Tom Coburn, R-Okla., pressed OPM and the Department of Homeland Security about their oversight of contractors and USIS’ performance before and during the cyberattack. Another committee member, Sen. Jon Tester, D-Mont., said he worried about the security of background check data, stating that contractors and federal agencies need to “maintain a modern, adaptable and secure IT infrastructure system that stays ahead of those who would attack our national interests.” Having seemingly lost faith in USIS, the Office of Personnel Management and the Homeland Security Department indefinitely halted all USIS work on background investigations in August.

The Office of Personnel Management, which paid the company $320 million for investigative and support services in 2013, later decided not to renew its background check contracts with the firm. The move prompted USIS to lay off its entire force of 2,500 investigators. Additionally, the federal Government Accounting Office (GAO) ruled that Homeland Security should re-evaluate a $200 million support contract award to USIS. The GAO advised the department to consider shifting the contract to FCI Federal, a rival firm, prompting protests from USIS. If you need more information, contact Rebecca Gillion, a lawyer in our Consumer Fraud Section, at 800-898-2034 or by email at Rebecca.Gillion@beasleyallen.com.
Source: Dailyfinance.com

Wells Fargo Must Pay $203 Million Overdraft Award

The Ninth Circuit Court of Appeals has ruled that Wells Fargo Bank NA will have to pay a $203 million class action penalty for misrepresenting the way it processed debit cards in order to maximize overdraft fees. The bank’s false statements were found by the court to support the lower court’s decision. According to the panels’ opinion, “the record is replete with examples of Wells Fargo’s false and misleading statements.” The panel also said that the district court’s calculation of the restitution award was justified because it was “based on factual findings that are not clearly erroneous.” Wells Fargo’s arguments that restitution is barred by the federal Due Process Clause or Rules Enabling Act was rejected by the panel.

The ruling comes after the Ninth Circuit had rejected the penalty last January, when it found that Wells Fargo was allowed to dictate the order in which it processes customer transactions. The court found further that there was nothing fraudulent about deducting charges in a “high-to-low fashion” that depleted retirement funds more quickly, which the award had been predicated on. But the appellate court had found that Wells Fargo’s marketing materials did not make that order clear, and returned the case to the trial court.

U.S. District Judge William Alsup reinstated the entire $203 million penalty in May, finding that the bank’s marketing materials violated fraud provisions of the state’s consumer protection law. Wells Fargo argued that Judge Alsup based the award on an expert’s calculation that didn’t “quantify damages” solely from the misrepresentation claims. Wells Fargo’s argument was that Judge Alsup did not determine that the misrepresentations independently caused the $203 million in harm, but instead that he found it was not possible to separate out the misstatements’ impact.

Along with the penalty, Judge Alsup also reinstated a permanent injunction on the false marketing practices—a decision the appellate panel vacated in its latest opinion, saying it was overly broad, as Wells Fargo had previously argued. The appellate panel wrote in its opinion that the district court should enter an injunction that does not reference “false or misleading statements” about the posting order of checks or ACH transactions.

In the case, filed in 2008, Veronica Gutierrez claimed she was billed $143 on a $49 overdraft, and Erin Walker complained of being charged $506 in overdraft fees because she exceeded her balance by $120. They con-

IX. THE CORPORATE WORLD

T-Mobile Settles With Visa and MasterCard in Swipe Fee MDL

T-Mobile USA Inc. has settled its antitrust litigation against Visa Inc. and MasterCard Inc. This made T-Mobile the latest company to settle with the two companies in the antitrust litigation over interchange fees. There have been several other settlements in the case involving companies such as Orbitz LLC, Duke Energy Corp. and Cox Communications Inc. T-Mobile, Metro PCS Wireless Inc., VoiceStream Wireless Corp. and Western PCS Corp. said they had “fully settled” all claims against Visa and MasterCard. Their suit will be dismissed with prejudice.

We didn’t have the terms of the settlement at press time. T-Mobile is among those companies separately pursuing antitrust claims against Visa and MasterCard after the credit card giants reached a landmark $7.25 billion antitrust settlement over their alleged swipe fee conspiracy.

T-Mobile alleged in its complaint that default interchange fees set by Visa and MasterCard on credit card transactions that merchants must pay to banks constituted price-fixing and harmed competition. The cell phone company’s settlement came shortly after a number of companies, including Duke Energy and Orbitz, opted to settle with Visa and MasterCard as well. Other recent settlements in the case include those with companies such as Cox Communications, Live Nation Entertainment Inc., Hewlett Packard Co. and Delta Air Lines Inc. Those companies settled with the credit card giants after excluding themselves from the $7.25 billion settlement agreement, which received court approval in December. That settlement is currently before the Second Circuit on appeal taken by objectors who claim the deal paled in comparison to “the amount the credit card giants would rake in from their allegedly anti-competitive merchant rules and fees.” When the initial case was originally filed in 2005, the credit card giants and the banks that founded them were accused of conspiring to “artificially inflate interchange fees.” But by the time the landmark settlement was reached in 2012, the case’s focus had been narrowed down to the companies’ restrictions on merchants that accept their cards and the practice of setting interchange fees, which merchants pay to be able to accept credit or debit cards. Source: law360.com

BeasleyAllen.com
tended that the bank let customers believe that transactions would be posted in “chronological order,” when instead Wells Fargo was deducting money in “high-to-low order,” which helped the company levy more than $1.4 billion in overdraft charges from 2005 to 2007.

After a bench trial, Judge Alsup ruled in August 2010 that Wells Fargo had reinforced customers’ belief that deductions would be made in the order purchases were made and hid its “high-to-low practices,” ordering the $205 million in restitution. The Ninth Circuit’s January decision found that Wells Fargo was free to deduct money from customers’ accounts in a “high-to-low fashion,” which it considered a pricing decision allowed by federal law. Circuit Judges Sidney R. Thomas, M. Margaret McKeown and William A. Fletcher sat on the panel for the Ninth Circuit.

Source: Law360.com

BIO-RAD PAYS $55 MILLION TO SETTLE FCPA INVESTIGATIONS

The U.S. Securities and Exchange Commission and the U.S. Department of Justice have charged Bio-Rad Laboratories Inc., a life science research company, with foreign bribery charges as part of a $55 million settlement to resolve probes centering on $7.5 million in improper payments to Russian, Vietnamese and Thai officials to win business. The California-based company, which self-reported its misconduct and cooperated with the SEC and the Justice Department, also entered into a nonprosecution agreement to resolve potential criminal liability. The SEC’s Andrew J. Ceresney said in a statement:

Bio-Rad Laboratories failed to detect a bribery scheme and did not properly address red flags that such a scheme was underway. This enforcement action, which reflects credit for Bio-Rad’s cooperation in our investigation, reiterates the importance of all companies ensuring they have the proper internal controls.

The money represents $40.7 million in disgorgement and interest paid to the SEC and a $14.35 million criminal fine paid to the government. According to the SEC, the company made excessive payments disguised as commissions to foreign agents—who had had no employees and no capacity to perform the purported services for Bio-Rad—and who had phony Moscow addresses and off-shore bank accounts. Bio-Rad managers repeatedly ignored various red flags indicating that the Russian agents were likely bribing government officials, and they condoned an atmosphere of secrecy, according to the SEC.

The SEC said that in Vietnam and Thailand Bio-Rad employees used local intermediaries to funnel bribes through to foreign officials in exchange for business. The agency said further that Bio-Rad also acquired a company in Thailand and failed to uncover a pre-existing bribery scheme in which Thai agents received inflated commissions that were partially used for improper payments.

The company is charged with violating the Foreign Corrupt Practices Act (FCPA) and must report its FCPA compliance efforts to the SEC for a period of two years. Bio-Rad CEO Norman Schwartz said in a statement the company has taken “strong, decisive action to end the problematic practices and prevent anything like this from happening in the future. According to the statement, that includes terminating involved employees and committing substantial resources to strengthening the compliance functions. Bio-Rad netted $77.8 million in 2013 on gross revenues of $2.1 billion.

In March of 2013, the company said it had “identified conduct in certain of our overseas operations that may have violated the anti-bribery provisions of the United States Foreign Corrupt Practices Act.” At the time, it estimated the company would take a $35 million hit. The company also faced private litigation in California related to foreign bribery and its internal controls.

Source: Law360.com

X. WHISTLEBLOWER LITIGATION

BP ACCUSED OF OVERCHARGING CALIFORNIA AGENCIES FOR NATURAL GAS

In another example of BP’s insatiable greed, BP has now been accused of overcharging the State of California by as much as $500 million by selling natural gas to the state at an inflated price. According to the state, BP’s management manipulated its profit margin to exceed any reasonable amount of profit and greatly exceeded these contractual caps. The amount of overcharging to plaintiffs on special purchases was rarely less than three times greater than allowed under the contract and was often five to six times the cap.

For the past decade, California’s Department of General Services entered into exclusive contracts with BP to provide natural gas for state entities in hopes of locking in a reasonable and constant price. Instead, the state alleges, BP sold gas at inflated prices to California state agencies by as much as 10 times what it billed other bulk-purchase customers between 2004 and 2012.

The suit was originally filed by a former employee of a BP subsidiary company based in Houston. The whistle-blower, Christopher A. Schroen, was a member of a BP team that worked on the company’s natural gas supply account with the California Department of General Services during the eight-year period.

Sources: www.abcnews.go.com and www.latimes.com

SEC REPORTS RISE IN WHISTLEBLOWER TIPS IN FISCAL 2014

The U.S. Securities and Exchange Commission received more than 3,500 tips from whistle-blowers in fiscal year 2014, the largest number received since the program went into effect three years ago. The SEC announced the increase in its Nov. 17 annual report, which tracks the success of the whistle-blower program and how much it pays out each year in awards. Fiscal 2014, which ended Sept. 30, marked a record year for the SEC’s program, both in terms of the number of tips received and the amounts it awarded tipsters. It authorized awards for nine whistle-blowers, including a record payout of more
than $30 million to a whistleblower overseas who had helped alert the SEC to what it described as an ongoing fraud.

The 2010 Dodd-Frank Wall Street reform law gave the SEC the power to start a whistleblower program that lets the agency reward people who report misconduct. The tip has to lead to the collection of more than $1 million in monetary sanctions to qualify. The Bernard Madoff scandal was the inspiration for the program. The SEC received numerous tips about Madoff’s Ponzi scheme, but failed to detect the fraud for decades. According to the SEC’s report, the agency received 3,620 tips from whistleblowers in fiscal 2014, compared with 3,238 in fiscal 2013.

The SEC has fielded over 2,700 phone calls from members of the public. It received tips from every state as well as Washington, D.C. and Puerto Rico. The states where the most tips originated included California, Florida, New York and Texas. It also got tips from outside the United States, with the bulk of those coming from Britain, India, Canada, China and Australia. It should be noted that “significant” additional payments were also made to folks who had received awards in previous years. That’s because the SEC has since been able to collect more money from a variety of enforcement actions.

One whistleblower, for example, saw the award increase from an initial $50,000 to more than $385,000. At the same time, the SEC’s report also discussed some of the tips it has rejected during the fiscal year. In one extreme example, the SEC said it rejected 143 claims submitted by one individual whom the SEC accused of making “false and baseless claims” that harmed the rights of legitimate whistleblowers. The SEC said it previously had rejected another 53 claims from the same person.

Source: Claims Journal

Beasley Allen Has Put a Major Emphasis on Whistleblower Litigation

Lawyers at Beasley Allen continue to handle whistleblower lawsuits under the Federal False Claims Act and similar state laws. We have made these a top priority for the firm. I still find that lots of folks, including some lawyers, don’t fully understand whistleblower litigation. The False Claims Act allows private citizens to bring lawsuits on behalf of the United States to recover money owed to the government. The law provides citizen-plaintiffs, called “relators,” with powerful incentives—sometimes up to 30 percent of the amount recovered—to report instances of fraud against the federal government. The relator must have first-hand knowledge of the fraudulent activity.

Government healthcare programs, such as Medicare and Medicaid, are common targets of fraud. Studies have shown as much as 10 percent of Medicare and Medicaid charges are fraudulent. For example, in November a Tennessee company agreed to pay $25 million, plus interest, to the United States and State of Tennessee to resolve allegations that the company violated the False Claims Act by submitting false and upcoded home health-care billings to Medicare and Medicaid.

CareAll Management, based in Nashville, is one of Tennessee’s largest home health providers. The relator, Toney Gonzales, will receive more than $3.9 million as his share of the recovery.

Government contracts, particularly in the defense industry, are another area where fraud is prevalent. In September, several defense contractors, including BAe Systems, Inc., settled False Claims Act allegations that they provided substandard batteries used to power turrets atop Humvee vehicles. The whistleblower, who filed his suit in Minnesota, will receive a $990,000 reward for reporting the fraud.

For further information on whistleblower cases, call 800-898-2034 and ask for these lawyers who are on the team of lawyers who handle this litigation for the firm, Archie Grubb (Archie.Grubb@BeasleyAllen.com), Andrew Brashear (Andrew.Brashier@Beasley-Allen.com), Lance Gould (Lance.Gould@Beas-leyAllen.com), or Larry Golston (Larry.Golston@BeasleyAllen.com), all lawyers in our Consumer Fraud Section.

Sources: Corporate Crime Reporter and Businesswire.com

XI. PRODUCT LIABILITY UPDATE

Tire Importers Must Make Sure Their Tires Are Safe

More and more frequently, tires are being made for this country by Chinese and other foreign tire manufacturers. Unfortunately, too many of these manufacturers do not take the appropriate steps through good design and manufacturing practices to assure that their tires are safe. As equally troubling are the companies that import these foreign companies’ tires into this country. In too many instances, “importers” are not taking the appropriate steps to assure that Chinese and other foreign tire makers’ tires are safe, despite the National Highway Traffic Safety Administration standards requiring them to do so.

Under federal law, importers of tires are deemed to be “manufacturers.” As such, Federal Motor Vehicle Safety Standards (FMVSS) holds importers to the same duties and responsibilities as domestic manufacturers have. Thus, “importers” must take steps to assure that the tires they import are free of defects. Good manufacturing processes require “importers” to conduct on-site inspection(s) of a foreign tire makers’ facilities to assure that adequate testing, manufacturing, quality control and other measures are in place. Further, “importers,” once they import tires into this country should perform random sampling, testing and inspection of foreign tires before they distribute and/or sell the tires to consumers in this country.

Lawyers in our firm are seeing more cases where importers of foreign tires are completely ignoring the responsibilities imposed upon them by the Federal Government. One of our lawyers, Rick Morrison, is currently handling a case where a very large tire importer of a particular foreign manufacturer’s tire line is doing nothing to assure that the tires it sells and profits from are safe. In fact, this importer has admitted it never inspected the manufacturing plant that produces the tire line at issue in Rick’s case. In addition, the importer has not observed any FMVSS testing or required verification that the minimum tire testing is being performed. Further, the company concedes that it has taken no steps to assure that its manufacturing processes are reasonable or that the company has any quality control. Finally, this importer has never performed one post-import inspection. Neither has it done any tests on even one single tire it has sold. This conduct is particularly troubling when you consider how important it is for the tires on a vehicle to be safe.

Companies that make substantial profits from importing potentially dangerous tires need to be held responsible for failing to take basic steps to assure that the tires it brings into the country and sell are safe. Our lawyers are seeing more and more importers that make no efforts at all to assure that the products they sell to our consumers meet even minimum standards. If a company is going to import a product into country, that company should have in place procedures to assure that our consumers are not hurt by defective products and in particular tires. If you need more information on imported tires, or have any questions about tires generally, contact Rick Morrison at 800-898-2034 or by email at Rick.Morrison@beasley-allen.com.

Independent Tests Underway on Trinity Guardrails After Whistleblower Verdict

Federal highway safety regulators have ordered independent tests to be carried out on guardrail systems made by Trinity Highway Products LLC early next year after the company lost a federal whistleblower trial in October. Whistleblower Joshua Harman
sued Trinity in 2012, alleging the manufac-
turer secretly modified the design of its
ET-Plus guardrail systems nearly a decade ago
in ways that made them more cost effective
but dangerously defective. Hundreds of thou-
sands of the allegedly defective ST-Plus guard-
rail systems have been installed along
highways in just about every state.

On Oct. 20, a federal court jury in Texas
sided with Mr. Harman and ordered Trinity to
pay the U.S. $175 million in restitution. Under
the U.S. False Claims Act, that amount will
automatically triple to $525 million. Mr.
Harman alleged that Trinity defrauded the
government by altering the design of a widely
used guardrail system in 2005 after it had
already been approved by federal regulators.
The company, he said, failed to tell regulators
about the changes.

Mr. Harman claimed that the alterations
casted the guardrails to “throttle lock” upon
impact instead of crumpling upon itself to
ease the vehicle to a stop. According to court
documents, the alleged defect caused the
guardrail “to double over on itself or protrude
through the crushing vehicle” like a giant
spare. Mr. Harman said that he was person-
ally aware of people being killed in collisions
with the ET-Plus guardrail systems in Ken-
tucky Tennessee, Texas and Virginia.

The Federal Highway Administration has
stood by the guardrail systems despite the
changes, saying that they still qualified for
government reimbursement. After the trial,
the same authorities chose to put the guard-
rails back to the test. Testing will be con-
ducted at an independent lab in San Antonio
in mid-January. The results are expected by
the end of February. Should the guardrails fail
the planned tests, the federal government
will stop reimbursing states that use the
guardrails, which Trinity quit selling after the
October verdict.

Trinity strongly disputes the jury verdict
in Texas. Judge Rodney Gilstrap has ordered the
company and Mr. Harman to mediate and try
to reach a settlement. They will appear
before Duke University law professor Francis
McGovern before the end of the year
to mediate.

Sources: Law 360, Associated Press, Mediate.com

A Tragic Death In A Lawsuit Over A
Recalled Jeep

Kayla White was killed last month in a
fiery crash that occurred on a freeway in
Detroit, Mich. It was reported that the SUV
driven by Ms. White had been recalled
because of a risk of catching fire during a
rear-end collision. Ms. White was killed when
her 2003 Jeep Liberty was struck from
behind, causing it to overturn and catch fire.
She died of injuries caused by flames that
engulfed her car. An autopsy has determined
the cause of death was burns and smoke
inhalation.

Ms. White, 23, was pregnant and in her
third trimester at the time of the crash. The
SUV was part of a Chrysler Group LLC recall
campaign last year of 1.56 million 2002-07
Jeep Libertys and 1993-2004 Jeep Grand
Cherokees. The vehicles were at risk of catch-
ing fire when struck from behind. The auto-
maker issued the recall following a request
from the National Highway Traffic Safety
Administration after an investigation found
the defect was connected to 37 fatal rear-end
collisions resulting in 51 deaths—including at
least five fatal crashes involving Libertys that
resulted in seven deaths.

A search of the vehicle’s VIN number
through NHTSA reveals that Ms. White’s Jeep
had not been fitted with a trailer hitch as a
result of the recall to better protect the gas
tank during collisions. It’s unclear if the
vehicle, which had two previous owners,
already had a factory-installed hitch before
the recall. But the recall was issued while Ms.
White owned the vehicle. The SUV, accord-
ing to a Car-Fax vehicle history report, had
been involved in a rear impact with another
vehicle causing “minor to moderate damage” in 2005.

Chrysler says it has “fixed or inspected”
nearly 130,000 vehicles since August. The
company said it had more than 427,000 hitchs in stock as of this week. It expects to
have more than 550,000 by Dec. 1. Under
government pressure, Chrysler said in July
that it would be able to produce enough hitchs to complete the June 2013 recall by
mid-March 2015—for faster than the original
timetable of up to 4.7 years.

Clarence Ditlow, executive director of The
Center for Auto Safety, a Washington, D.C.,
avocacy group, said that the design of the
vehicles leaves the gas tanks vulnerable in
the event of a rear-end collision. He says that
“if you’re in the wrong place at the wrong
time, the vehicles are going to explode and
you’re very likely to burn to death.” Mr.
Ditlow also said Chrysler’s fix of adding a
hitch may not adequately protect the fuel
tank. He added:

Looking at the one photo I saw of
(White’s) Liberty, it appears that the
striking vehicle went under the
bumper and hit the fuel tank. All bets
are off if you go under the bumper and
the trailer hitch.

NHTSA opened an investigation into the
Jeeps in August 2010 at the request of the
Center for Auto Safety. The organization said
the vehicles’ gas tanks were positioned below
the rear bumper and behind the rear axle,
making them susceptible to rupturing and
spilling gasoline in a rear-end crash. Interest-
ingly, at first Chrysler opposed the recall. The
company last year issued a statement and
three-page white paper report supporting its
decision not to voluntarily recall the vehicles,
saying the company did “not agree with
NHTSA’s conclusions and does not intend to
recall the vehicles cited in the investigation.”

The automaker did move gas tanks on the
Grand Cherokee in front of the rear axle in
2005, and did the same thing with the Liberty
in 2007. Both moves were in connection to
the vehicles being redesigned with new plat-
forms, which automakers plan years in
advance. A Cadillac struck Ms. White’s Jeep
in the crash, forcing it into a 2014 Nissan
Cube, which then struck a 2015 Lincoln MKZ
as it slowed for traffic. The family of Ms.
White has filed a lawsuit against the auto-
maker. Gerald Thruswell, from the Thruswell
Law Firm, located in Southfield, MI., repre-
sents Ms. White’s family in the lawsuit.

Source: Detroitung.com

The Admissibility Of Other Similar Incident
Evidence In Alabama

Product Liability lawyers in our firm spend a
great deal of time handling claims against
automobile manufacturers. In order to be suc-
cessful in a case against an automobile manu-
facturer, the lawyer must show that their
client was injured because of a defect in the
automobile designed and sold by the autom-
obes. One of the ways a lawyer can prove that
the automobile in question was defective
is to show that the manufacturer knew that
other incidents like the one in the case were
occurring. These are called “other similar
incidents” or “OSIs” and they are extremely
important in this type litigation. I will give a
brief explanation of how OSIs are used in
litigation.

In Alabama, OSIs can be used to prove not
only the defective nature of the vehicle but
notice of the defect, negligence or the stan-
dard of care, a defendant’s ability to correct a
known defect, lack of safety for the intended
use, strength of a product and causation.
However, the party attempting to use OSIs as
evidence must lay the proper foundation by
showing that the OSI is “substantially similar”
to the accident at issue. The other incident
does not need to be exactly like the accident
at issue. As long as the other incident
occurred in reasonably similar conditions,
the evidence is admissible.

In a product liability case, the only factor
that must be the same is the type of defect.
Lawyers can use evidence of accidents involv-
ing different products as long as those prod-
tucts had the same defect. The reason for
allowing other similar incidents involving the
same defect is because, “In a product liability
action…the primary evidence of a defect is
the fact that other people exposed to the
same defect suffered injury. The greater the
number of such incidents, the greater the
likelihood that the defect, in fact, exists
rather than some anecdotal explanation.”

Source: Detroitnews.com
Another obstacle to using OSIs as evidence is finding a way around the evidence being excluded as hearsay. Most OSIs are out-of-court statements. However, the argument can be made that the evidence is not being offered to prove the truth of the matter asserted, i.e. that the accident occurred. Instead, the evidence of OSIs is being used to prove defect, notice, or danger. Also, OSIs may fall under a non-hearsay exception, such as a party opponent admission.

The method in which a lawyer introduces OSI evidence to the jury is just as important as laying the proper foundation. The best method for introducing this evidence is through an expert. If the OSI evidence is being offered for the expert to demonstrate and explain how that particular type of accident occurred, it is not required to meet the substantially similar standard. However, if the evidence is being used to show that the manufacturer had notice of the defect, it must meet the substantial similarity test.

Another effective way of presenting OSI evidence is through a witness who actually observed or was injured in another similar incident. This can be done at trial through presenting that witness’s deposition testimony or having the witness come testify at trial. However, the costs of using witnesses who experienced an OSI may outweigh the benefits. Usually, OSI witnesses are located in various parts of the country. It may be too time-consuming and expensive to identify, locate, and visit each one to take a deposition to present at trial.

OSI evidence is a necessary and indispensable part of product liability litigation. It is important for lawyers to ask for OSI evidence early in the discovery phase. Our lawyers plan out how they will meet the substantial similarity test as soon as they know OSI evidence exists. Laying the proper foundation for OSI evidence could make or break a products case, especially against automobile manufacturers. If you need additional information on this subject, contact Greg Allen, our firm’s Senior Products Liability lawyer, at 800-898-2034 or by email at Greg.Allen@beasleyallen.com. Stephanie Monplaisir, another lawyer in the Section, contributed to this part of the report and she has done considerable research on this evidentiary subject.

XII. MASS TORTS UPDATE

$18.5 MILLION VERDICT AWARDED IN BOSTON SCIENTIFIC TRANSVAGINAL MESH LAWSUIT

A jury has awarded $18.5 million to four women in a lawsuit against Boston Scientific Corp. The women alleged that Obtixy, an implanted medical device, left them with chronic pelvic pain, chronic infection and pain during intercourse. The trial was heard by a federal jury in West Virginia and is the second verdict against the company over transvaginal mesh devices.

A federal jury in Florida had returned a $26.7 million verdict one week earlier against Boston Scientific for providing insufficient warnings about the risks of its Pinnacle, a pelvic organ prolapse device. Boston Scientific moved too quickly in bringing this product to market. The company also used inappropriate materials, while at the same time, failing to warn doctors and patients about the risks involved. Each of the women will receive $1 million in punitive damages in the verdict.

The multidistrict litigation (MDL) bellwether case tried in Miami also involved four women suffering injury after having the pelvic mesh implanted. This was the first federal bellwether trial against Boston Scientific, one of seven manufacturers of pelvic mesh that face about 60,000 lawsuits across the country.

As we have reported, transvaginal mesh devices are surgically implanted to treat Pelvic Organ Prolapse (POP) and/or Stress Urinary Incontinence (SUI). For more information on this subject, contact Leigh O’Dell or Chad Cook, lawyers in our firm’s Mass Torts Section, at 800-898-2034 or by email at Leigh.ODell@beasleyallen.com or Chad.Cook@beasleyallen.com.

Source: LawyersandSettlements.com

SETTLEMENT AGREED TO IN DEFECTIVE HIP IMPLANT CASE

Howmedica Osteonics Corporation / Stryker Orthopaedics have agreed to a global settlement estimated to be over $1 billion to resolve thousands of claims related to injuries suffered as the result of defective hip implant parts. The settlement was overseen by Judge Brian R. Martinotti of the Superior Court of New Jersey, along with Judge Donovan W. Frank who presides in the U.S. District of Minnesota. Howmedica/Stryker was facing thousands of lawsuits in the United States related to its Rejuvenate and ABG II Modular Hip Implant, which it recalled in July 2012 amid reports of unusually high rates of device failure.

Navan Ward, a lawyer in our firm’s Mass Torts Section, has been heavily involved in the cases against Howmedica / Stryker Orthopaedics in the New Jersey consolidated hip implant litigation which is in front of Judge Martinotti. Navan was involved in the negotiations of this settlement, along with other lawyers on the Plaintiffs Steering Committee (PSC) in the Multidistrict Litigation (MDL).

Since the Rejuvenate and ABG II metal hip devices were pulled from the market in July 2012, lawyers in our firm, along with several other law firms around the country, have worked hard to expose the problems with these products, as well as the similar problems seen with several of the other failed metal-on-metal hip devices made by other manufacturers. Due to the highly invasive nature of these particular hip devices, the revision surgeries suffered by many of our clients have been catastrophic in nature, leading to permanent damage to their hip and femur areas.

Lawyers at Beasley Allen are looking forward to resolving our clients’ Rejuvenate and ABG II claims as soon as possible in order to provide the clients the much needed compensation they deserve. Resolution of the claims against Howmedica/Stryker was a direct result of the hard work of our lawyers, along with many lawyers around the country, who pushed this litigation on multiple fronts. Holding Howmedica/Stryker accountable for manufacturing these devices was the result of their cooperative hard work.

An estimated 20,000 people were implanted in the U.S. with the Rejuvenate and ABG II hip products. Since these devices were the “stem” part of the hip components, revision surgeries required the stem of the component to be removed from the femur. That results in further hip/femur instability. Compared to most of the other metal-on-metal hip failures, the post revision damages have typically been more severe with these hips. Patients are reporting problems within as few as two years after receiving these hip implants. These hip implants have shown that the metal-on-metal friction between the stem and neck of the components cause metal debris to accumulate, resulting in a condition called metallosis, or metal poisoning. Metallosis is caused by metal shavings from the devices entering the bloodstream.

Navan and all of the lawyers working on this litigation and the settlement did a tremendous job for the persons who will get their cases resolved and who will benefit greatly from the settlement. If you need more information on this settlement, contact Navan Ward, who is in our firm’s Mass Torts Section, at 800-898-2034 or by email at Navan.Ward@beasleyallen.com.
THE SIDE EFFECTS ASSOCIATED WITH THE USE OF ANTIBIOTIC

Fluoroquinolones are antibiotics, such as Levaquin and Cipro, widely prescribed to treat a variety of infections. These drugs are prescribed millions of times each year and have been linked to peripheral neuropathy, a potentially irreversible form of nerve damage that can be severely painful and disabling. Studies have shown that patients who take these antibiotics are at twice the risk of developing peripheral neuropathy.

Although peripheral neuropathy has been listed as a side effect in the label since 2004, a 2013 FDA review revealed that the existing warnings were inadequate. The FDA’s newest alert requires that all drugs labels be updated to better emphasize the risk for peripheral neuropathy. This is not the first serious warning for these drugs. In 2008, the FDA required a black box warning to be added alerting patients of the risk of tendon damage and rupture. If you would like more information, please contact Melissa Prickett, a lawyer in our firm’s Mass Torts Section, at 800-898-2034 or by email at Melissa.Prickett@beasleyallen.com.

DO STATINS BENEFIT HEALTHY INDIVIDUALS?

Our firm’s Mass Torts Section is handling cases involving Pfizer’s statin medication Lipitor. The complaints allege that the manufacturer failed to warn about the risk of diabetes after several signals of the risk were known in the clinical trials. Statins are meant to reduce the risk of cardiovascular events. Ironically, one group of patients at a much higher risk of cardiovascular events is diabetics. All statin labels now say that a blood glucose measure called Hb1AC may be affected while on the drug. So there is still no warning about diabetes.

The American College of Cardiology (ACC) and the American Heart Association (AHA) released new treatment guidelines in 2013 which have led to some controversy according to Public Citizen, the consumer group in Washington, D.C. A recent study that compared the 2002 guidelines would increase the number of U.S. adults aged 40-75 who are eligible for statin therapy from 43 million to 56 million. This increase would be driven largely by use for primary prevention (in individuals without heart disease), where the evidence for benefit is not well established. Public Citizen’s Health Research Group agrees with the new guidelines when statins are used for secondary prevention. We have seen in the discovery in the Lipitor litigation that the medical literature does not necessarily support healthy females taking Lipitor for primary prevention. Neither does the drug extend the life of a female taking Lipitor for primary prevention. Public Citizen poses the question: why else would an individual be taking a drug every day for the rest of their lives?

Source: Public Citizen

$6.5 MILLION VERDICT RETURNED AGAINST ALLERGAN IN OFF-LABEL BOTOX SUIT

A federal court jury in Vermont returned a $6.5 million verdict in favor of the parents of a 6-year-old boy with cerebral palsy who suffered seizures after receiving off-label Botox treatment for his mild muscle spasticity. The jury determined that the defendant, Allergan Inc., negligently promoted the off-label use of Botox to treat muscle spasticity in children at unsafe high doses and failed to sufficiently provide the little boy’s parents and his health care providers with information about the drug’s known risks and dangers, such as seizures, side effects and harmful immune responses.

The jury did find, however, that Allergan had not violated the Vermont Consumer Fraud Act by deceptively promoting Botox for its off-label use in children with muscle spasticity. The jury awarded the Drakes $2.5 million in compensatory damages and $4 million in punitive damages. The trial strategy for the plaintiffs was to put the CEO of Allergan and the company’s ethics on trial in this case.

The parents, Kevin and Lori Drake, filed suit in 2013 against the pharmaceutical company after their son, who had mild spasticity in his legs, began having seizure-like episodes requiring hospitalization after a Vermont doctor injected him with Botox. The Drakes said:

Prior to his Botox injections, J.D. could walk, feed himself, brush his teeth and speak. He had no history of seizures.

Dr. Scott Benjamin injected almost 7 u/kg of Botox into the boy’s calves in April 2010. Two days after the injections, the child’s complained of pain and his walking became more and more unstable. The doctor injected him again in May with almost twice as much Botox. The next day, the boy began vomiting and had trouble breathing and speaking, in addition to having seizure-like symptoms. He was rushed to the emergency room and diagnosed with an allergic reaction to Botox.

Since then, the boy has continued to have seizures and has developed a chronic, life-threatening immune response. The maximum safe dose for Botox, which has never been approved by the U.S. Food and Drug Administration to treat pediatric spasticity, is 8 u/kg. The FDA denied to approve the drug for that indication because Allergan couldn’t show it was effective at safe doses.

Allergan has continued to promote the off-label use of Botox to treat children. The majority of Botox sales are for off-label indications. It was alleged in the complaint:

The FDA made clear to Allergan in 2009 that it was free to warn physicians about the maximum safe dose for children, but to date Allergan has failed to make that information public. Instead of warning, Allergan continues to sponsor ‘medical education’ activities and dosing schedules that encourage physicians to use unsafe doses higher than 8 u/kg.

Allergan pled guilty to off-label promotion of, among other indications, pediatric spasticity, and agreed to pay $600 million in civil and criminal penalties to the United States government in 2010. Allergan never disclosed information about side effects or seizures in warnings, promotional or marketing materials. Instead, it had a corporate plan to illegally promote the off-label use of Botox by physicians. In addition to promoting Botox at doctors’ conferences, Allergan established and funded two organizations for the express purpose of promoting off-label use of Botox. Allergan has publicly stated that Botox is a miracle drug and has often compared it to penicillin. Side effects are rarely mentioned and consistently understated.

Source: Law360.com

FDA WARNS OF CANCER RISK WITH UTERINE FIBROID SURGERY TOOL

We have written previously on the cancer risks associated with the use of laparoscopic power morcellators. Now the FDA, in a guidance update, says that this surgical device may spread cancer and shouldn’t be used in gynecological surgery that involves cancer or fibroids. The communique is a sharp warning against the use of morcellators, gynecological tools used to perform hysterectomy or uterine fibroid removal. The FDA said that uterine tissue may contain unsuspected cancer and that using the morcellators may spread the cancer and decrease long-term patient survival. Dr. William Maisel, FDA’s deputy director for science, in a statement, said:

The FDA strongly encourages doctors to inform their patients of the risk of spreading unsuspected cancer from the use of these devices in fibroid surgery and discuss the benefits and risks associated with all treatment options.

The FDA warned against the use of such tools earlier this year, but its latest warning was more urgent. The controversy over the tool’s danger prompted Johnson & Johnson unit Ethicon Endo-Surgery Inc. to execute a worldwide recall of its Morcellex brand.
devices in July. Ethicon had suspended sales of the devices in April.

As we wrote previously, laparoscopic power morcellation, one technique used to treat non-cancerous fibroids as well as in some hysterectomy procedures, uses a device to break targeted tissue into fragments that can be removed through an incision in the stomach. Of the 500,000 hysterectomies performed every year, about 11 percent are done using this method, according to the FDA. Although uterine fibroids are common and usually benign, about 1 in 350 women undergoing a hysterectomy or fibroid removal have an unsuspected uterine sarcoma, a type of uterine cancer, according to the agency said. If you need more information on this subject, contact Melissa Prickett at 800-898-2054 or by email at Melissa.Prickett@beasleyallen.com.

Source: Law360.com

**REGLAN FAILURE-TO-WARN CLAIMS ARE NOT PREEMPTED**

A decision by the New Jersey Appellate Division has preserved patients’ claims that manufacturers of generic Reglan failed to adequately warn about neurological risks associated with Reglan in use. The court said the companies had dragged their feet in updating the digestion medication’s labeling. The court ruled last month that federal law doesn’t preempt the claims.

The three-judge panel dealt a blow to generics makers including Pliva Inc., Actavis Elizabeth LLC, Teva Pharmaceuticals USA Inc. and Watson Laboratories Inc., which had argued that lower court decisions ran afoul of Hatch-Waxman Act amendments to the Federal Food, Drug and Cosmetic Act (FDCA) and that the responsibility of generic-drug companies to ensure their labeling matches a brand-name product is exclusively federal in nature. In 2012, Judge Carol E. Higbee, then sitting in Atlantic County Superior Court, found that consumers could proceed with claims against generics manufacturers that allegedly failed to timely change their labeling for metoclopramide products to match the brand-name product’s labeling. Judge Higbee, who dismissed other claims against the companies, reached a similar conclusion in 2013 following renewed motions for dismissal or summary judgment. Those decisions are in accord with the U.S. Supreme Court’s 2011 ruling in *Pliva Inc. v. Mensing*, according to the appellate panel.

As Judge Higbee explained in her 2012 decision, the high court in Mensing effectively held that “generic manufacturers who comply with the U.S. Food & Drug Administration (FDA) requirement that they mimic brand-name manufacturers’ warning labels cannot be held liable under state tort law for failure to warn.” Judge Higbee also said generics manufacturers that failed to update their labels for metoclopramide tablets following the FDA-approved change to the brand-name label were excluded from federal preemption, based on an absence of “sameness.” The court’s opinion stated:

*The court found that plaintiffs were precluded from claiming that the generic defendants should have employed “different or stronger” warnings than those approved for Reglan. However, the trial court correctly determined that plaintiffs’ claims based on the generic defendants’ failure to update their warnings to conform to changes made to the brand-name warnings are not preempted by federal law.*

The case hinges on a warning that the FDA approved for Reglan’s label in 2004, advising that therapy shouldn’t exceed 12 weeks, as well as a related “black box warning” that the regulator approved in 2009. The Plaintiffs have accused the generics companies of improper delay in updating their labeling and failing to adequately warn about risks from the drug such as tardive dyskinesia, a neurological disorder. The court’s opinion said:

*The court correctly found that allowing plaintiffs to assert these claims would not frustrate any of the purposes or objectivities that Congress sought to achieve in the Hatch-Waxman amendments to the FDCA. Moreover, plaintiffs are not pursuing state-law claims based on an alleged violation of federal law. They are pursuing state-law products liability claims based on the generic defendants’ alleged failure to provide adequate warnings concerning their products.*

The panel relied on the Sixth Circuit’s in *Fulgenzi v. Pliva*, a decision issued last year. That court found that the FDA didn’t preempt a Plaintiff’s state-law claim against Pliva for allegedly failing to provide an adequate warning about tardive dyskinesia to the extent that the claim concerned the warning approved for the Reglan label in 2004 and its absence from the generic version, according to Wednesday’s opinion. The claim wasn’t premised on a violation of the FDCA, but instead an independent duty under state law, the opinion said. The panel also rejected the generics manufacturers’ arguments that the claims should be tossed based on the New Jersey Supreme Court’s 2012 decision in *Cornett v. Johnson & Johnson*.

*Source: Law360.com*

**SEcurities FraUD Is Back In The Supreme Court**

During its last term, the U.S. Supreme Court dealt with an issue relating to individual reliance in securities class actions in *Halliburton Co. v. Erica P. John Fund Inc.* This term, the question is narrower, but could be just as important. The case, *Omnicare, Inc. v. Laborers District Council Construction Industry Pension Fund*, presents the Court with a question regarding the falsity of material facts in a registration statement for a public offering under Section 11 of the 1933 Act. It is well understood that there is no general scienter requirement under Section 11, in contrast to a claim proceeding under Rule 10b-5. Section 11 claims are more akin to a claim for unjust enrichment rather than the losses of investors incurred in reliance upon false statements (i.e., the company unfairly profited from a false statement rather than the investor lost because of a false statement).

Section 11 of the 1933 Act allows a civil claim when a registration statement for a securities offering “contain[s] an untrue statement of a material fact or omit[s] to state a material fact required to be stated therein or necessary to make the statements therein not misleading.” 15 U.S.C. § 77k(a). Here, the question is whether a company’s statement of opinion or belief in a registration statement constitutes an “untrue statement of material fact” when it turns out that the opinion or belief is false. Bear in mind that the Court has already held that an opinion can be a fact when it is the sort of opinion that can be presumed to have a reasonable basis in fact, such as when a board of directors tells its stockholders that the price offered in a merger is high or attractive or fair. That opinion, expressed by the board of directors, should reflect the board’s investigation into the facts underlying the opinion. As for this particular case, Omnicare made the following statement in its 2004 Form 10-K:

*We believe our contract arrangements with other health care providers, our pharmaceutical suppliers and our pharmacy practices are in compliance with applicable federal and state laws. These laws may, however, be interpreted in the future in a manner inconsistent with our interpretation and application.*

As it turns out, and as has come to light through other lawsuits and settlements with
government agencies. Omnicare was participating in an illegal kickback scheme with Johnson & Johnson involving Risperdal. Although it has neither admitted nor denied guilt, Omnicare has already agreed to pay government agencies almost $200 million to settle those claims.

The question, then, hinges on whether the Plaintiffs in this lawsuit must allege subjective knowledge that the above statement was false, or whether it is sufficient to allege that the statement was objectively false. Assuming the allegations in the complaint are true, the objective falsity of the statement is settled. The Plaintiffs did not, however, allege that Omnicare was aware that the statement was false when made. The trial court granted Omnicare’s motion to dismiss, but the Sixth Circuit reversed, finding instead that scienter is not required under Section 11 of the 1933 Act and thus is not required for an opinion of the sort that should be based on fact.

During oral argument, held Nov. 3, 2014, Omnicare did not appear to find any support among the justices for its position that allegations of subjective knowledge of falsity are required. As one example of the uphill battle faced by Omnicare, and likely the most memorable passage of the day, Chief Justice John Roberts as to whether an issuer could avoid liability simply by adding “in our opinion” at the beginning of any statement of fact. Kannon Shanmugam, representing Omnicare, tried to strike a distinction between statements of opinion intended to express uncertainty versus those intended to express a judgment. Justice Breyer followed up:

“But suppose it is actually disputed… A museum expert on an archaeological mission says, “It is my opinion that those bones in that mountain are of a Diplodocus and not a Trisopterus.” Now wouldn’t you have thought that at least he’d looked into it, that at least he’d seen the bones? You see, it’s absolutely open—it is a matter of opinion—but there are some things implied. If you had learned later that he’d been in a bar all night and had never even seen or heard one word about what the bones were like, wouldn’t you think he had issued a misrepresentation?”

Each Justice who joined in the questioning seemed to focus on the idea that an opinion that summarizes objective facts must have a reasonable basis in fact even if believed in all good faith. If the oral argument provides any indication, the Sixth Circuit is likely to be affirmed and the Plaintiffs will be allowed to proceed. It is unlikely that the Court will create an additional pleading requirement to address subjective knowledge of falsity under Section 11 where scienter is not currently required. If you need more information, contact Rebecca Gilliland, a lawyer in our Consumer Fraud Section, at 800-898-2034 or by email at Rebecca.Gilliland@beasleyallen.com.

Source: SCOTUSBlog

XIV. EMPLOYMENT AND FLSA LITIGATION

JURY AWARDS $185 MILLION TO EX-AUTOZONE WORKER DEMOTED AFTER PREGNANCY

A jury awarded $185 million in punitive damages last month in a lawsuit against retailer AutoZone Stores Inc. It was alleged in the lawsuit that a female employee who complained about gender and pregnancy discrimination was unlawfully demoted and fired. The plaintiff, Rosario Juarez, said she was demoted from a management position at a San Diego County store in 2006 after she became pregnant. The company fired Ms. Juarez after she filed a lawsuit that challenged her demotion. The $185 million in punitive damages awarded was in addition to $872,000 in compensatory damages in the last phase of the trial. AutoZone says it will appeal.

Ms. Juarez said the company started treating her differently after she told a district manager in 2005 that she had become pregnant. She said AutoZone started complaining about performance shortly afterward. Subsequently, the company demoted her. AutoZone’s lawyers argued at trial that Ms. Juarez was fired for misplacing $400 in cash. But a store loss prevention officer who led the investigation for AutoZone, testified at trial that she never suspected Ms. Juarez of wrongdoing and thought the company was targeting her. AutoZone sells auto and light truck parts and accessories through more than 5,000 stores in the United States, Mexico and Brazil. As of Aug. 30, it had 539 stores in California. The company reported $9.5 billion in revenue in the 12 months ended Aug. 30.

Source: Los Angeles Times

$10.9 MILLION AWARDED TO EXOTIC DANCERS IN NEW YORK WAGE SUIT

A New York federal judge awarded nearly $11 million last month to a class of “exotic dancers” who “worked” at Rick’s Cabaret. They alleged that club operator Peregrine Enterprises Inc. incorrectly classified them as independent contractors and failed to pay minimum wages. U.S. District Judge Paul A. Engelmayer found in favor of the dancers on several issues denying a motion to decertify the class. The judge awarded $10.9 million in damages against Peregrine for violations of the Fair Labor Standards Act (FLSA) and New York Labor Law (NYLL). The court had previously ruled, in September 2013, that the New York exotic dancers in the case were Peregrine’s employees as opposed to independent contractors. He found in November 2013 that the club operator violated the New York law in his ruling. Judge Engelmayer said in his ruling:

Given the court’s prior determination that the dancers were employees entitled to be paid a minimum wage, and given that plaintiffs have satisfied their request for summary judgment to days in which the club’s records unambiguously and reliably show that a dancer worked defined hours, there is no legal or factual basis for opposing this motion for partial summary judgment [on damages].

The court also determined that “performance fees” paid to the dancers by customers don’t qualify as an “offset” that would have freed the club operator of its obligation under state law to pay minimum wage. Judge Engelmayer had previously reached a similar conclusion with respect to the FLSA.

The lawsuit was filed in March 2009. In December of that year, the court certified the case as an FLSA collective action. In December 2010, the court certified a state law class comprised of entertainers who worked in New York. While the court’s latest ruling resolved several of the remaining issues in the case, Judge Engelmayer left a handful of questions open for a trial, including whether Peregrine parent companies Cabaret International Inc. and RCI Entertainment (New York) Inc. are joint employers with Peregrine and therefore also liable for the damages. The trial would also consider whether the dancers are entitled to additional damages on some of their FLSA and NYLL claims, and whether the employer’s violations were willful. Judge Engelmayer is expected to set an early trial date.

Source: Law360.com

MARYLAND FIRM TO PAY $415,000 TO SETTLE EEOC DISCRIMINATION SUIT

A Maryland-based environmental remediation services contractor will pay $415,000 and provide comprehensive equitable relief to settle a U.S. Equal Employment Opportunity Commission (EEOC) race, gender discrimination and harassment lawsuit. The EEOC had charged that ACM Services, located in Rockville, Md., engaged in a pattern or practice of race and sex discrimination in hiring and also harassed two women based on sex, race and national origin and retaliated against them.
It was alleged in the suit filed by the EEOC that ACM Services exclusively used word-of-mouth recruitment practices for field laborer positions with the intent and effect of failing to recruit black job applicants. The EEOC said that ACM Services also refused to hire black job applicants, or female applicants for field laborer positions.

The EEOC also charged that ACM Services subjected two Hispanic female employees to harassment based on sex, national origin, and race and engaged in unlawful retaliation against them, which resulted in the termination of their jobs, when they opposed the harassment and discrimination. The EEOC said such alleged conduct violates Title VII of the Civil Rights Act of 1964, which prohibits discrimination and harassment based on race, sex and national origin. Title VII also forbids employers from retaliating against individuals who oppose discrimination.

The EEOC said it filed its lawsuit in U.S. District Court for the District of Maryland, after first attempting to reach a pre-litigation settlement through its conciliation process. Under the settlement, ACM Services will provide $305,000 in monetary relief for a class of persons not hired or recruited because of race or sex and $110,000 in monetary relief to the two Hispanic female employees.

Additionally, the three-year consent decree resolving the lawsuit enjoins ACM Services from engaging in any future race, sex, or national origin discrimination or retaliation, and provides substantial non-monetary relief, the EEOC said. The EEOC said ACM Services has agreed to a number of measures, including:

• implement numerical goals for hiring qualified black applicants and female applicants, including both permanent and temporary or contingent workers, for field laborer positions;
• create a job opportunities advertisement program to recruit a diverse pool of qualified applicants for field laborer positions and refrain from using word-of-mouth recruiting as its sole method for seeking job applicants;
• conduct extensive self-assessment of hiring and work assignment practices to ensure non-discrimination and compliance with the terms of the consent decree;
• pay for advertising of the class claims process; and
• submit reports to the EEOC concerning numerical hiring goals and other consent decree compliance issues.

Source: Insurance Journal

XV. PREMISES LIABILITY UPDATE

SETTLEMENT REACHED IN ACCIDENTAL SHOOTING CASE IN NEW JERSEY

A lawsuit over an accidental shooting at a Wild West theme park in New Jersey that left an actor partially paralyzed has been settled. The settlement of nearly $2 million will end the litigation. The actor, Scott Harris, was shot in the head in 2006 during a staged gunfight at Wild West City in Byram, N.J.

Live ammunition was mistakenly used in the scene. A juvenile who fired the shot and another man who brought the bullets to the park have served probatoryary sentences. Arizona Territorial Rangers, a group of western re-enactors who performed at the theme park, will pay $950,000. Cheyenne Corporation, which owns the site where the park is located, will pay $1 million.

Source: The Insurance Journal and The New Jersey Herald

A REPORT ON A DEADLY CHEMICAL LEAK AT A SITE IN TEXAS

The U.S. Chemical Safety Board, the federal agency that investigates chemical accidents, has sent a team to a Houston-area industrial plant where a chemical leak killed four people. The 7-member team was sent to the DuPont plant in La Porte where the leak of methyl mercaptan killed four employees and hospitalized another. The pre-dawn leak occurred on Saturday Nov. 15. It was contained in about two hours. At press time, the cause of the leak had not been determined.

The chemical was used at the plant to create insecticides and fungicides, according to DuPont. The company says it is cooperating with local, state and federal officials in investigating the incident.

Two workers, who were brothers, were killed. They worked at the DuPont Chemical Refinery’s crop unit. Reportedly, one brother went to the aid of the other and both were overcome by toxic fumes. Also killed were a supervisor with 40 years’ experience and an employee, who had only been on the job at the plant for eight months. A fifth employee was injured and taken to the hospital, but released after treatment for inhalation of toxic fumes.

The methyl mercaptan, began leaking from a valve around 4 a.m. in a unit at the plant in La Porte, which is located about 20 miles east of Houston. According to plant officials, the release was contained by 6 a.m. Methyl mercaptan was used at the plant to create crop protection products such as insecticides and fungicides, according to DuPont. There will be litigation arising from this incident.


OSHA INVESTIGATES FATAL FRACKING ACCIDENT IN COLORADO

The Occupational Safety and Health Administration is investigating an accident that occurred last month at a hydraulic fracturing site in northern Colorado. One worker was killed and two others seriously injured. Investigators are looking at the cause of the accident, oversight, safety measures and operating procedures. OSHA Area Director Herb Gibson says the agency is also looking at ways to prevent such accidents. The investigation by OSHA is expected to take a month or more. We didn’t have any more information relating to this matter at press time.

Source: OSHA

XVI. WORKPLACE HAZARDS

ALABAMA CHICKEN PRODUCER WAYNE FARMS FINED FOR LABOR VIOLATIONS

Chicken producer Wayne Farms is facing fines totaling $102,600 for labor violations at a processing plant in Jack, Ala. Workers at the plant were exposed to safety and musculoskeletal hazards and suffered serious injuries, according to the Occupational Safety and Health Administration (OSHA). Employees at the plant are also at a higher risk for developing carpal tunnel syndrome and other disorders that affect the nerves, muscles and tendons, according to the citation.

Plant workers were also exposed to dangerous machinery and fall hazards, according to OSHA. A complaint by the Southern Poverty Law Center (SPLC) launched the investigation. The citation comes on the heels of a joint letter the U.S. Department of Agriculture and Labor sent in August to all poultry plants regarding their responsibility to prevent musculoskeletal disorders. Joseph Roesler, OSHA’s area director in Mobile, said: “Wayne Farms effectively concealed the extent to which these poultry workers plant were suffering work-related injuries and illnesses.”

Wayne Farms was cited for a repeat violation, with a penalty of $38,000, for failing to protect workers from a moving part of a machine during servicing and maintenance work, according to the complaint. In this instance, the employer lacked lockout and
TENNESSEE CONSTRUCTION WORKERS INJURED WHEN WALL COLLAPSES

Three workers in Bedford County, Tenn., were injured when a wall from a building under construction collapsed on them. The incident happened on Nov. 1 during the morning hours. The wall was part of a new football fieldhouse being built at Shelbyville Central High School. Officials said that wooden roof trusses were being placed atop the structure by a crane when the wall fell. According to reports, a blast of wind appeared to topple the wall. At press time, this accident was still under investigation. Several construction experts who visited the scene said “shoddy methods” used by a subcontractor who built the block walls may have led to the collapse. Kent Holt of Lee Adcock Construction said the footings, concrete floor and the block walls were constructed last year by another contractor. He said that it “looks as if the block wasn’t put in according to plans.” As a result, he added that “the walls didn’t support the weight of the trusses.”

Source: Shelbyville Times-Gazette

OSHA FINES TWO ARKANSAS FIRMS FOR SAFETY VIOLATIONS

Two Arkansas-based companies have been cited by the U.S. Department of Labor’s Occupational Safety and Health Administration (OSHA) for workplace safety violations. The combined penalties proposed by OSHA for the two companies total $123,100. Custom design and packaging manufacturer AGE Industries Ltd., located in Conway, was cited for 14 safety violations, including exposing workers to amputation and electric shock hazards. The proposed penalty for that is $78,500. OSHA’s September inspection of the Conway facility uncovered one repeat, seven serious and six other safety violations. The repeat violation, with a penalty of $38,500, was cited for exposing workers to amputation hazards as they worked near the manual cutting machine without required machine guards. Similar violations were cited in December 2011.

Seven serious violations, with a $38,900 penalty, were cited for failure to provide correct machine guards for tube saws and glue machines and to contain live electrical wiring on an automatic pallet-wrapping machine. Six other violations, with a penalty of $1,100, were cited for improper record keeping, housekeeping and additional electrical violations. With U.S. facilities in Arkansas and Texas, and another facility in Mexico, AGE Industries builds corrugated boxes, fiber tubes and packaging supplies.

Little Rock-based Good Old Days Foods Inc. was cited for 14 violations, including exposing workers to amputation and electric shock hazards due to a lack of machine guarding and lockout/tagout procedures. The company was hit with a $47,600 penalty. Two repeat violations, with a penalty of $14,000, were cited for worker exposure to housekeeping hazards, including ice accumulation on a freezer ceiling and floor holes on an expanded metal platform.

Similar violations were cited in January 2012 at the same facility. Nine serious violations, with a $33,600 penalty, were cited for worker exposure to possible amputation hazards for failure to guard rotating machinery parts and implement lockout/tagout procedures to protect workers who service or maintain machines. The company also exposed workers to electric shock hazards as they worked on machines with exposed wiring. Good Old Days Foods, based in Little Rock, specializes in unbaked frozen bread and pastry products.

Source: OSHA

OSHA CITES MISSISSIPPI DOLLAR GENERAL STORE

A Dollar General store in south Mississippi has been cited by the Occupational Safety and Health Administration (OSHA) for safety hazards. OSHA said in a news release this is the second time the Brooklyn, Miss., store has been cited for the same hazards. It was cited for the same violations in 2010. Brooklyn is located on U.S. Highway 49 between Hattiesburg and Wiggins. Since I attended a junior college in that area, I am familiar with the town. OSHA has proposed penalties of $51,700. OSHA says the store had failed to ensure that exit routes, fire extinguishers and electrical access panels were not blocked by merchandise, display racks or supplies. Additionally, the employer failed to inspect portable fire extinguishers annually. Dollar General, headquartered in Goodlettsville, Tenn., is a discount retailer that employs more than 90,000 workers nationwide.

Source: Claims Journal

AUTO PARTS MANUFACTURER FACES FINE FOR CHEMICAL EMISSIONS VIOLATION

A Honda car parts manufacturer located in North Alabama is facing a $40,000 fine from the state for allegedly committing chemical emissions violations. The Alabama Department of Environmental Management issued a consent order on Nov. 18 that stated that Rainsville Technology did not follow ADEM regulations and emitted more than 95 tons of volatile organic compounds per year from May 2013 to April 2014 (97.07 tons); from June 2013 to May 2014 (95.14 tons); and, from July 2013 to June 2014 (96.24 tons).

The Environmental Protection Agency defines volatile organic compounds as a “variety of chemicals, some of which may have short- and long-term adverse health effects.” Organic chemicals are used in paints, varnishes, wax. It can also be found in many cleaning, disinfecting, cosmetic, degrading and hobby products. Health effects of volatile organic chemical compounds include eye, nose, and throat irritation; headaches, loss of coordination, nausea; damage to liver, kidney, and central nervous system. Some organics can cause cancer in animals; some are suspected or known to cause cancer in humans.

Source: AL.com
According to ADEM, the firm “gained economic benefit,” from delayed compliance since it did not incur natural gas costs and other expenses for operating its Regenerative Thermal Oxidizer, a combustion device used to reduce the emissions. There have been no other ADEM Air Division violations documented at the facility within the last five years. According to its website, Rainsville Technology employs 400 employees and manufactures a variety of parts for cars, vans, SUVs, and trucks.

Source: The Birmingham News

XVII.
TRANSPORTATION

SAFETY CONCERNS PROMPT NTSB TO UPHOLD FAA REGULATION OF DRONES

In light of increasing safety concerns about drones flying near airplanes and helicopters or close to airports without permission, in November the National Transportation Safety Board (NTSB) determined it is within the government’s ability to regulate drones. The decision overturns a previous judge’s ruling that aviation regulations should not apply to small unmanned aircraft.

The NTSB decision provides support for the Federal Aviation Administration (FAA), which has called for help in responding to a surge in drone flights. The FAA tightly restricts the use of drones, which could cause a crash if one collided with a plane or was sucked into an engine. Small drones usually aren’t visible on radar to air traffic controllers, particularly if they’re made of plastic or other composites.

Potentially dangerous drone activity is reported to the FAA by airline pilots, as well as other pilots, airport officials and local authorities. The government says it is getting near-daily reports—and sometimes two or three reports a day—about drones flying in dangerous proximity to aircraft or in unauthorized locations.

A drone industry trade group spokesman said more than 1 million drones have been sold worldwide in the past few years. Although the FAA requires that all drone operators receive a certificate of authorization from the agency prior to flying the unmanned aircraft, many ignore the regulations. Some misuse the drones because they don’t understand the safety risks, or just don’t care.

The NTSB decision preempts a March 6 ruling that threw out the FAA’s $10,000 fine against Raphael Pirker, a Swiss citizen who flew a small plane over the University of Virginia to film a promotional video without the agency’s permission. The Pirker case will go back to the original judge to rule whether the flight violated FAA regulations. It’s anticipated that there may be more appeals before the issue is settled.

Proposed regulations governing commercial drones weighing less than 55 pounds are expected from the FAA before the end of the year. Congress in 2012 ordered the FAA to craft rules to safely integrate drones into U.S. skies by 2015, but the agency hopes to phase them into the system over a longer period, FAA Administrator Michael Huerta told a Senate hearing Jan. 15.

Drones are forecast to create 100,000 jobs and $82 billion in economic impact in the first 10 years after the FAA allows flights, according to a forecast by the Association for Unmanned Vehicle Systems International, an Arlington, Va.-based trade group. I am afraid that the safety risks associated with the use of drones may prove to create some severe problems.

Source: Insurance Journal

XVIII.
HEALTHCARE

ISSUES

FDA BACKS TOUGHER WARNINGS FOR NEXIUM AND PRILOSCE

The U.S. Food and Drug Administration (FDA) will require stronger warnings regarding risks associated with Nexium, Prilosec and other popular heartburn drugs. The FDA concluded that doctors and patients should know more about potential drug interactions and side effects. The agency’s action, disclosed Nov. 7, was a response to a 2011 petition from Public Citizen. The consumer advocacy group sued the FDA in April seeking to force regulators to address the petition’s concerns. Although Public Citizen’s petition was granted in several respects, the FDA rejected an important request in the petition Public Citizen wanted black box warnings. Instead, the FDA concludes that standard labeling sections relating to new risks are adequate. Public Citizen, in a statement, had this to say:

The FDA’s actions are important and will make the products safer but also took far too long. It is unconscionable that the agency took more than three years to respond. The evidence for all of the warnings now granted was available more than three years ago, but the agency unreasonably delayed, endangering millions of patients.

In addition to Nexium and Prilosec, the FDA’s action has implications for other so-called proton pump inhibitors (PPIs), including Protonix, Pravacid, Dewisol, Zegerid, Aciphex, as well as any generic versions of those products. PPIs are widely used—Nexium alone racked up sales of roughly $6 billion last year—and are sold in different forms both over the counter and by prescription.

One of the new warnings addresses possible interactions between PPIs and cancer drug methotrexate that can cause the latter product to remain in patients longer than usual and have a toxic effect. FDA officials wrote:

We agree that the potential drug-drug interaction between methotrexate and PPI drugs poses a safety risk and should be reflected in the labeling of all PPI products.

The FDA said further that labels for prescription products have been updated and will be revised in the future for OTC pills. Separately, the FDA said labels have been updated to reflect drug interaction risks between heart attack drug Plavix, or clopidogrel, and several PPIs. The concern in those instances is that clopidogrel’s blood-thinning effects can be inhibited by PPIs, whose active ingredients include esomeprazole, omeprazole and pantoprazole, among others. In another area, FDA officials agreed that the acid-reducing effects of PPIs can sometimes lead to excess bacteria accumulating in the digestive system. That raises the risk of serious infections involving a bacterium called Clostridium difficile, and the FDA said that labeling will be updated accordingly.

But the FDA did refuse to add new information about pneumonia risk associated with PPI-linked bacterial overgrowth, finding that the “risk and causal association are not well-established” between the two. On another front, the FDA also agreed to take steps regarding PPI-related risks of vitamin B12 deficiency and a kidney disorder called acute interstitial nephritis. Medication guides also will be issued along with some PPIs to disclose their risks.

On several additional fronts the FDA rejected Public Citizen’s requests. One of the requests involved the group’s argument in favor of black box warnings discussing the risk of bone fractures when using PPIs. The FDA made this interesting response, saying there is a “lack of data on fatal outcomes related to PPI use and bone fractures,” as well as a “relatively low magnitude of risk.” Regulators also rejected requests for new warnings related to rebound effects that Public Citizen said can occur when PPIs are discontinued after more than one month of use. Also, the FDA declined to require new “dear doctor” letters informing health care providers of revised risks.

Frankly, I would put Public Citizen’s record on safety issues involving drugs up against...
that of the FDA. Making that comparison, there can be little question about which of the two comes out on top. Public Citizen has clearly been head and shoulders above the FDA. All you have to do is take a look at the number of drugs that were approved and placed on the market by the FDA over the strong objection of Public Citizen. Vioxx, the pain killer, is a prime example.

Source: Law360.com

XIX.
ENVIRONMENTAL CONCERNS

CHURCH FILES LAWSUIT OVER CRASH

On March 10, 2014, a flat-bed tractor-trailer truck crashed into the First Baptist Church, of Center Star, in rural Killen, Ala., extensively damaging the building. A gaping hole was left in the church. The truck reportedly traveled 35 feet inside the building and spilled approximately 75-100 gallons of diesel fuel inside the church. The truck reportedly traveled 35 feet inside the building and spilled approximately 75-100 gallons of diesel fuel inside the church, which penetrated the slab and contaminated the property. Church officials said there were three workers, two children and some painters at the church when the wreck occurred, but thankfully they were not in the section of the building that was hit. The crash occurred about 45 minutes after about 100 children had been picked up from the church's preschool program, according to pastor Ronny Jones. Since the crash, the church's services have been held in the family life center while the leadership decides what to do about the church.

Witnesses reported that the truck was traveling west on U.S. 72 when it ran off the north side of the road and then the driver appeared to overcompensate. The truck crossed the median and went off the south side of the highway before crashing into the church. Mud impressions were left embedded in the median. Those lead to muddy tire marks that cross the eastbound lane. Those prints continue where the truck’s path somehow avoided a small space between a mailbox and tree on the church grounds. The path ended with the scene of about half the truck jammed into a corner of the building.

Our law firm recently filed a lawsuit on behalf of the church against the truck driver and the companies responsible for the crash. We are honored to be able to represent the church and its members and to assist them in their efforts to recover for their losses.

Source: Mobile Advertiser

XX.
UPDATE ON NURSING HOME LITIGATION

NURSING HOMES AND THE ABSENCE OF INSURANCE

We have mentioned this previously, but it needs to be emphasized that Alabama law does not require a nursing home to maintain medical liability insurance. This means that if a nursing home is negligent in its care of a loved one, the facility may not have insurance coverage to pay a settle or verdict. When that’s the case, the nursing home usually will be virtually “judgment proof.”

Lawyers in our firm are currently involved in ongoing litigation against a nursing home located in Montgomery. While we may not discover the availability of insurance coverage under Alabama’s outdated Medical Liability Act, the nursing home in this particular case has recently confirmed that it does not have liability insurance. The nursing home also owns no real estate. The building it operates out of is owned by another company. That company (or companies by similar names) owns the real estate of other nursing homes in Alabama.

The Montgomery nursing home has had a chain of owners with a succession of chains of owners. The prior owners sued each other and raised a variety of claims against each other, including mismanagement and embezzlement of the proceeds made off of operating the nursing homes. That litigation resulted in the sale of the nursing home, and several others in Alabama, to the new chain of owners.

The Montgomery nursing home is currently owned by a limited liability company, which is owned by another limited company, which is owned by another limited liability company, which is owned by a corporation, whose stock is owned by an individual. This chain of companies, or companies in this group of companies, owns nursing homes all over the United States. All of the companies in the chain that owns the Montgomery nursing home are out-of-state companies, except one. If all of this seems confusing, it is—and I submit the confusion is intended by the nursing home owners and managers.

In Alabama, as with most states, the change of ownership and operation of nursing homes must be approved by the Alabama Department of Public Health. The Department of Public Health reviews applications and approves the changes of ownership. While they are not required to do so, the Department of Public Health can promulgate regulations regarding the ownership, management and operation of these facilities.

The Alabama Department of Public Health can provide added protection to elderly and incompetent citizens by requiring proof of medical liability insurance from these companies when they request a change of ownership. We would expect that such a regulation would be met with great resistance by the nursing home industry, but our Department of Public Health understands that it is charged with the responsibility of protecting those individuals who cannot protect themselves. Making sure that these companies are properly capitalized and insured would go a long way toward providing an added layer of protection to our loved ones in these facilities.

While there are many nursing homes that are privately owned by Alabama individuals and companies, our firm will continue to address the quagmire of ownership of these nursing homes that are owned and operated by out-of-state entities. Our Alabama Supreme Court has already recognized this stacking of ownership as a serious issue. It addressed the “common enterprise” and “alter ego” issues of a nursing home in a similar situation in Hill v. Fairfield Nursing & Rehabilitation Center, LLC, 134 So.3d 396 (Ala. 2013). We are hopeful that our legislature, governor and regulatory authorities will do likewise and will begin to scrutinize these corporate chains to ensure that our loved ones receive adequate and safe care and are properly provided for in the event of medical negligence in their health care.

We also encourage any of our readers who are faced with having to select a nursing home for a loved one, to ask important questions before admitting the family member to a facility. Likely, the clerical person or even the nursing staff at the facility will not understand who actually owns and operates the nursing home, so ask the facility’s administrator who owns it, where they are located, and whether the facility has medical liability insurance. Knowledge is power and knowing this information is essential. If you need more information on this subject, contact Ben Locklar, a lawyer in our firm who handles nursing home litigation, at 800-898-2054 or by email at Ben.Locklar@beasleyallen.com.

XXI.
CLASS ACTION UPDATE

SECOND CIRCUIT APPROVES RECORD BANK OF AMERICA SETTLEMENT

The Second Circuit Court of Appeals last month approved Bank of America Corp.’s record $2.4 billion securities class action settlement over its merger with Merrill Lynch &
Co. at the height of the 2008 financial crisis. A three-judge panel said a district court didn’t abuse its discretion by approving the settlement, which was first announced in September 2012. This remains the largest-ever securities class deal related to the financial crisis.

A few of the investors wanted attorneys’ fees limited to three percent of the total settlement. They also said that so-called “representative Plaintiffs” should not have been reimbursed for about $450,000 in legal costs. The objectors had also argued that a notice sent to potential class members should have disclosed the average amount of damages per Bank of America share that the Plaintiffs could recover if they were successful in the case. The panel said it “considered all of [the objectors’] remaining arguments” and concluded “that they are without merit.”

Plaintiffs allege Bank of America and its top executives misled shareholders about its financial health and that of Merrill Lynch before the merger closed in January 2009. In particular, investors have said they were not told at the time that Merrill Lynch faced projected losses of more than $21 billion in the fourth quarter of 2008; that some Bank of America executives who were aware of the losses had attempted to thwart the merger; and that Merrill Lynch had paid its executives $3.6 billion in bonuses.

Once that information came to light, the suit alleged, Bank of America’s stock price fell by more than half over the course of 11 days. Bank of America, for its part, has painted the merger as a shotgun wedding orchestrated by federal banking regulators, who feared the collapse of a Wall Street titan like Merrill could have a domino effect in the teetering industry. The merger agreement was struck the same day that Lehman Brothers Holdings Inc. filed for bankruptcy. The $2.4 billion settlement was approved in April 2013 by U.S. District Judge Kevin Castel, who called it “fair, reasonable and adequate.” As we have come to expect, Bank of America has continued to deny the allegations.

The bank agreed in 2010 to a $150 million settlement with the U.S. Securities and Exchange Commission in a separate suit alleging the bank failed to tell shareholders it had authorized Merrill to pay the bonuses. Source: Law360.com

Allianz Life Insurance Co. of North America has reached a $251 million settlement to end two racketeering class actions alleging it lured 250,000 seniors into buying poorly performing deferred annuities with harsh surrender policies. Plaintiffs in the suits have asked the court for final approval of the settlement, which had been preliminarily approved in August. The Plaintiffs accused Allianz of conspiring through a racketeering enterprise with a network of field marketing organizations to induce class members to buy deferred annuities through misleading statements and omissions about the annuities’ value. The suits claimed the Plaintiffs suffered $489 million in damages.

Class members will receive a variety of benefits based on the status and intended use of their accounts, ranging from a five percent annual increase to the amount of funds they can withdraw without penalty to a nine percent increase in their cash surrender value. The settlement also provides up to $13.3 million for Plaintiffs with misrepresentation claims, $11.9 million for those with lack of suitability claims and $9.8 million for those who can establish financial need when they surrendered their annuity.

U.S. District Judge Christina A. Snyder denied Allianz’s motion for summary judgment last March, ruling that federal racketeering claims are not barred by reverse preemption and refusing to dismiss claims under the California Elder Abuse Act. That California law allows Plaintiffs to pursue additional damages for acts that inflict physical or financial abuse against a person aged 65 or older. Judge Snyder ruled that class members in at least 16 states were not barred from bringing RICO (Racketeer Influenced and Corrupt Organizations) Act claims under the McCarran-Ferguson Act, which reverses preempts federal claims that interfere with state insurance statutes.

In this case, Judge Snyder said that RICO claims actually advanced states’ interest in fighting insurance fraud. The judge added that the act was not designed to preclude federal regulation merely because that regulation imposes stiffer liability than state law. The class actions were filed in 2005 by the two Plaintiffs, who said that Allianz conspired with a network of field marketing organizations to falsely market an “immedi- ate” 10 percent bonus and claim that its annuities would pay full value even though there would be a 10 percent charge on premiums received, a reduced rate of interest and no bonus if the annuity remained in deferral for less than five years.

Source: Law360.com

Allianz To Pay $251 Million To Settle Annuities Racketeering Class Actions

Activision Blizzard Inc. has agreed to a $275 million settlement which will end consolidated shareholder derivative and class action litigation. Investors had alleged a tainted $8.2 billion deal to buy back Vivendi SA’s controlling stake. The settlement will resolve allegations that Activision CEO Bobby Kotick and Chairman Brian Kelly put their own interests over those of other shareholders when an investment vehicle they control bought more than $2 billion worth of stock concurrent with the California video game giant’s $5.8 billion equity buyback from its former majority stakeholder.

Eric LBO Collusion Case Settles For $590 Million

A Massachusetts federal judge has granted final approval to $590 million in settlements and $200 million in attorneys’ fees in a class action claiming Goldman Sachs Group Inc., Carlyle Group LP and other private equity firms teamed up to keep leveraged buyout prices low. U.S. District Judge William G. Young granted final approval to a series of settlements the firms had reached in recent months with the Plaintiffs in the antitrust class action. This brings the case to a close just a month prior to the seven-year anniversary of the filing of the initial complaint. Judge Young also approved a petition for $200 million in attorneys’ fees, despite objections that that number—more than one-third of the total settlement fund—was too high.

The decision comes three months after Carlyle became the last defendant to resolve the suit with a $115 million settlement to stave off a November trial in the case, which was brought by shareholders of companies the firms allegedly had underpaid by agreeing not to compete with one another for several major leveraged buyouts. The case had its way through federal court in Boston since late 2007 and remained largely under wraps until it was unsealed in late 2012. The complaint pinpoints a number of separate deals between 2003 and 2009 in which private firms allegedly followed an elaborate set of bidding rules to artificially deflate prices, shortchanging shareholders in the target companies.

Among the buyouts highlighted in the suit were a $21 billion deal for hospital chain HCA Holdings Inc. and a $5.1 billion deal for high-end retailer Neiman Marcus Group. Carlyle agreed in August to pay $115 million to settle claims that it and several other private equity firms had teamed up to depress prices in leveraged buyouts leading up to the financial crisis. It agreed to settle after the five other private equity firms on the case agreed to settlements of their own. That left Carlyle as the sole defendant in the case. Goldman and Bain Capital Partners LLC were the first to reach a settlement with the Plaintiffs in June, agreeing to pay $67 million and $54 million, respectively, to exit the case. Silver Lake Partners LP followed suit in July with a $29.5 million settlement. In early August, KKR & Co. Inc., Blackstone Group LP and TPG Capital LP also agreed to pay a total of $325 million in settlements.

Source: Law360.com

Activision Blizzard Agrees To $275 Million Settlement

Source: Law360.com
Under the terms of the settlement, certain defendants and insurers will pay $275 million to the company and will be responsible for the Plaintiffs’ attorneys’ fees. Kotick and Kelly also agreed to expand Activision’s board of directors with two added independent spots and reduce their voting power from 24.9 percent to 19.9 percent. The settlement is subject to approval by the Delaware Chancery Court. Under the Vivendi deal, Activision bought back $5.8 million worth of shares at $13.60 each from the French conglomerate, while Kotick’s and Kelly’s group acquired $2.3 billion worth of the remaining shares and gained $664 million. The investors claimed that the deal doesn’t provide any real benefit to Activision or its shareholders. The $664 million gain comes from the difference between Activision stock’s $13.60 share price in the deal and the $17.46 share price the company skyrocketed to after it announced the transaction.

Source: Law360.com

**LEUCADIA TO PAY $70 MILLION TO END JEFFERIES INVESTOR SUITS**

Leucadia National Corp., New York City-based holding company, has agreed to pay $70 million to settle a series of investor class action lawsuits challenging its nearly $3 billion stock swap deal for Jefferies Group Inc. The deal created a $9 billion conglomerate with real estate, health care and other holdings. The settlement will resolve seven class actions filed in New York and Delaware by former stockholders of global investment banking firm Jefferies Group. The suits claimed, among other things, that instead of focusing on the best deal possible, Jefferies’ then-CEO and Chairman Richard Handler was part of a strategy to spurn an inadequate transaction in order to realize his career goal of becoming the head of Leucadia.

If approved by the court, the settlement will resolve all claims in Delaware and release the claims in New York, which had been stayed pending discovery in the Delaware litigation. The settlement was announced in November 2012, and Leucadia, which had owned a nearly 50 percent stake in the target, acquired the rest of Jefferies for what the complaint says was an implied value of $17.66 per share. It appears that Jefferies became Leucadia’s largest operating subsidiary, and the target’s shareholders got 0.81 shares of Leucadia for every Jefferies share they owned. Reportedly, the transaction put more than 35 percent of the stock of Leucadia—which holds a diversified portfolio of beef processing, manufacturing, gaming entertainment, real estate activities, medical product development and winery operations—in the hands of Jefferies shareholders.

Source: Law360.com

**BANK OF AMERICA AND U.S. BANCORP PAY $69 MILLION TO SETTLE INVESTOR LAWSUIT**

Bank of America Corp. and U.S. Bancorp have agreed to pay $69 million to settle a class action lawsuit over their role as trustee for mortgage-backed securities containing shoddy loans issued by Washington Mutual Inc. (WaMu), which collapsed at the height of the 2008 financial crisis. The settlement was described as the first-ever settlement in a class action over the conduct of a residential mortgage-backed securities trustee. Pension funds and other investors have accused Bank of America and U.S. Bancorp of failing to properly monitor the underlying mortgages, which tanked during the crisis. The investors have also said the banks failed to force WaMu to fix or buy back defective loans.

The suit was initially filed in April 2012 and the complaint was amended in November 2013. The Plaintiffs claimed in the amended complaint that loans underlying the securities were plagued by delinquencies in borrower payments, credit losses and downgrades by rating agencies. The bank trustees had the duty to watch carefully monitor the performance of the loans. Instead, it was claimed they “stood by and did nothing” as the loans “soured.” There were also reports of widespread underwriting abuses at Washington Mutual.

Washington Mutual collapsed in September 2008 due to massive losses in its subprime mortgage loans. JPMorgan Chase & Co. took over the bank in a merger brokered by the Federal Deposit Insurance Corp. Plaintiffs in the suit—large investors who bought and sold the securities—claimed to have suffered hundreds of millions of dollars in losses as the financial crisis worsened.

Source: Law360.com

**DAIMLER FACES MERCEDES GAS LEAKS CLASS ACTION**

A class action lawsuit has been filed against Daimler AG and Mercedes-Benz USA LLC in a New Jersey state court, claiming the companies failed to disclose, and have failed to properly remedy, defects in certain Mercedes-Benz vehicles that can cause gasoline-soaked seats and vapors. Plaintiff Helena Barinova is attempting to represent a class of New Jersey residents who purchased certain W211 E-Class generation Mercedes-Benz vehicles that were produced from 2003 to 2009 as well as a subclass of owners and lease holders who shouldered costs to repair components of the vehicles’ fuel delivery systems.

Ms. Barinova contends in the suit, which asserts claims under the New Jersey Consumer Fraud Act and state common law, that undisclosed defects in the fuel delivery system of the vehicles can cause interior and exterior leaks of gasoline and gasoline vapors and that the vehicles’ seats can end up absorbing gasoline. The problem has left drivers and passengers facing fire and explosion risks and health problems, according to the complaint. It’s alleged in the suit:

*Defendants have ignored these risks and otherwise failed to repair or replace defective fuel tanks under vehicle warranties. Instead, Defendants have ignored and concealed the defect, instructing Mercedes-Benz technicians to replace fuel sending units under warranty only after repeated owner complaints.*

The National Highway Traffic Safety Administration (NHTSA) has received more than 100 complaints concerning the smell of gasoline in the cabins of Mercedes-Benz E-Class vehicles and liquid gasoline leaks outside of the vehicles. In 2012, the agency opened an investigation into gasoline leaks on Mercedes-Benz E55 vehicles from 2005 to 2006. Mercedes-Benz issued a recall to fix a problem related to leaking gasoline, but said that recall only covered certain 2003 to 2006 vehicles and didn’t correct the problem.

Source: Law360.com

**LG ELECTRONICS SETTLES DEFective REFRIGERATOR CLASS ACTION**

LG Electronics USA Inc. has agreed to settle a class action accusing it of knowingly selling defective refrigerators. The Plaintiff, Jeannette Clark, alleged LG’s Signature Model refrigerators have a programming defect. She has filed a motion seeking preliminary approval of the settlement. Pursuant to the settlement, LG Electronics agreed to repair any of the more than 390,000 refrigerators allegedly subject to the defect; pay for up to $5,000 of property damage per class member, including up to $500 in out-of-pocket expenses for spoiled food. If the repairs are unsuccessful, LG Electronics will hand out $1,500 discounts toward the purchase of a new refrigerator. The settlement also includes a one-year extension of the refrigerators’ warranty. The value of the settlement is dependent on how many class members seek repairs or file claims. That defect was said to be in the refrigerator’s main control panel, which included a programming defect.

Source: Law360.com

**CLASS ACTION LAWSUIT FILED AGAINST TOYOTA OVER MELTING DASHBOARD**

A class action lawsuit has been filed against Toyota Motor Corp. in a South Carolina federal court. This is the latest litigation the automaker faces over allegedly defective dashboards that melt and create a glossy film.
that drivers say reduces visibility. Melissa Graham, the Plaintiff in the case, claims the 2009 Toyota Camry she bought contains one of the defective dashboards. She says that the manufacturer concealed the problem from her and all other South Carolina consumers who are now stuck paying for repairs themselves because the vehicles’ warranties have lapsed. It’s alleged in the complaint:

Unbeknownst to consumers, Toyota designed, manufactured, distributed, marketed and sold certain automobiles with defective dashboards that melt or degrade upon prolonged exposure to the sun. Because the nature of this defect is that the degradation occurs over time, it was a hidden defect from consumers at the time of purchase.

The suit lists model year 2007 through 2009 Camrys, as well as 2006 through 2008 Lexus IS and ES vehicles. The filing expands the reach of litigation Toyota faces over the problem from a first class action that was filed in Florida earlier this year that targeted only the Lexus brand.

At press time it was unclear whether class actions have been filed in other states. However, a number of complaints have been filed with the National Highway Traffic Safety Administration (NHTSA) over Toyota vehicles with melting dashboards. In 2011, after most of the models’ warranties had expired, Lexus issued a technical service bulletin notifying customers that the 2006-2008 Lexus IS 250 and IS 350 “may exhibit sticky interior panels that have a shiny/degraded appearance.”

But it’s contended in the Graham complaint that Toyota used a similar defective dashboard design for the 2006-2008 Lexus ES and the 2007-2009 Toyota Camry and did not notify customers who had purchased those vehicles of a potential problem. Additionally, Toyota did not inform buyers that it had found a way to fix the defective dashboards and deliberately concealed the nature of the defect from consumers. Because the repairs were needed outside the time frame of the warranty, Toyota profited off of the defect by offloading the responsibility for repair costs to consumers.

The proposed class action was filed on behalf of all South Carolina residents who purchased the models-in-suit and accuses Toyota of breach of express and implied warranty. The case is in the U.S. District Court for the District of South Carolina.

Source: Law360.com

REGIONS INVESTORS AGAIN WIN CLASS CERTIFICATION IN STOCK INFLATION SUIT

An Alabama federal judge has certified for the second time a class of shareholders suing Regions Financial Corp. Misrepresentations related to Regions 2006 acquisition of AmSouth Bancorp are alleged in the complaint. The Eleventh Circuit Court of Appeals had remanded the case to the lower court. U.S. District Judge Inge Prytz granted the Plaintiffs’ motion for class certification after reviewing the evidence Regions had previously placed before the court in light of the Supreme Court’s June 23 Halliburton II decision. In that case the high court ruled that securities defendants may rebut fraud-on-the-market presumption of reliance before the class certification stage by showing a lack of price impact.

Judge Prytz said that Region’s event study did not prove its corrective disclosures had no impact on the price of its stock. The fact that the plaintiffs haven’t shown there was price impact is irrelevant, the judge said. That was because the U.S. Supreme Court in Halliburton placed burden of proof on the defendants. Judge Prytz wrote:

The defendants read too much into Halliburton II. While that case recognized an event study can show the reaction of market price to corrective disclosures, nothing in Halliburton II requires the plaintiffs to produce an event study in opposition to defendants’ event study on a class certification motion.

The Plaintiffs alleged that Regions misrepresented millions of dollars in loans to keep the value of goodwill reflected in quarterly reports artificially high. It was alleged further that Regions represented that its goodwill had been repeatedly tested during 2007 and 2008 and was properly calculated. That was even though the value of its real estate investments was steadily dropping. It’s significant that on Jan. 20, 2009, the company made a substantial corrective disclosure, reporting $5.6 billion in losses. That day, Region’s stock fell to $4.60 per share, down from $23.33 per share the previous February.

In June 2012, Judge Prytz certified the class for the period from Feb. 27, 2008, to Jan. 20, 2009. In its highly anticipated Halliburton II decision, the U.S. Supreme Court in June declined to overturn its landmark opinion, Basic v. Levinson, which in 1988 established “the fraud-on-the-market presumption of reliance” that rests on the principle that “public, material information about a publicly traded company affects the price of the company’s stock and that investors thereby rely on that information when they purchase securities.” But the justices found that defendants should be allowed to rebut that presumption of reliance before class certification by showing evidence that an alleged misrepresentation did not affect the stock’s price.

The Eleventh Circuit in August asked Judge Prytz to review the Regions class certification in light of that ruling, giving Regions a chance to prove that alleged misrepresentations related to the acquisition did not actually affect the price of its stock. Now that Judge Prytz has certified the class, it will be interesting to see how this case develops as it moves forward.

Source: Law360.com

FLORIDA COMPANY REACHES $40 MILLION SETTLEMENT OVER ILLEGAL FAX ADS

A Jacksonville-based company has reached a $40 million settlement in a class action lawsuit over claims the company sent unsolicited fax advertisements to consumers. A federal judge will still need to approve the settlement by Interline Brands Inc. over charges that it violated the Telephone Consumer Protection Act (TCPA), which prohibits companies from sending fax ads to customers it doesn’t already do business with. The settlement will be apportioned among members of the class action based on how many faxes each received, and attorneys’ fees.

COURT ORDERS HERTZ TO PAY $53 MILLION IN CLASS ACTION LAWSUIT

A Nevada federal judge has ordered Hertz to pay $53.4 million to the remaining class members in a long-running lawsuit that accused the company of concealing that it was passing along the cost of doing business at airports to its customers. U.S. District Judge Larry R. Hicks ruled that the car rental company would have to pay the class’ requested $42.3 million in damages along with $11.1 million in interest.

Hertz had urged the judge to rule that the class—folks who rented cars from the company at Nevada airports between 2003 and 2009—deserved nothing. But instead, Judge Hicks found that the amount requested by the class accurately reflected what members paid as an extra fee after they had been quoted a price without it. Judge Hicks wrote in the ruling:

The court finds that plaintiffs’ requested damages are accurate and have been appropriately reduced based on the 416 class members who have opted out.

It was alleged that car rental companies in the Reno and Las Vegas airports must pay a portion of gross revenues to the airport for the pleasure of offering services there. The companies pass the fees to customers, labeled as surcharges in the agreement to rent cars, according to the suit. But Hertz would quote a price to customers then itemize the concession fee separately on the rental agreement.
This was a move that Judge Hicks found was against a Nevada law that requires car companies to advertise a rate that includes all the fees. Judge Hicks also refused to revert any unused money from the class award to Hertz. Instead, he will allow the parties to petition the court to establish a fund to hold the money after each class member has been paid.

Source: Law360.com

$27 million MF Global Metals market settlement gets initial approval

A New York judge has given preliminary approval to class action settlements over alleged price manipulation in metal markets that will allow Plaintiffs to file $21.1 million in claims in MF Global Inc.'s bankruptcy and receive more than $6 million in cash. U.S. District Judge William H. Pauley said he was ready to sign off on an order directing notices of the proposed deal to be sent to class members and instructed the lawyers to present him with the necessary documents without delay. The combined settlement would resolve separate class actions alleging manipulation in palladium and platinum futures as well as in the physical settlements of the precious metals.

The settlements will give the futures Plaintiffs the ability to file a claim against MF Global's estate valued at nearly $18.8 million and the ability to file a claim against MF Global. The settlement also includes a $30 million award for each of the plaintiffs' lawyers. Judge Denise Cote approved the settlement during a hearing in Manhattan court. Under the settlement, consumers will receive $400 million, state authorities which assisted in the handling of the case will get $20 million, and class counsel at Hagens Berman Sobol Shapiro LLP and Cohen Milstein Sellers & Toll PLLC will together receive $30 million in fees.

The settlement contains an unusual proviso that allows Apple to pay $50 million to consumers and $10 million each to the states and class counsel if Judge Cote's 2013 decision finding Apple liable is vacated and remanded on appeal or reversed and remanded with instructions for reconsideration or a new trial. Interestingly, if the decision is simply reversed, Apple will pay nothing. Judge Cote called the $400 million consumer payment an "excellent recovery," adding that the "enforcement of our antitrust laws is vitally important to the vibrancy of our economy."

XXII.
THE CONSUMER CORNER

Apple's $450 million E-books settlement approved

A New York federal judge has granted final approval to Apple Inc.'s $450 million settlement with consumers over claims it conspired with publishers to raise e-book prices. The settlement includes a $30 million award as fees for the plaintiffs' lawyers. Judge Denise Cote approved the settlement during a hearing in Manhattan court. Under the settlement, consumers will receive $400 million, state authorities which assisted in the handling of the case will get $20 million, and class counsel at Hagens Berman Sobol Shapiro LLP and Cohen Milstein Sellers & Toll PLLC will together receive $30 million in fees.

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In July 2013, Judge Cote ruled that Apple had "played a central role in facilitating and executing" the conspiracy. The company has since appealed that decision to the Second Circuit. According to a Nov. 14 motion, seeking Judge Cote's final approval for the $450 million deal, a claims administrator and e-book retailers have sent emails or postcards to almost 25 million addresses of people eligible to receive compensation. The settlement had won preliminary approval on Aug. 1.

Source: Law360.com

Space heaters annually cause 25,000 house fires

The Consumer Product Safety Commission estimates that more than 25,000 residential fires and more than 300 deaths are caused each year by space heaters. More than 6,000 Americans receive hospital emergency room care annually for burn injuries associated with space heaters. "Bitter cold, ice and snow are here for many parts of the East and Midwest bringing with it burn injuries caused by improper use of heating devices," said Michael Mosier, MD, burn surgeon at Loyola University Medical Center.

The Loyola Burn Center is one of the busiest in the Midwest, treating nearly 700 patients annually in the hospital, and another 3,500 patients each year in its clinic. The Burn Center at Loyola University Medical Center is warning the public about the dangers of space heaters used by so many to keep warm. Dr. Mosier stated:

If proper precautions are taken, space heaters can be used safely; but so often they aren’t and house fires ignite. Whole families are seriously injured, often for life.

About 40 percent of Loyola’s burn cases are children and the majority of these children are ages 2 and younger. Mosier is an assistant professor at Loyola University Stritch School of Medicine.

Source: Loyola University Health System

New regulations for for-profit schools

The U.S. Department of Education adopted new rules on Oct. 31, 2014 aimed at for-profit colleges in an effort to protect students from becoming overburdened with debt that they cannot repay. Under the new rules, for-profit and certificate programs at private non-profit and public institutions must prepare students for “gainful employment in a recognized occupation” or risk losing access to federal student aid. The Department stated:

These regulations will bold career training programs accountable for putting their students on the path to success, and they complement action across the Administration to protect

Source: JereBeasleyReport.com

INTERLINE AND CRAFTWOOD AGREE TO $40 MILLION SETTLEMENT IN TCPA CLASS ACTION

Interline Brands Inc. will pay $40 million to a class led by Craftwood Lumber Co. to settle a suit alleging Interline violated the Telephone Consumer Protection Act (TCPA) by faxing at least 1,500 advertisements. The parties are asking for the settlement to be approved by the court. An earlier proposed settlement in the “junk fax” case was rejected by the court in September.

Source: Law360.com

NEW REGULATIONS FOR FOR-PROFIT SCHOOLS

The U.S. Department of Education adopted new rules on Oct. 31, 2014 aimed at for-profit colleges in an effort to protect students from becoming overburdened with debt that they cannot repay. Under the new rules, for-profit and certificate programs at private non-profit and public institutions must prepare students for “gainful employment in a recognized occupation” or risk losing access to federal student aid. The Department stated:

These regulations will bold career training programs accountable for putting their students on the path to success, and they complement action across the Administration to protect
consumers and prevent and investigate fraud, waste and abuse, particularly at for-profit colleges.

Schools will only pass the test for gainful employment if the projected annual loan payment of a typical graduate does not exceed 20 percent of his or her discretionary income or 8 percent of total earnings.

The new gainful employment regulations follow an extensive rulemaking process involving public hearings, negotiations and about 95,000 public comments. The regulations, which will go into effect on July 1, 2015, reflect feedback the Department of Education received. It intends to protect students from unscrupulous career training programs by targeting institutions that leave students deep in debt with little chance to repay it. These students regularly find themselves struggling to find gainful employment while for-profit schools continue to register as many students as possible and rake in the federal funds.

The Association of Private Sector Colleges and Universities (APSCU) has filed suit in Washington, D.C., against the U.S. Department of Education, challenging the newly adopted gainful employment regulations. The APSCU, which is made up of more than 1,400 accredited, private postsecondary schools, is attacking the constitutionality of the newly enacted rules. Specifically, the complaint states that the new rules “are unconstitutional; contrary to Title IV of the Higher Education Act of 1985, as amended; arbitrary and capricious; and otherwise in violation of the Administrative Procedure Act.” This challenge comes as no surprise as the Department estimates that about 1,400 schools serving 840,000 students—of whom 99 percent are at for-profit institutions—would fail the new accountability standards. If you need more information on this subject, contact Jake Jeter, a lawyer in our Consumer Fraud Section, at 800-898-2034 or by email at Jake.Jeter@beasleyallen.com.

**Williams-Sonoma Agrees to Pay $700,000 Civil Penalty**

The U.S. Consumer Product Safety Commission (CPSC) has announced that Williams-Sonoma, Inc., of San Francisco, Calif., has agreed to pay a $700,000 civil penalty. The agreement resolves charges by CPSC staff that the firm knowingly failed to report to CPSC immediately, as required by federal law, a defect involving Pottery Barn Kids Roman shades with exposed inner cords. Williams-Sonoma sold the Roman shades nationwide, through its Pottery Barn Kids brand, between January 2003 and November 2007, for $30 to $60. CPSC staff charged that the Pottery Barn Kids Roman shades posed a strangulation hazard to young children.

By the time that Williams-Sonoma filed its full report with CPSC, seven consumers had reported that children had become entangled on the inner cords of the Pottery Barn Kids Roman shades. Williams-Sonoma finally recalled approximately 85,000 of the Roman shades. 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 requirement enforced by CPSC.

Williams-Sonoma has agreed to continue to maintain the compliance program and system of internal controls referenced in an earlier civil penalty settlement with CPSC, designed to ensure compliance with the safety statutes and regulations enforced by the Commission. The penalty agreement was accepted provisionally by the Commission in a 4-1 vote.

Source: PR Newswire

**Poisonings From Detergent Pods Harms Young Children At Alarming Rate**

Accidental poisonings from squishy laundry detergent packets sometimes mistaken for toys or candy landed more than 700 U.S. children in the hospital in just two years, researchers report. Coma and seizures were among the most serious complications. The cases stem from the more than 17,000 poison center calls about the products received in the past two years. The calls involved children younger than 6 and most weren’t seriously harmed. But one child died last year and the potential risks highlight a need for even safer packaging, the researchers said.

To their credit, some manufacturers already have revised packaging and labels in efforts to make the detergent packets or “pods” safer for children. The study found calls dropped slightly after some of those changes were made. The products contain concentrated liquid laundry soap and became widely available in the U.S. two years ago. Some are multicolored and thus may look enticing to young children. Poisoning or injuries including mouth, throat and eye burns can occur when children burst the capsules or put them in their mouths. In the study, 144 had eye injuries, 30 went into comas and 12 had seizures.

The American Association of Poison Control Centers says that exposure to household cleaning products is among the top reasons for calls to poison centers involving young children. In 2012, detergent packet calls accounted for a fraction—about 6 percent—of the 111,000 calls involving young children and cleaning products. Many calls involve regular laundry detergent, which can cause mild stomach upsets, but poison center experts say the new concentrated laundry packets seem to cause more severe problems.

One report says that Jessica Morin of Houston says her 9-month-old daughter, Marlow, was sickened earlier this year when the child’s grandmother mistook a detergent pod for a teething toy and put it in the baby’s mouth. Mrs. Morin says she “called poison control and they said to take her to the ER immediately.” The child was repeatedly vomiting and underwent tests, but doctors at Texas Children’s Hospital found no serious damage and she didn’t need to stay overnight. “We were very lucky,” Morin said. “We don’t have those pods in our house anymore.”

The researchers examined 2012-13 data from the poison control centers group. Their study was published online Nov. 13 in Pediatrics. Overall, there were 17,230 poison center calls about young kids getting into the packets, including 769 children who were hospitalized. Dr. Gary Smith, the study’s lead author, said his hospital had two recent cases—children who developed breathing problems and required treatment in the intensive care unit. Dr. Smith is the director of the Center for Injury Research and Policy at Nationwide Children’s Hospital in Columbus, Ohio.

The American Cleaning Institute, which represents makers of cleaning products, issued voluntary guidance in March encouraging manufacturers to use labels that prominently list safe handling information. The cleaning institute said it is also working with manufacturers to educate parents. But a survey the group released in early November suggests many consumers still don’t know about the risks. The Consumer Product Safety Commission says children should not be allowed to handle the packets and advises parents to store them out of children’s sight and reach.

Source: Claims Journal

**The Role Of The CPSC**

The U.S. Consumer Product Safety Commission (CPSC) is charged with protecting the public from unreasonable risks of injury or death associated with the use of thousands of types of consumer products under the agency’s jurisdiction. Deaths, injuries, and property damage from consumer product incidents cost the nation more than $1 trillion annually. CPSC is committed to protecting consumers and families from products that pose a fire, electrical, chemical or mechanical hazard. CPSC’s work to ensure the safety of consumer products—such as toys, cribs, power tools, cigarette lighters and household chemicals—contributed to a decline in the rate of deaths and injuries asso-
The Alabama Attorney General Helps Consumers

Luther Strange, the Alabama Attorney General, has asked us to let folks know about how some ways his office is helping folks. The office of Attorney General in Alabama has two important hotlines that the public can use. Attorney General Luther Strange says that folks can call these hotlines and get help when help is needed.

1. For Elder Abuse and Consumer Protection issues folks can call the Consumer hotline: 1-800- 392-5698. Attorney General Luther Strange has been working hard in the area of consumer protection and this gives the public a method of reporting abuses and also seeking help. The elderly are often-times victims and that is an area where the Attorney General’s office has a special interest.

2. The Attorney General also has a Victims Assistance Office that works with victims of crime and their families to guide them through the legal process. The Victims Assistance Hotline is 1-800-626-7676.

If you need more information about how the Attorney General’s office can help you in other areas, call (334) 242-7300.

XXIII. Current Areas of Concentration by Beasley Allen

We have been asked by a number of our readers to write on some of the specific areas of litigation that lawyers in the firm are currently working on. I will set out some of these areas below.

BP Oil Spill

The settlement claims center has now started processing business claims again under the new matching rules set out by the Claims Center. Claims can still be filed under the settlement. Any business not excluded in the settlement in any part of Alabama, Mississippi and Louisiana, or the west coast of Florida may qualify for compensation. More than $5 billion has been paid out to date under the settlement. Lawyers in our Toxic Tort Section have been working very hard to process claims and to get them paid.

Accident Cases

We continue to focus on accident cases involving automobiles, heavy equipment and consumer products. Some of these auto cases involve single-vehicle crashes, while others involve multiple-vehicle accidents. We will review any case involving catastrophic injury or death.

As we have mentioned previously, a single case sometimes can be developed into a class action. We are handling numerous class actions involving consumer products from automobiles to baby powder as well as financial and insurance products. If you have a potential class action case, please allow us to review the matter.

Whistleblower Cases

Lawyers in our Consumer Fraud Section are handling and investigating whistleblower claims of government fraud ranging from Medicare/Medicaid to military contracts, and any other type of fraud involving a government contract. Under the False Claims Act (FCA) the whistleblower is entitled to a percentage of the recovery. Studies show that as much as 10 percent of Medicare/Medicaid charges are fraudulent. Common schemes involve double-billing for the same service, inaccurately coding services, and billing for services not performed. Additionally, the Commission on Wartime Contracting has warned that the lack of oversight of government contractors has led to massive fraud and waste.

GM Defective Ignition Switch

General Motors (GM) recalled about 780,000 2005-07 Chevrolet Cobalt and Pontiac G5 vehicles on Feb. 13. Twelve days later, it expanded the recall to include an additional 590,000 model-year 2003-07 Saturn Ion, Chevy HHR, Pontiac Solstice, and Saturn Sky vehicles. It was later expanded again to include model-year 2006-2011 Chevy HHRs. The recall now encompasses 17 million vehicles. GM knew about the ignition switch problem as early as 2001. The company originally linked 31 crashes and 13 deaths to the faulty ignition switch, but an independent study commissioned by the Center for Auto Safety indicates the death toll exceeds 300.

Takata Air Bags Class Action and Personal Injury Cases

Lawyers in our Consumer Fraud Section are involved in class action lawsuits for economic loss related to the devaluation of certain motor vehicles because of an air bag defect. The air bag was manufactured by Takata Corp. Affected vehicles span 2000-2011 year models by manufacturers including BMW, Chrysler, Ford, General Motors (GM), Honda, Mazda, Mitsubishi, Nissan, Subaru and Toyota. The class representatives are from the following states: Alabama, Florida, Mississippi, Georgia, South Carolina, North Carolina, Tennessee, Kentucky, Louisiana and Arkansas. Lawyers in our Personal Injury/Products Liability Section are also handling cases involving deaths or serious injury caused by the exploding Takata air bags.

Heavy Truck Product Liability Claims

Tractor trailer and other heavy trucks are not required to contain many of the same protections for occupants as smaller passenger cars. They can contain dangerous defects putting the truck driver or passengers at risk of serious injury or death. These trucks many times have particularly weak roofs that crush in rollovers. The passenger compartments are often not protected by effective cab guards, and this allows loads to shift into the truck cab. We will review any case involving catastrophic injury or death.

18-wheeler Accidents

There are significant differences between handling an interstate trucking case and other car wreck cases. It is imperative to have knowledge of the Federal Motor Carrier Safety Regulations, technology, business practices, insurance coverages, and to have the ability to discover written and electronic records. Expert testimony is of utmost importance. Accidents involving semi-trucks and passenger vehicles often result in serious injuries and wrongful death. Trucking companies and their...
insurance companies almost always quickly send accident investigators to the scene of a truck accident to begin working to limit their liability in these situations. Our lawyers, staff and in-house accident investigators immediately begin the important task of documenting and preserving the evidence. We would like to review any case involving catastrophic injury or death.

Defective Tires

Tire failure can result in a serious car crash and even a vehicle rollover accident, causing serious injury or death to vehicle occupants. Air, heat and sunlight can cause the rubber in tires to break down. When a tire is defective, potentially serious problems like detread and blowouts can occur long before the tire would be expected to wear out. If the tire failure is the result of design or manufacturing defects, and the manufacturer is aware of the problem, they have an obligation to alert consumers to the potential danger.

On-the-job Product Liability

Many times product claims arise from incidents initially viewed as only a workers compensation claim. After we investigate the circumstances that caused the injuries, many times we discover a defective machine may be the cause of injuries sustained. Currently we are handling a number of cases involving an injured worker in an on-the-job accident.

Talcum Powder And Ovarian Cancer

As many as 2,200 cases of ovarian cancer diagnosed each year may have been caused by regular use of talcum powder. Talc is a mineral made of up various elements including magnesium, silicon and oxygen. Talc is ground to make talcum powder which is used to absorb moisture and is widely available in various products including baby powder and adult products including body and facial powder. Talc products used regularly in the genital area could increase the risk of ovarian cancer if the powder were to travel through the vagina, uterus and fallopian tubes to the ovaries. A jury recently found consumer health care products manufacturer Johnson & Johnson knew of the cancer risks associated with its talc products but failed to warn consumers.

Power Morcellator

In April, the U.S. Food and Drug Administration (FDA) urged doctors to stop using a medical device called a power morcellator, because studies showed the device may spread cancer. An estimated 1 in 350 women develops uterine sarcoma—a type of uterine cancer—after undergoing a morcellator procedure. Morcellators are typically used to grind away uterine growths such as fibroid tumors, and in hysterectomies. They became popular as a less invasive surgical alternative. The FDA conducted a formal review of the devices in July and announced that its concerns with the morcellator were confirmed. During this time, Johnson & Johnson announced it would stop selling the surgical tools.

Actos

The FDA has approved updated drug labels for Actos, usually prescribed to treat Type 2 diabetes. The new label states that the use of the drug for more than one year may be associated with an increased risk of bladder cancer.

Transvaginal Mesh

The FDA has issued an updated safety communication warning doctors and patients that the placement of surgical mesh through the vagina to treat pelvic organ prolapse may present greater risk for the patient than other options. This is also called transvaginal mesh. According to the FDA, reported complications from using the mesh include the mesh becoming exposed or protruding out of the vaginal tissue, pain, infection, organ perforation and urinary problems.

Lipitor

Lipitor is a statin drug to treat high cholesterol. It was approved by the FDA in 1996 and is one of the best-selling prescription medications in the world. Recent studies have found a possible link between Lipitor and the risk of developing Type 2 diabetes. A University of Massachusetts study found a potential link in postmenopausal women, particularly those who had a Body Mass Index (BMI) less than 30. Of the 153,840 women evaluated, more than 10,000 had developed Type 2 diabetes by the end of the study.

Testosterone Replacement Therapy

Testosterone Replacement Therapy (TRT) products for men have been linked to an increased risk of death, heart attack and stroke. Researchers found men who used testosterone therapy were 30 percent more likely to have a heart attack, stroke, or die after three years of use. A second study found that men had a significant increase in risk of heart attack and stroke in just the first 90 days of testosterone therapy use. Furthermore, men who started the study with clear, unobstructed coronary arteries were just as likely to have a heart attack, stroke or die as men who entered the study with established coronary artery disease. Testosterone therapy, such as the prescription topical treatments Androgel, Testim and Axiron, are used to help boost testosterone levels in men who have a deficiency of the male hormone. Symptoms of low testosterone include decreased libido and low energy.

Viagra

A preliminary study indicates the erectile dysfunction drug Viagra (sildenafil) may increase the risk of developing melanoma, the deadliest form of skin cancer. The study, published in the JAMA Internal Medicine journal, analyzed data from nearly 26,000 men, 6 percent of whom had taken Viagra. The men who used Viagra at some point in their lives had about double the risk of developing melanoma compared to men who had never taken the drug. Men who were currently taking Viagra were at an 84 percent greater risk of developing melanoma. We are currently looking at cases involving men who are taking or have taken Viagra and were diagnosed with melanoma.

Risperdal

Risperdal, an atypical antipsychotic drug used to treat schizophrenia and certain problems caused by bipolar disorder, has been linked to the development of gynecomastia in boys and young men. Gynecomastia is a condition that causes boys to grow breasts. The drug is manufactured by Johnson & Johnson.

Metal-on-Metal Hip Replacement Parts

The FDA has ordered a review of all metal-on-metal hip implants due to mounting patient complaints. Problems with the metal-on-metal devices include loosening, fracturing and dislocating of the device caused by inflammation in the joint space. We are investigating all cases involving metal-on-metal hip implants, including the DePuy Orthopaedics ASR XL Acetabular System and the DePuy ASR Hip Resurfacing System, recalled in August 2010; the Smith & Nephew R3 Acetabular System, recalled in June 2012; the Stryker Rejuventate and ABG II modular-neck stems, recalled in July 2012; the DePuy Pinnacle, the Zimmer Durom Cup, the Wright Conserve, and the Biomet M2A and M2A-Magnum hip replacement systems.
which have not been recalled. Reported problems include pain, swelling and problems walking.

**GranuFlo**

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

**Mirena**

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

**Byetta And Januvia**

Byetta and Januvia are two drugs used to treat Type 2 diabetes. The FDA approved Byetta in 2005 and Januvia in 2006. These drugs have been prescribed to millions of people in the United States. Since approving the medications, the FDA has issued several warnings about links between Byetta and Januvia to complications related to pancreatic diseases. Recent studies have linked these two drugs to acute pancreatic cancer.

**Antitrust**

Lawyers in our firm are handling claims related to the violation of federal and state antitrust laws. We are currently involved in claims alleging a wide array of anticompetitive conduct, including illegal tying, exclusive dealing, monopolization, and price fixing.

**Health Care Fraud**

Our lawyers are looking into cases of fraud within the health care industry. These may include cases dealing with pricing, off-label prescriptions, or other health care abuse.

**Syngenta Corn Class Action**

Lawyers at Beasley Allen are pursuing claims on behalf of those who were harmed by Syngenta Corporation’s market conduct resulting in decreased market prices for farmers in the corn export market. China and other countries are turning away American-grown genetically modified corn.

**Predatory Lending**

Predatory lenders target consumers who historically do not have access to mainstream lending institutions. This group of consumers includes minorities, the economically disadvantaged, the elderly and the uneducated and members of the military. Predatory loans harm borrowers by making it difficult or impossible for them to keep up with their payments, by such methods as charging the borrowers higher rates of interest, requiring credit insurance products, exorbitant up-front fees and pre-payment penalties.

If you would like more information on any of these areas of litigation or you need to talk with a lawyer about a potential client, feel free to contact one of the lawyers in the section that deals with your request. The Sections of our firm are: Personal Injury/Products Liability, Consumer Fraud, Toxic Torts, and Mass Torts. You can get more information on these sections by going to our website www.BeasleyAllen.com or by calling 800-898-2034 and asking for Kathy Eckermann. She will put you in contact with a lawyer working in the specific area relating to your request.

**XXIV. RECALLS UPDATE**

Even though we are sending this issue to the printer a week earlier this month because of the Thanksgiving holidays, there are still a large number of safety-related recalls to report. We have included some of the more significant recalls that were issued in November. If more information is needed on any of the recalls, readers are encouraged to contact Shanna Malone, the Executive Editor of the Report. We would also like to know if we have missed any safety recalls that should have been included in this issue.

**Ford Is Recalling More Than 202,000 Vehicles**

Ford Motor Co has recalled 202,241 vehicles in five North American recalls covering several issues, including an incorrect repair in a previous recall. According to the automaker, it was aware of one accident in the case of the improperly repaired vehicles, but that no injuries related to any of the issues. Ford is recalling 38,645 Ford Crown Victoria, Mercury Grand Marquis and Lincoln Town Car vehicles from model years 2005 through 2011 because they may have been improperly repaired in a previous recall for an issue with the lower intermediate steering shaft that could result in loss of steering. In the autumn of 2013, Ford recalled 570,000 of the cars in the United States and Canada because corrosion of the steering shaft could result in loss of steering. In the new recall, Ford said that dealers will inspect and replace the steering shaft as needed.

The automaker is recalling 134,947 Flex and F-150 vehicles from model year 2014 because of a passenger seat sensing issue that could result in the passenger air bag not deploying in certain front crashes, increasing the risk of injury. According to Ford, dealers will widen the gap between the manual seat frame and the seat track assembly and then recalibrate the seat occupant classification system.

The company is recalling 960 F-150 pickup trucks from model year 2014 because an incorrectly adjusted brake pedal position switch could cause a delay or non-illumination of the brake lights when the brake pedal is depressed. Ford has advised customers not to use cruise control until the trucks have been repaired because they may need to use additional brake pressure to disengage that system. However, it said the cruise control off switch on the steering wheel will continue to disengage the system. Dealers, according to Ford, will remove and reinstall the brake pedal position switch.

The other two recalls both affect Ford Transit Connect vehicles. In the first, 25,597 of the 2014 models are being recalled because the fuel and vapor lines may be incorrectly routed, which could cause a fuel leak and lead to a fire. The second one affects 92 of the 2015 models because the bracket that holds the fuel filter to the vehicle frame may become
detached over time, resulting in knocking sounds or an engine stall, which could increase the risk of a crash. In the first Transit Connect recall, dealers will inspect the lines and reroute and replace them as needed, Ford said. In the second one, dealers will reinforce the underbody structure if necessary.

**CHRYSLER RECALLS 566,000 DODGE AND JEEP VEHICLES**

Chrysler Group LLC has recalled more than 566,000 Dodge Rams and Durangos, as well as Jeep Grand Cherokees, to upgrade the electronic stability control software and wire-harness terminals, and to also potentially replace the fuel-heater housings in certain vehicles. The automaker said it is recalling 184,186 sports utility vehicles globally after its engineers discovered that a debris cover protecting a certain circuit board in 2014 Durango and Grand Cherokee vehicles can potentially disrupt a communication line and disable the electronic stability controls.

Under the recall, the company will upgrade the software that helps manage the electronic stability control. The automaker says this should restore proper communication and preserve the unit’s function. The recall covers 132,225 of the SUVs in the U.S., as well as 8,871 in Canada, 4,742 in Mexico and 38,350 in other locations across the world. The automaker will notify customers and let them know when they can schedule the service, which Chrysler will pay for, the statement said.

Chrysler also said in a separate statement that it is recalling 381,876 Ram trucks across the world so that it can upgrade certain wiring-harness terminals and, if necessary, replace their fuel-heater housings. The recall only covers vehicles equipped with 6.7-liter Cummins diesel engines and follows an investigation over two instances in which fuel-heater housings showed signs of overheating, though the automaker said it is not aware of any fires, injuries or accidents stemming from the issue, according to the statement.

The automaker said the recall affects certain 2010-14 model year Ram 2500 and 3500 pickup trucks, as well as the 4500 and 5500 chassis cabs. Approximately 314,704 trucks in the U.S. will be recalled, in addition to 59,432 in Canada, 1,803 in Mexico and another 5,937 outside of the North America region. Technicians will be instructed to install new terminals composed of upgraded material and to inspect fuel-heater housings, replacing the part if it shows signs of leakage, with Chrysler fronting the costs of repair, the statement said.

The recalls mark the eighth voluntary U.S. campaign by the automaker this year to remedy a potential issue before receiving any customer complaints over the matter. Last week, the National Highway Traffic Safety Administration (NHTSA) opened an investigation into the automaker’s recalls of nearly 1 million Rams for a potential steering problem, opening an audit to assess the timeliness and effectiveness of Chrysler’s recall process. NHTSA said it received “hundreds” of complaints from consumers who have faced delayed getting their vehicles fixed under the recall.

**PORSCHE RECALLS VEHICLES TO FIX HOOD LOCK BRACKET**

Porsche Cars North America has recalled 1,382 2014-15 Porsche 911 variants, Boxster and Cayman vehicles to replace the lock bracket on the front hood. This is part of a global Porsche recall of 4,428 cars. “Ongoing internal quality inspection procedures found that while these vehicles pass all current strength requirements, it was determined that these specific parts may not meet Porsche-specific quality standards through the life cycle of the vehicle,” the automaker in a statement. No accidents or injuries have been reported to Porsche. There are no “instances of an unintentional opening of the front hood,” the company said. Porsche dealers will replace the lock bracket in a procedure that takes about 30 minutes.

The company said owners of the vehicles will be notified within 60 days. Owners can contact Porsche at 800-767-7243.

**VW RECALLS 270,000 CARS IN CHINA TO FIX AIRBAG ISSUE**

Volkswagen and a Chinese partner are recalling 270,000 cars in China to repair a software problem that might prevent air bags from activating properly, the government said Wednesday. The recall by FAW-Volkswagen Automotive Co. applies to 265,943 Audi A4L cars made in China and 4,692 imported Audi A4 allroad cars, according to the Administration for Quality Inspection, Supervision and Quarantine.

In a collision at some angles the front air bags might fail to open, the agency said. It did not identify the supplier of the air bags but gave no indication they were linked to Japan’s Takata Corp. More than 12 million cars that use Takata air bags have been recalled because the airbags can explode, possibly injuring drivers and passengers. Volkswagen and FAW announced another recall two weeks ago of some 570,000 vehicles to repair a possible suspension defect.

**FIRE TRUCK MANUFACTURER RECALLS TRUCKS BECAUSE WHEEL COULD FALL OFF**

Pierce Manufacturing has recalled 135 fire trucks in the U.S. because a suspension part can fail and cause a wheel to fall off. The National Highway Traffic Safety Administration (NHTSA) says in documents posted on its website that the recall covers Pierce Arrow fire trucks from the 2010 and 2011 model years. The trucks have TAK-4 front suspensions and were built from Nov. 18, 2009, through May 11, 2011. The agency began investigating the trucks in March after getting reports of a wheel falling off two aerial ladder trucks that were responding to emergency calls in Portland, Ore., and Edmond, Okla. The Wisconsin-based company also told the agency of another case in Milwaukee.

Pierce will inspect the lower control arms on the trucks and replace any that are defective.

**CANE CREEK RECALLS BICYCLE SHOCKS DUE TO RISK OF INJURY**

Cane Creek Cycling Components, Inc., Fletcher, N.C., has recalled their DBINLINE Rear Shock. The shock absorber is marked with graphics that incorrectly identify the adjustment directions for High Speed Rebound (HSR) damping. Following these directions will cause unexpected behavior by a bike’s suspension and pose a fall hazard to a rider. This recall involves Cane Creek Cycling Components DBINLINE bicycle rear shock absorbers. The shocks are marked with graphics that incorrectly identify the adjustment directions for High Speed Rebound (HSR) damping. HSR on the shock is decreased by turning the adjuster counter-clockwise and increased by turning it clockwise.

The incorrect graphics present the opposite; that is, the plus(+) and minus(–) symbols are switched. The consumer can be misled or confused when adjusting HSR on these shocks. The shocks come in black anodized aluminum with the words “INLINE” marked on the air can portion of the shock and are attached to a full-suspension mountain bike frame. Recalled products have a serial number on the underside of the top valve body in the...
following ranges: AA00002—AA07304 and SA00077—SA03926. The shocks were sold separately and also were sold with the following mountain bikes:

2015 Alutech—Tofane
2015 Banshee—Phantom and Spitfire
2015 Bianchi—Methanol 29
2015 Canyon—Spectral 140—27.5 and 29; and Strike CF
2015 Ghost—AMR Riot 130
2015 Guerilla—Gravity Megatrail
2015 Ibis—Ripley 29
2015 Intense—Tracer, Carbine 29 and Spyder 29 Comp
2015 Knolly—Warden
2015 Nicolai—Helius
2015 Norco—Sight Carbon 7.1
2015 Nukeproof—Mega TR
2015 Orange—Five and Five 29
2015 Specialized—Enduro 650B and 29

Cane Creek says it has received four complaints from customers, one of which involved a report of injury with bruises in the midsection. The shocks were sold at distributors and retailers globally from May 2014 through September 2014 for about $495 each or included in the price of the bike. Consumers should immediately stop using the product and contact Cane Creek for a repair decal kit to correct the HSR adjustment markings on affected product. Contact Cane Creek Cycling Components at 844-490-5663 from 9 a.m. to 5 p.m. ET Monday through Friday, or online at www.cane creek.com and click on “Safety and Recall” for recall information.

**Aqua Lung Expands Recall Of Buoyancy Compensators Due To Drowning Hazard**

Aqua Lung buoyancy compensators with SureLock II weight pocket handles have been recalled by Aqua Lung America, of Vista, Calif. The rubber handles can detach as divers are trying to remove the weight pockets to rise to the surface in an emergency. This poses a drowning hazard. This recall involves all Aqua Lung buoyancy compensator vests with SureLock II rubber handles attached to the weight pockets, including those with SureLock II handles that were replaced in the previous recall. The handles are gray rubber, measure about 2 inches tall by 4 inches wide and extend from the forward end of the ditchable weight pockets.

SureLock II handles were installed in most Aqua Lung and one model of Apeks buoyancy compensators including: all discontinued Black Diamond, Pro QD and Pro QD13 models with serial numbers lower than BB408620. The recall also includes all Apeks Black Ice, Axiom, Axiom i3, Balance, Dimension, Libra, Lotus, Pearl, Pearl i3, ProLT and Zuma models with serial numbers lower than BB408620. The buoyancy compensator’s model name is embroidered on the inside back pad or on the right lobe.

“Sure Lock” is molded into the back of the weight pocket. The serial numbers are located on a tag under the back pad of the buoyancy compensator or inside the pocket. Earlier models could have the number printed on a tag behind the hook and loop inflator hold down on the left shoulder. Aqua Lung is aware of an additional 50 reports of the handles detaching from the weight pockets. No injuries have been reported.

The handles were sold at sporting goods and scuba diving stores nationwide from September 2008 through October 2014 for between $460 and $700 for the buoyancy compensator with the weight pockets. Consumers should immediately stop using the recalled buoyancy compensators and return the two weight pockets to an authorized Aqua Lung dealer to receive a free inspection and free newly-designed replacement weight pocket handles. Contact Aqua Lung toll-free at 855-355-7170 from 8 a.m. to 5 p.m. PT Monday through Friday or www.aqualung.com and click on Recall Notice for more information.

**Tectron International Recalls USB Chargers Due To Fire Hazard**

About 55,000 3-in-1 USB phone chargers have been recalled by Tectron International of Vernon, Calif. The charger can overheat while in use, posing a fire hazard. The 3-in-1 USB charging cable is used to charge iPhone 4/4S/5G/3GS/3G, iPhone 5, iPad mini/iPad4 and android phones. The 10-foot white cord has a USB plug on one end. The other end has 3 plugs: 30-pin plug for the iPad First Generation and iPhone 4S and earlier models; Lightning plug for the iPhone 5 and later models and the iPad 2 and later models; and mini USB plug. The cable comes in a transparent sealed pouch. Item NO. USB29B is printed on label on the outside of the pouch. Two incidents reported the USB charger melting. No injuries or property damage were reported.

The chargers were sold by distributors for school fundraisers from July 2014 to August 2014 for about $3.50. The distributors were AGI Fundraising, The Chip Shoppe, CPK Inc. Evergreen Fundraising, Great American Opportunities and Paragon Promotions. Consumers should immediately stop using the charger and contact Tectron International to request a mailing label to return the merchandise. Mailing labels will be emailed to customers. Contact Tectron International toll free at 844-582-3152 from 9 a.m. to 6 p.m. PT Monday through Friday or online at www.tectronint.com and click on Recall for more information.

**Ventamatic Recalls Cool Draft Misting Fans Due To Risk Of Fire And Electric Shock**

About 450 Cool Draft Misting Fans have been recalled by Ventamatic LTD, of Mineral Wells, Texas. The fan’s wiring is not properly grounded, posing electric shock and fire hazards. This recall involves Cool Draft misting mid pressure and high pressure misting fans. The misting fans fit on top of 15 gallon yellow or orange round Igloo coolers or on top of gray 40 gallon water tanks. Cool Draft by Ventamatic is printed on a sticker on the fan’s water tank and www.cooldraft.com is printed on a sticker in the center of all of fans. The company is aware of two incidents with the misting fans, including one electric shock injury to a consumer.

The fans were sold at Hardware, home improvement, fire and home security retailers, buying cooperatives, and online at AdvancedSystems.com, BigFogg.com, CollinsSports.com, Cooldraft.com, MistNGo.com and ProPack.com from November 2013 through August 2014 for between $600 and $1,200. Consumers should stop using the misting fans immediately, unplug them and contact Ventamatic for a free repair, free shipping of the fan to Ventamatic and return back to consumers. Contact Ventamatic at 800-433-1626 or online at www.bvc.com and click on “Cool Draft Recall” for more information.

**Venmar Ventilation Expands Recall Of Air Exchangers Due To Fire Hazard**

Venmar Ventilation Inc., of Quebec, Canada, has recalled its air exchangers. The motor in the air exchangers can overheat, posing a fire hazard to consumers. This includes about 108,000 in the United States (an additional 77,500 previously recalled in March 2007, December 2007 and June 2011) and about 207,000 in Canada. This recall involves air exchangers with and without heat recovery sold under different brands that are used to circulate air in and out of the home. The metal air exchangers are painted blue or grey. Air exchangers with heat recovery included in this recall were manufactured from January 2002 through May 2008 and...
have brand and model information written on a silver or black label on the outside panel. Air exchangers without heat recovery included in this recall were manufactured from January 2002 through July 2009 and have brand and model information printed on the unit’s rating plate or imprinted on the side of the unit.

To view a full list of brand names and model numbers included in this recall, go to http://www.cpsc.gov/en/Recalls/2015/Venmar-Ventilation-Expands-Recall-of-Air-Exchangers/

Venmar Ventilation has received four new reports in relation to this recall expansion. In the previous recalls, Venmar Ventilation reported 26 incidents, for a total of 30. Out of these 30 incidents, five took place in the U.S. and 25 took place in Canada. All incidents resulted in fires and more than $1.1 million in property damages. No injuries have been reported.

Air exchangers with heat recovery were sold at heating, plumbing and building supply distributors nationwide from January 2002 through May 2008 for between $700 and $2,500. Air exchangers without heat recovery were sold at heating, plumbing, and building supply distributors nationwide from January 2002 through July 2009 for between $350 and $850. Consumers should immediately turn off and stop using their air exchangers. Consumers should contact Venmar Ventilation to request a free inspection and repair by a Venmar field technician. Contact Venmar Ventilation toll-free at 866-441-4645 anytime or online at www.venmar.ca and click on the Safety Upgrade Program link for more information.

**Mohawk Recalls Rugs Due To Fire Hazard**

Mohawk Industries Inc., of Calhoun, Ga., has recalled its Altitude Gold shag rugs. The large rugs fail to meet federal standards for flammability and could ignite, posing fire and burn hazards to consumers. The small rugs fail to meet federal labeling requirements. Small rugs are not required to meet the federal flammability standard; however, they are required to be permanently labeled with the following statement: “FLAMMABLE (FAILS U.S. DEPARTMENT OF COMMERCE STANDARD FF 2-70): SHOULD NOT BE USED NEAR SOURCES OF IGNITION.” This recall involves large and small Altitude shag area rugs. Large rugs came in sizes 59 inches x 84 inches with SKU number 1000012476 or 1000037219, 72 inches x 120 inches with SKU number 1000012777 and 84 inches x 120 inches with SKU number 1000037220. Small rugs came in sizes 24 inches x 36 inches with SKU number 100007217 and 24 inches x 48 inches with SKU number 1000037218. The rugs are made of polyester and were available in the color gold. “Altitude Gold,” the size and the SKU number are on a label on the underside of the product.

The rugs were sold exclusively at The Home Depot stores nationwide and online at HomeDepot.com from August 2013 through September 2014 for between $20 and $247. Consumers should contact Mohawk to receive a refund for the large rugs and a warning label to be affixed to the underside of the small rugs. Contact Mohawk toll-free at 877-737-8343 from 8 a.m. to 5 p.m. Monday through Friday, or online at www.mohawkflooring.com and click on “Safety Recall” in the “Customer Care” section at the bottom of the page.

**Daesung Celtic Energys Tankless Water Heaters Recalled**

Tankless gas water heaters have been recalled by Challenger Supply Holdings Inc., of Fort Worth, Texas (successor to Quietside Corp., of Santa Fe Springs, Calif.) The water heaters can overheat, posing a fire hazard. This recall involves all models of single- and dual-purpose Coaire and Quietside brand tankless gas water heaters. The recalled water heaters heat either 4 or 7.2 gallons of water per minute. They are white and come in the following dimension ranges: 25-28 inches tall x 15-19 inches wide x 8-14 inches thick. The words “S-Line Condensing” are on the top front and brand names “Coaire” or “Quietside” are on the bottom front of the recalled water heaters. Daesung has received 40 reports of the units overheating, including four involving burns on the wall where the heater was mounted and two involving fires and property damage. No injuries have been reported.

They were sold by Independent dealers nationwide and on various websites including Amazon.com from July 2008 through August 2014 for between $500 and $2,000. Consumers should immediately stop using the recalled water heaters and contact Challenger Supply Holdings to arrange for a free repair. Contact Challenger Supply Holdings at 800-729-6118 between 7 a.m. and 6 p.m. CT Monday through Friday or online at www.challengersupply.com and click on “Product Recall” for more information.

**Cost Plus World Market Recalls Modular Storage Bars**

About 7,000 Modular Storage Bars have been recalled by Cost Plus Management Services Inc., of Oakland, Calif. When weight is applied to the storage bar, the screws holding the mounting plate can pull out of the bar allowing the storage bar to fail, posing an injury hazard. The recall includes wall-mounted storage bars made of medium-density fiberboard with an oak wood finish that allow hanging storage accessories to be attached. The storage bars were sold in two sizes; long and short. The long bar is 36 inches in length and the short bar is 23.5 inches in length. The accessories are sold separately and include items such as a black metal mesh basket, key hooks and S-hooks. The storage bars have SKU numbers 491996 (long) and 491997 (short) printed on the UPC sticker attached to the product packaging. There are no identifying labels on the product itself. The company has received one report of a short storage bar pulling away from the wall. No injuries have been reported.

The bars were sold at Cost Plus World Market and World Market stores nationwide and online at www.worldmarket.com from June 2014 through August 2014 for between about $20 and $25. Consumers should immediately stop using the storage bars and return them to any Cost Plus World Market or World Market store for a free replacement. Contact Cost Plus World Market toll-free at 877-967-5362 from 7 a.m. to midnight ET daily or online at www.worldmarket.com and click on “Product Recalls” for more information.

**Visonic Recalls Amber Personal Emergency Response Pendants and Kits Due To Pendant Battery Failure**

Visonic Inc., of Westford, Mass., has recalled about 29,200 Visonic Amber Pendants and Visonic Amber Kits. An accelerated circuit drain of the pendant battery can result in a decreased battery life and shorter than expected “low battery” warning period, from 30 days down to a nine-day warning period. This recall involves Visonic Amber Pendants MCT-212 GS LA S (315) ENR and Visonic Amber Kits GS LA (315) KIT2. The kits contain the pendant and a base station. The Visonic Amber personal miniature transmitter pendant enables consumers to remotely signal their personal emergency response system to send a request for assistance. The pendant is off-white with a red oval-shaped button on the
face. It measures about 1 1/2 inches long by 1 1/2 inches wide by 5/8 of an inch deep. The white, plastic base station measures 8 inches wide by 2 inches deep by 11 inches high, and has an emergency, call and status check button. A label on the back of the pendant lists the part number and serial number. Recalled pendants sold separately have part number 0-102511 and serial numbers 0114147681 through 2015044165, 2513325212 through 4313226157 and 4513346942 through 5113063274. Pendants sold as part of the kit have model number 0-102371 and serial numbers 0114147759 through 1713321693, 1913433218 through 3313297879 and 3713561718 through 5113063339.

The pendants and kits were sold exclusively by Leased by Life Alert Emergency Response to consumers who subscribed for alarm monitoring services from about May 2013 through July 2014. Retail price for the products are about $50 for the pendant, and between $220 and $240 for the kit. Consumers should immediately contact Visonic or their alarm service provider for instructions on receiving a replacement pendant. Until a new pendant is received, consumers should manually test their pendant regularly for low battery status. Contact Visonic at 800-223-0020 from 8:30 a.m. to 6 p.m. ET Monday through Friday, or online at www.visonic.com and click on North America and then Product News under the Solutions & Products tab for more information about the recall.

**Waterway Plastics Recalls Spa Drain Suction Covers Due To Risk Of Entrapment**

Waterway Plastics, of Oxnard, Calif., has recalled about 26,000 Designer Pro Series Suction Covers. The drain suction cover can become disengaged from the spa wall, posing an entrapment hazard to consumers. This recall involves Waterway Plastics Designer Pro Series suction covers with model number 640-52XX S, printed on top of the outside edge of the plastic. The round covers are black and silver and were installed in select spas manufactured by Catalina Spas, Four Winds Spas, Dimension One Spas, and Sunrise Spas from June 2011 to June 2013. The covers are installed on the following model spas:

**Sunrise Spas Series**

989 Aquarian, Bimini (Mermaid brand only), 939 Endeavour, 959 Equinox, Essence 250, Genesis 250, Jewel 250, Legend 250, Medallion 350, S102 (White-water brand only), S103, S104, S105, 203LS, 204LS, 205LS, 939 Meridian, 249 Spirit SE, Tonga (Mermaid brand only).

Model and series numbers are located on the cabinet panel on the lower right side near the top side control.

**Dimension One Spa Series**

At Home Series, Bay Series, Reflection Series

The model name is on the inside of the cabinet access door.

**Four Winds Spa Series**

XL Swim Spas XL 12000, XLI4000, XL 16000

The model name is printed on stainless steel plates mounted on the outside of the spa. They are usually located on the left panel, using the topside as the front panel.

**Catalina Spas**

All models manufactured from 2011-2013.

The company has received 70 reports of drain covers detaching. No injuries have been reported. The covers were sold at Pool and Spa dealers nationwide from June 2011 to June 2013 for between $3,500 and $16,000 for the spas. Consumers should immediately stop using spas with the recalled drained covers. Consumers should contact Waterway Plastics for inspection instructions and information on receiving a free replacement cover. Contact Waterway Plastics toll-free at 866-719-6044, from 9 a.m. to 5 p.m. PT Monday through Friday, or visit the company website at www.waterwayplastics.com and click on “Recall” under Resources for more information.

**Loung Chairs Sold at Ross Stores Recalled**

4Seasons folding lounge chairs that were sold exclusively at Ross Stores have been recalled for posing a fall hazard. According to 4Seasons, the recall was issued because the chairs can recline too quickly, which could cause users to fall. So far, the company has received five reports of falls occurring, with three of those including minor injuries. The chairs come in orange, turquoise or brown and are made of steel tube frames and textilene fabric with an attached head cushion. They can be identified by a SKU number on the retailer’s hang tag attached to an arm of the chair. The SKU numbers are 400085136029 (bronce fabric and frame), 400085136036 (turquoise fabric and a white frame), and 400085136043 (orange fabric and a white frame).

A manufacturer’s tag can also be seen on the back of the chair with “Weight limit—250 lbs.” and “Made in China.”

**CoScentrix Expands Recall of DD Brand Candles**

About 256,000 DD brand candles were recalled by CoScentrix, of Carson, Calif. About 126,000 candles sold in tins were previously recalled in April 2014. The candles’ high flame can ignite the surface of the wax, posing a fire hazard.

This recall involves DD branded candles sold in 5- and 12-ounce Mason jars, 10- and 20-ounce decorative jars, 13-ounce coffee tins and 13-ounce holiday-themed jars. The single-wick candles were sold in a variety of fragrances and colors.

The 5-ounce Mason jars are 2.25 inches wide by 3.75 inches high. The 12-ounce Mason jars are 3 inches wide by 5 inches high with plain metal lids. The DD logo and the word Handcrafted are in raised letters on the front of the jars. The candle fragrance and size are printed on a hang tag attached to the mouth of the jars.

The 10-ounce decorative jars are 4 inches wide by 3 inches high. The 20-ounce decorative jars are 5 inches wide by 4 inches high and hold a candle. The jars have metal lids with the DD logo in raised letters on the top. The candle fragrance and size are printed on a rectangular label on the front of the jar.

The 13-ounce coffee tins are 3.5 inches wide by 4 inches high and have a plain metal lid. The candle size and fragrance are printed on a label that wraps around the outside of the tin. The 13-ounce Holiday candle jars are 3.75 inches wide by 4 inches high and have metal lids with the DD logo in raised letters on the top. The DD logo inside a floral wreath, the fragrance and size are printed directly onto the front of the jar in silver.
The SKU number is on a label on the underside of each container. For a full listing of candle scents and SKU numbers for being recalled, visit: http://www.cpsc.gov/en/Recalls/2015/CoScen-trix-Expands-Recall-of-DD-Brand-Candles/

CoScenrix has received 29 reports of the candle’s surface igniting and nine reports of property damage. One injury has been reported.

The candles were sold exclusively at Hobby Lobby stores nationwide and online at HobbyLobby.com from June 2014 through October 2014 for between $6 and $20. Consumers should immediately stop using the candles and return them to the nearest Hobby Lobby. Consumers with a receipt will receive a full refund. Consumers without a receipt will be issued a store credit. Online purchasers should contact CoScenrix for instructions on returning the product. Contact CoScenrix toll-free at 888-298-2722 from 8 a.m. to 5 p.m. PT Monday through Friday or online at www.coscentrix.com and click on “Recall Information” at the bottom of the page.

BLACK DIAMOND EQUIPMENT RECALLS WHIPPET SKI POLES DUE TO RISK OF INJURY

About 3,000 ski poles have been recalled by Black Diamond Inc., of Salt Lake City. The stainless steel pick in the handgrip can break and fail to slow or stop users from sliding downhill on a snow or ice covered slope, posing a risk of injury. This recall includes Black Diamond Whippet and Whippet Carbon ski poles manufactured May 2013 through January 2014. The Whippet is gray with two telescoping shafts and the Carbon Whippet is black with three telescoping shafts. The upper shaft of both models is made of aluminum and has a black and orange rubber handgrip with a built-in, stainless steel, serrated pick and a black nylon wrist strap with a an orange Black Diamond logo. “Black Diamond” and the Black Diamond logo are on the upper shaft of both models. The Whippet has an aluminum lower shaft with an orange and silver locking mechanism. “Whippet” and the logo are on the lower shaft. The middle and lower shafts of the Carbon Whippet are made of carbon fiber and have orange and silver locking mechanisms. “Carbon Whippet” and the logo are on the lower shaft. Both models have a 4-inch plastic powder basket on the lower shaft near the tip and graduation marks on the shafts to show the various lengths of the pole in centimeters. The Whippet can be extended from 99 centimeters (39 inches) to 142 centimeters (56 inches) long. The Carbon Whippet can be extended from 67.9 centimeters (26.75 inches) to 142 centimeters (56 inches) long.

Recalled poles have picks with polished surfaces, a notch in the top of the pick and a date code between 13121 and 14015 etched on the pole. The date code can be found by removing the locking mechanism on the middle shaft of the Carbon Whippet and the lower shaft of the Whippet.

The ski poles were sold at major outdoor retailers globally from January 2014 to November 2014 for between about $100 for the Whippet and about $140 for the Carbon Whippet. The poles are sold individually. Consumers should immediately stop using the recalled ski poles and contact Black Diamond to receive a free replacement for the upper shaft. Contact Black Diamond Equipment at 800-775-5552 from 8 a.m. to 5 p.m. MT Monday through Friday or online at www.blackdiamondequipment.com and select Customer Service at the top of the page then click on Product Recalls in the drop-down menu for more information.

OLYMPUS RECALLS DIGITAL AUDIO RECORDERS DUE TO BURN HAZARD

About 500 Olympus DS-5500 digital audio recorders have been recalled by Olympus Imaging America Inc., of Center Valley, Pa. The recalled recorders can overheat when charging, posing a burn hazard to consumers and property. This recall involves Olympus digital audio recorders with model number DS-5500. The recorders are black, measure about 4.5 inches tall by 1.9 inches wide by .67 inches thick. “Olympus” and “Digital Voice Recorder DS-5500” are printed on the front of the recorder. The recorder has three smart buttons, slide switches, edit functions, 2 GB of memory, an external SD card slot and a 1.7 inch LCD display on the front. Olympus has received three reports of the recorders overheating.

No injuries or property damage have been reported. Consumers should stop using the recorders immediately and contact Olympus, or the retailer where the recorder was purchased, to receive a full refund, free repair or a free replacement recorder. The recorders were sold at camera and electronics stores and mass merchandisers nationwide from February 2014 through June 2014 for about $450.

AP SPECIALTIES RECALLS POWER BANK CHARGERS

Alumni Partners dba AP Specialties of San Clemente, Calif., has recalled about 172,000 Two-Tone Power Bank chargers. When unit is being charged or being used to charge another device, it can overheat, causing a fire hazard. Power Bank charger is a self-contained energy source used to charge cell phones and other devices when an electrical outlet is not available. The unit is rectangular in shape and measures approximately 3.6 inches long by 1 inch high by 1 inch wide. It has a white top and the sides are either black, dark blue, lime green, light blue, orange, pink, purple, red, white or yellow. On the white top of the charger in black letters are “OUT DC5V” and “IN DC5V.“ Units with a period after the lettering—reading “OUT DC5V,”—are not involved in this recall. The name and/or logo of the organization that gave away the charger as a promotional item appears on the side of the power bank. There are three reported incidents of the Power Bank overheating. One incident resulted in fire damage. No injuries have been reported.

The chargers were given as promotional items at various meetings, trade shows and industry conventions from November 2013 to August 2014. The products sold for about $8 to $11. Consumers should immediately stop using the charger and contact AP Specialties for a replacement. AP Specialties will send consumer an envelope and label with instructions on how to return the power bank free of charge. Upon receipt of the power bank, AP Specialties will send the consumer a replacement product. Contact AP Specialties toll free at 888-877-7221 from 8 a.m. to 5 p.m. ET Monday through Friday or online at www.apspecialties.com and click on Product Recall or go directly to www.powerbankrecall.com for more information.

HOPPE’S RECALLS SEMI-AUTO BORE CLEANER

About 110,000 Hoppe’s Semi-Auto Gun Bore Cleaners have been recalled by TriPak Inc., Vandalia, Mich. Bottles have a child-resistant cap that can become loose. Chemicals in this product can cause skin irritation, internal injury or death if ingested. This recall involves Hoppe’s Semi-Auto Gun Bore Cleaner. This product is packaged in a brown 5-ounce plastic bottle with a blue and yellow label and black cap. The recalled item number is SA904 and can be found above the UPC code on the label.
Hoppe’s has received one report of a child opening a loose cap and spilling the product on himself. No injuries have been reported.

Consumers should immediately discontinue use of the product, ensure that the cap is secured on the bottle, keep out of the reach and sight of children and contact Hoppe’s for a free replacement product and disposal instructions. Contact Hoppe’s at 800-796-4760 Monday through Thursday 7 a.m. to 7 p.m. CT and 7 a.m. to 5 p.m. CT on Friday, or online at www.hoppes.com and click on the link entitled “Hoppe’s Semi-Auto Bore Cleaner Recall.”

**Graco Strollers Recalled For Fingertip Amputations**

Eleven models of Graco strollers have been recalled due to a fingertip amputation hazard, according to the United States Consumer Product Safety Commission (CPSC). The folding hinge on the sides of the stroller can pinch a child’s finger, resulting in a laceration or amputation. Graco has received 11 reports of finger injuries including six reports of fingertip amputations, four reports of partial-fingertip amputations and one finger laceration.

The recall includes about 4.7 million Graco and Century-branded strollers in the United States with model names Aspen, Breeze, Capri, Cirrus, Glider, Kite, LiteRider, Sierra, Solara, Sterling and TravelMate. All models are single-occupant strollers with an external sliding fold-lock hinge on each side and a one-hand fold release mechanism on the handle. Strollers manufactured from August 1, 2000 to September 25, 2014 are included in the recall.

If your stroller is included in the recall, contact Graco for a free repair kit available at the beginning of December.

The strollers were sold at Target, Toys R Us, Walmart and other retail stores nationwide and online at Amazon.com, Walmart.com and other online retailers from August 2000 through November 2014 for about $40-70 for the stroller and about $140-$170 for the Travel System. Contact Graco immediately for a free repair kit. Repair kits will be available from the firm at the beginning of December 2014. While waiting for a repair kit, caregivers should exercise extreme care when unfolding the stroller to be certain that the hinges are firmly locked before placing a child in the stroller. Caregivers are advised to immediately remove the child from a stroller that begins to fold to keep their fingers from the side hinge area. Consumer Contact: Graco Children’s Products at (800) 345-4109 from 8 a.m. to 5 p.m. ET Monday through Friday or online at www.gracobaby.com and click on the “Help Center” at the top and Recall and Safety Notifications for more information.

**Leatherman Recalls Children’s Multi-Tool Due To Laceration Hazard**

Leatherman Tool Group, Inc., of Portland, Ore. has recalled their Leatherman® Leap™ multi-tool. The lock mechanism on the optional knife blade can inadvertently release the blade, posing a laceration hazard. This recall involves the Leatherman Leap multi-purpose tool that was designed for users age nine and up. The multi-tool has a green, blue or red plastic casing with two screws, one on each handle of the tool. It consists of combination needle-nose and regular pliers, wire cutters, wood saw, ruler, tweezers, soda bottle opener, optional 420HC (high carbon stainless steel) knife blade, scissors, phillips screwdriver, and small and medium slotted screwdrivers. The words Leatherman and LeapTM appear on one side of the multi-tool.

The tool’s were sold at Bass Pro Shop, Cabela’s and retailers nationwide, including knife and sporting goods online stores, from August 2014 through September 2014 for about $54. Consumers should not install the optional knife blade or should immediately stop using the multi-tool with the installed optional knife. Consumers should contact Leatherman for a free replacement multi-tool, including shipping. Consumer Contact: Leatherman toll-free at (888) 212-2438 from 7 a.m. to 5 p.m. PT Monday through Friday or online at www.leatherman.com and click on Safety Recall under the Support section at the bottom of the page for more information.

**McDonald’s Recalls Hello Kitty Happy Meal Toy Due To Choking Risk**

McDonald’s has recalled a Hello Kitty-themed whistle given to children in Happy Meals, citing a chance they could choke on some of its parts. Two children have reportedly coughed out pieces of the whistle that they had sucked into their mouths, including one child who received medical attention, according to the U.S. Consumer Product Safety Commission (CPSC).

The CPSC said that parts of the three-inch tall “Hello Kitty Birthday Lollipop” whistle can detach and be inhaled, posing a risk to small children. McDonald’s handed out about 2.3 million of these whistles in the U.S. and 200,000 in Canada from October through November in Happy Meals and Mighty Kids Meals. Consumers should return the whistle to any McDonald’s for a free replacement toy.

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

**XXV. FIRM ACTIVITIES**

**Employee Spotlights**

**ANDREW BRASHIER**

Since joining Beasley Allen in September 2010, Andrew Brashier has worked in the Consumer Fraud Section. He has focused primarily on class action work involving consumer fraud. His practice has included *qui tam* litigation and the False Claims Act, along with litigating against insurance carriers on behalf of policyholders, and pursuing workers’ compensation claims.

Andrew is a member of the American Bar Association. In the American Bar Association Young Lawyers Division, he serves on the Antitrust Law Committee, Business Law Committee, International Law Committee and Litigation Committee. He also serves on Section of Litigation committees including Class Actions and Derivative Suits, Consumer Rights Litigation, Pretrial Practice and Discoversy, and Trial Practice.

Andrew serves on the ABA Section of International Law International Human Rights Committee and the Young Lawyers Interest Network. He also is a member of the Alabama State Bar, the ASB Young Lawyers Section, and the ASB Business Torts and Antitrust Law Section. Additionally, Andrew is a member of Taxpayers Against Fraud, a whistleblower lawyers group.

Andrew received his B.A. with a double major in Political Science and History, graduating from the University of Alabama at Birmingham (UAB) in 2007 with honors. He
earned his Juris Doctor degree from Samford University’s Cumberland School of Law in 2010. While in law school, Andrew was on the Dean’s List each semester and also earned a Certificate of Trial Advocacy. He was named to Scholars of Merit, received the Alabama Association of Circuit Judges Scholarship and Birmingham Bar Association Scholarship.

While at Cumberland, Andrew was Article Editor for the American Journal of Trial Advocacy and participated on the Cumberland National Trial Team, Henry Upson Sims Moot Court Board, Honor Court Justice, and Trial Advocacy Board as Client Counseling Competition Director. He obtained the rank of Champion in the Summer Haley Trial Competition and Spring 2008 Negotiation Competition, was a Finalist in the Donworth Freshman Moot Court Competition and Quarterfinalist at Parham H. Williams Freshman Trial Competition. He was a member of Phi Alpha Delta.

Andrew obtained and utilized an Alabama Third Year Practice Card while at Cumberland. His past experience includes Law Clerk positions at the Shelby County Public Defender’s Office, Alabama Attorney General’s Office, Capital Litigation Division; Legal Aid Society of Birmingham; and Mobile County District Attorney’s Office; as well as a position as a Legal Associate with the Americans for Prosperity Foundation.

Andrew and his wife, the former Cara Camp of Dothan, Ala., live in Prattville, where they attend Christ the King Anglican Church. Andrew volunteers as the Chancellor for the Jurisdiction of the Armed Forces and Chaplaincy, Anglican Church in North America. He also serves as a Board member for the Autauga Interfaith Care Center, is a member of the UAB Alumni Society, and a member of Alabama Citizens for Constitutional Reform. We are most fortunate to have Andrew with the firm. He is a hard worker and is totally dedicated to his clients’ cases and their welfare.

STEPHANIE MONPLASIR

Stephanie Monplaisir started as a Law Clerk in our Personal Injury/Products Liability Section in April 2011. She became a Personal Injury/Products Liability Staff Attorney after passing the Alabama Bar Exam in October 2011. Her practice in that section focused on complex litigation and appellate proceedings for the Personal Injury/Products Liability departments. In December 2012, Stephanie worked in the firm’s Toxic Torts section, handling cases related to the BP Oil Spill litigation and settlement. She has since rejoined the Personal Injury/Products Liability section.

Stephanie graduated Summa Cum Laude from Troy University in 2007 with a double major in Political Science and Psychology. Before starting law school, she worked as a Crisis Counselor with the Federal Emergency Management Agency during the Enterprise, Ala., tornado recovery. Stephanie graduated Summa Cum Laude from Thomas Goode Jones School of Law in May 2011. While in law school, she received 10 Best Paper Awards and the Best Advocate Award in Trial Advocacy. She served as a Senior Editor on the Faulkner Law Review and as a Senior Member of the Board of Advocates.

Stephanie is admitted to practice in Alabama state courts and the United States District Court for the Middle District of Alabama, and the U.S. District Court for the Northern District of Alabama. She is also a member of the Montgomery County Young Lawyer’s Association, the Montgomery County Association for Justice and the Women’s Section of the Montgomery County Bar Association. Stephanie is President of the Alabama Head Injury Foundation Junior Board.

Stephanie recently had an article published in Alabama Lawyer magazine titled The Limited Scope of Contributory Negligence in AEMLD-Crashworthiness Cases. Published November 2012. Other authors on the articles are Greg Allen, Cole Portis, Ben Baker, Dana Taunt, Stephanie Monplaisir, David Wirtes, Toby Brown, George Dent, III, David Marsh, Bruce McKee, Larry Morris, and Clay Hornsby.

Stephanie is married to David Monplaisir and they are members of Frager United Methodist Church. She also is a cheer coach at Ezekiel Academy. Stephanie is another very good lawyer who has exhibited exceptional writing skills. She too is dedicated to the clients she represents and works hard for them. We are fortunate to have Stephanie with the firm.

JODI TURNER

Jodi Turner is a Legal Assistant, working with Lance Gould, Rebecca Gilliland, and Leslie Pescia in the Consumer Fraud Section. She assists them by keeping cases organized, monitoring calendars, ensuring meeting deadlines are met, inputting information into the database and case management software, keeping up with the case statuses, maintaining contact with people involved in the cases, scheduling depositions, preparing and filing discovery, keeping clients updated on case status, and assisting in trial proceedings by preparing exhibits. Jodi has an 8-year-old daughter, Morgan. Jodi’s favorite hobbies are still spending quality family time, shopping, and watching Alabama football. Jodi is a very good employee, who works very hard on all of her projects. We are fortunate to have Jodi with the firm.

ANGELA TALLEY

Angela Talley has been with the firm for more than 12 years. She started as a receptionist and has moved on to other jobs over the years. Angela now works as legal secretary to Michael J. Crow and Graham Esdale, lawyers in our Personal Injury/Products Liability Section. Work in that Section is very fast paced. Angela says she loves working in the Section and in our firm. Angela says she has a wonderful grandson, Anthony Cruz, who recently turned 3 years old. She says she spends her spare time being a “granny” to Anthony. Angela enjoys spending time outside, doing yard work and taking care of her family. She is a good employee. Angela works very hard on the cases handled by her lawyers. We are fortunate to have Angela with the firm.

XXVI.
SPECIAL RECOGNITIONS

PRESIDENT OBAMA NOMINATES LORETTA LYNCH AS FIRST BLACK FEMALE U.S. ATTORNEY GENERAL

President Barack Obama on Nov. 8 officially announced Loretta E. Lynch as his nominee for U.S. Attorney General to replace Eric Holder, who resigned from the position in September. President Obama picked Ms. Lynch, the U.S. Attorney for the Eastern District of New York, which covers Brooklyn, Queens, Staten Island and Long Island. If she is confirmed, she would be the first black female to fill the position. It would be virtually impossible not to confirm this nominee if qualifications still count in the confirmation process.

Upon announcing her nomination, President Obama said Ms. Lynch “might be the only lawyer in America who battles mobsters and drug lords and terrorists,” and still has a reputation for being “a charming people person.” For those who didn’t know about the nominee, her office is known for prosecuting people accused of terrorism, including those accused of plotting to set off bombs in the subway. Additionally, she has overseen the prosecutions of public officials in corruption cases, including a state senator convicted for taking funds from taxpayer-subsidized health clinics he supervised and a state assemblyman convicted for accepting bribes.

Ms. Lynch is known among her colleagues at the Justice Department as a quiet hard-worker, who unlike many in positions of influence and visibility, avoids the spotlight and the political game. It may be good for her that she has no personal ties to President Obama. That may serve her well in confirmation hearings in a political climate when connections to the President are quite often more of a hindrance than a help.

Ms. Lynch, 55, was born in Greensboro, N.C. Her mother was a librarian and her father a Baptist minister who was also active in the civil rights movement. She received her
undergraduate and law degrees from Harvard University. While it’s unusual for a U.S. Attorney to be moved directly into the position of U.S. Attorney General, I believe this nominee should be an exception to that rule. Ms. Lynch has served as an advisor to the man she will replace, chairing a committee that advises the Attorney General on policy. I believe that President Obama made a good selection and hopefully the Senate will promptly confirm this nominee.

Sources: al.com and New York Times

WILLA CARPENTER FEATURED IN JOURNEY MAGAZINE’S SPOTLIGHT ON FAITH IN ACTION IN THE WORKPLACE

Willa Carpenter, the firm’s Human Resources Liaison, was highlighted in “River Region’s Journey” magazine last month. Starting with the firm in 1993, Willa grew up in Mississippi as a pastor’s daughter with a very strong relationship with the Lord. Her peaceful nature and nurturing spirit, both spiritual gifts that she thanks her parents for, help her bridge the gap between supervisors and their staff by offering godly counsel and prayer for those who need it.

Willa began at Beasley Allen as a receptionist, which allowed her to interact on a personal level with the lawyers and staff from day to day. Once struggling lawyers and staff began approaching her for prayer and encouragement regularly, we recognized that she needed to change her job title and location. Willa then became the Human Resources Liaison for Beasley Allen. One of her many duties in this position allows her to organize the firm’s weekly devotion luncheon. On each Thursday at noon, employees are given the opportunity to listen to God’s word and also enjoy a prepaid meal together. While this event is optional and not requested by the firm’s management, it’s extremely important. Willa told River Region’s Journey:

“It is humbling to see how God has blessed our law firm with such wonderful attorneys and staff. Our Board of Directors are generous, Christian men who have consistently provided for the needs of our employees and their families. Faith works by love—loving God means loving people—not in word only, but in deed.

Willa has spent 21 years with the firm. Before working for Beasley Allen, she worked for Durr Fillaue in the building at 218 Commerce St. Greg Allen and I bought the building for use by the law firm. Willa tells folks that when we bought the building, she came along as part of the deal, and began working as the firm’s receptionist. I met Willa when Greg and I first went through the building before buying it. I saw something in her eyes that told me that this woman “was special.” To this day, Willa continues to work in the very same building, but in a totally different role. She now brings folks people together in the name of Jesus Christ. Look for a copy of River Region’s Journey magazine to read the full article on Willa Carpenter. It will be a tremendous blessing!

ALICE LEE WAS AN INFLUENTIAL ALABAMA LAWYER

Alice Finch Lee, a pioneer for women in both the law and in the church, passed away on Nov. 17 at the age of 103. An influential Alabama lawyer who helped pave the way for women in the legal profession, Alice Lee was perhaps most instantly known to the general public as the sister of famous author Nelle Harper Lee, who won the Pulitzer Prize in 1961 for her novel, “To Kill A Mockingbird.” The lead character in the book, lawyer Atticus Finch, was modeled on the girls’ own father, in whose footsteps Alice followed into law.

Alice Lee practiced real estate law in her hometown of Monroeville, Ala., at the firm Barnett, Bugg, Lee and Carter. She was one of the first women to become a lawyers in the state of Alabama, in 1944, and one of the few women who practiced law in the U.S. until after World War II. She was active in the practice until 2012, and at age 100, was the oldest lawyers still practicing law in Alabama. Ms. Lee also worked as her sister’s lawyer. Harper Lee was an intensely private person, refusing almost all offers for publicity following the massive success of her novel. Requests for interviews were always funneled to her sister Alice, who almost always declined them on behalf of her sister.

Alice Lee also was active in the United Methodist Church, leading the way for women in the ministry. She was the first and only female to lead the Alabama-West Florida Annual Conference delegation at the United Methodist Church general conference. In 1992, the Conference created the Alice Lee Award in her honor. It was in recognition of women who “showed commitment to God while breaking barriers for women through leadership.” The award was both named in her honor, and appropriately, she was its first recipient.

With her passing goes a wealth of knowledge about the real estate in Monroeville. Her friend and retired United Methodist minister, Thomas Lane Butts, told the Associated Press, “Whenever there was a question in the community that no one could answer, the saying was, ‘Go ask Miss Alice.’ Her death is like the closing of a great library.” This lady led a full life and contributed greatly to her country and state.

Sources: AL.com, Associated Press

XXVII.
FAVORITE BIBLE VERSES

Dr. Lawson Bryan, Senior Minister at First United Methodist in Montgomery, furnished a timely verse for this issue. Lawson, a man of God in every respect, is a tremendous preacher of the Gospel. He says that Ephesians 1:9-10 is one of his “very favorite Bible verses,” adding:

The Lord led me to it years ago at a time when I needed a fresh answer to the question, “What is God up to in the world?” In many English translations this passage is hard to grasp; but I was reading it in the New English Bible and knew that I had found the answer to my question when I read the words in these verses. Among all the many things I do not know, these verses remind me of what I do know—God is at work to unite all things in Christ; and I want to be part of that unity.

God has made known to us his hidden purpose, to be put into effect when the time was ripe, namely, that the universe, all in heaven and on earth, might be brought into a unity in Christ.

Ephesians 1:9-10

Jennifer Aughtman, the Director of Youth Ministry at St. James United Methodist Church, sent in a verse for this month. Jennifer does a terrific job with young people in our church.

Whoever receives one little child like this in My name receives Me.

Matthew 18:5

Ben Gibbons, a lawyer in our firm, supplied two verses this month. He says these scriptures are what guided him to the profession of law. Ben had this to say:

Speak up for those who cannot speak for themselves, for the rights of all who are destitute. Speak up and judge fairly; defend the rights of the poor and needy.

Proverbs 31:8-9

Learn to do right; seek justice. Defend the oppressed. Take up the cause of the fatherless; plead the case of the widow.

Isaiah 1:17

Melinda Henderson, a legal secretary in our firm, also provided a verse for this issue. She says that Romans 8:31 always comes to

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mind for her and that it has totally changed her life.

What, then, shall we say in response to these things? If God is for us, who can be against us?

Romans 8:31

Beverly Larkin, another Beasley Allen employee, and a regular verse contributor to this part of the report, sent a verse in for this issue. It contains a good message for parents and one that we best listen to and follow.

And these words which I command you today shall be in your heart. You shall teach them diligently to your children, and shall talk of them when you sit in your house, when you walk by the way, when you lie down, and when you rise up. You shall bind them as a sign on your hand, and they shall be as frontlets between your eyes. You shall write them on the doorposts of your house and on your gates.

Deuteronomy 6:6-9

Wesley Smithart, a student at Huntingdon College, is working at the firm as an intern in the Web Services department and Consumer Fraud Section. Wesley says her favorite verse sums up who God is calling her to be.

Learn to do right; seek justice. Defend the oppressed. Take up the cause of the fatherless; plead the case of the widow.

Isaiah 1:17

Wesley says the second chapter of Philippians has also been a favorite passage throughout her Christian journey. She says it helps her understand who Jesus is and also who she wants to be. Specifically, Wesley says that Philippians 2:3 has been a constant “attitude-check” reminder in her daily life.

Do nothing out of selfish ambition or vain conceit; but in humility, consider others better than yourself.

Philippians 2:3

We appreciate all of the folks who send in Bible verses for the Report. We try to include as many as we can each month.

**XXVIII. CLOSING OBSERVATIONS**

The Thanksgiving Season is a very special one for all Americans. It’s a special time for each of us to count our many blessings and to be thankful for them. All too often we take our blessings for granted. We all have so much to be thankful for. We must thank God for each of our blessings. God has been so good to me and to my family, that words alone are insufficient to say how thankful and eternally grateful I am for all of those blessings. All too often, I take for granted God’s goodness.

We must acknowledge that God is able to do so much more for us and in us through Christ Jesus. He clearly is our provider and supplier of all that is good and helpful. God will sustain us in all things and under all circumstances. We must also learn to trust God to supply and fulfill all of our needs. It took me a while to fully understand and comprehend that I can do all things, but only through Jesus who guides me, directs me and strengthens me. As we leave Thanksgiving and head toward Christmas, pray the verses set out below for your family and for the United States of America.

Be joyful always; pray continually; give thanks in all circumstances, for this is God’s will for you in Christ Jesus.

1 Thessalonians 5:16-18

Do not be anxious about anything, but in everything, by prayer and petition, with thanksgiving, present your requests to God. And the peace of God, which transcends all understanding, will guard your hearts and your minds in Christ Jesus. Philippians 4:6-7

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 I will hear from heaven, and will forgive their sin and heal their land.

2 Chronicles 7:14

**SOME MONTHLY REMINDERS**

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

**XXIX. PARTING WORDS**

I am once again borrowing a message from my good friend, Rev. Walter Albritton for this issue. After reading what Walter sent me, I felt that it was perfect for the season of Thanksgiving. It also contains some very good advice from a man who has served the Lord faithfully for a good number of years. As you may recall, Walter is one of the pastors at St. James United Methodist Church.

**TAKE A BREAK AND ADMIRE THE HANDWORK OF GOD**

Many of us live in the fast lane. We live busy lives. Our schedules are so tight that we are often stressed out. Now and then it is helpful to slow down and admire the universe. Teddy Roosevelt was a busy man. But he was also wise. He had a habit of going outside his home at night and gazing in amazement at the stars and galaxies. After a period of silence he would say to those who had joined him, “We can go inside now; I think we are small enough.” This exercise reminded him of the greatness of God and his own finitude.

One way to take a break and catch your breath is to read the Psalms in the Bible. There are 150 Psalms. Many of them celebrate the mighty power of God. The next time you pray, read the first verse of Psalm 104 as the beginning of your prayer: “Bless the Lord, O my soul. O Lord my God, you are very great. You are clothed with honor and majesty.” The body and the soul can be
refreshed by meditating on the greatness of God. Take a few minutes and read the entire Psalm 104. Then go outside and take a fresh look at the moon and the stars. Give thanks for the magnificent glory of God displayed in the heavens. And give thanks for Stuart K. Hine. The song, “How Great Thou Art,” must have come to him on a star-lit night.

Take a few deep breaths and let God stir your heart as he stirred Hine’s heart, inspiring him to exclaim “O Lord my God! when I in awesome wonder consider all the worlds thy hands have made, I see the stars, I hear the rolling thunder, thy power throughout the universe displayed.” God in all his creative glory is the focus of Psalm 104. Other psalms bring us to our knees in repentance. Still others give us assurance that in all circumstances the Lord is with us. Celebrating God’s creative power and glory can awaken a song in our souls and move us to “bow in humble adoration” and proclaim with Stuart Hine, “My God, bow great thou art!”

The 104th Psalm is also a song of praise. It ends where it begins with the words, “Praise the Lord, O my soul.” There is no lament about pain or evil. Instead the writer is so filled with awe and wonder that he insists, “I will sing praise to my God as long as I live.”

His awe and wonder spring from his conclusion that only a great and mighty God could have designed the world with such precision, purpose, rhythm and beauty. There is life-giving water controlled by boundaries engineered by the bands of God. There are majestic mountains and fertile valleys. There are majestic trees that are useful to humankind.

Singing birds have nests in the trees. Grass is provided for the cattle. The earth offers bread and fruit to gladden the hearts of men and women. Even the wild donkeys and wild goats have a habitat. Sustenance is offered to mankind and all living creatures by the gracious hand of God: “When you open your hand, they are satisfied with good things.”

We should not miss observing that though the Psalmist is awed by the greatness of God, he never moves to despair about the “smallness” of human beings. Indeed he suggests that his meditation upon God’s greatness can be pleasing to God. This is an important truth. It gives us a positive perspective about the creative power of God. We are made in the image of God. Therefore, we have God-given creative potential that we can use to manage wisely the “works” of God’s hands. He has given his children the gift of, and the urge for, creativity. We can obey God by living as good stewards of the gifts of his creation.

We can look for ways to cooperate with the natural laws of the created universe. For example, NASA engineers were able to land a spaceship on the moon because they could calculate exactly where the moon would be at any given point in time. We have learned that neither God nor his universe is characterized by whimsical decisions. That is why we can trust God with our whole heart; he is never capricious. He is always faithful and everything he does is motivated by love because his nature is love.

Since God is love, we may conclude that even the creative majesty of the world has been created not by chance but for our enjoyment. God made us with the wondrous capacity to view with breathtaking wonder the Grand Canyon, Niagara Falls, Victoria Falls and similar displays of his handiwork. We can view a magnificent sunset and with thankful hearts praise God for giving us eyes to behold such beauty, and hearts that can be touched by the gentle work of his fingers. When I saw Iguazu Falls in South America for the first time, my heart was filled with praise for God as I prayed, “Thank you Lord for loving me so much that you allowed me to see this display of your glory with my own eyes.” For me that breathtaking beauty was not an act of something called Nature, but an act of a loving Creator who delights in displaying creative splendor for his children to behold with wonder.

Geologists can explain why over centuries all that water now converges on that site shared by Brazil and Argentina. I prefer, however, a theological perspective—that the earth and the heavens display the glory of God for the enjoyment of his children, and so they may realize that as awesome as are the gifts of his hands, even more awesome is the gift of his love that caused him to send his Son to redeem us from our sins. We shall be wise now and then to get off the merry-go-round long enough to admire God’s handiwork and in awesome wonder cry with the Psalmist, “Praise the Lord, O my soul!”

All I can add to Walter’s message is Amen! Coming just after Thanksgiving and as we head toward Christmas, each of us needs to hear these words. We have so very much to be thankful for and it’s important to understand where our blessings come from. May God bless each of you, your families and co-workers as we will soon be entering the Advent season.

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