I. CAPITOL OBSERVATIONS

THE SELMA MARCH

Fifty years ago this month, an event took place that drastically changed our nation. It began on March 7, 1965, with what had been planned as a peaceful protest in Selma, Ala., to call for voting rights for African Americans. Rev. Hosea Williams and John Lewis led 600 folks toward Montgomery, where they would gather at the state capitol building. It was not to be.

As the marchers were met with violent resistance by Alabama State Troopers and Sheriff’s deputies, Marchers were beaten, and the event came to be known as “Bloody Sunday.” The eyes of the nation were once again drawn to the civil rights battle and Alabama would play a key role.

Fortunately, the movement was not to be stopped, only delayed, and the rest is history. Led by Dr. Martin Luther King, Jr., on March 22, hundreds of protesters once again set out to march toward Montgomery. In the next four days, they traveled the 54 miles between Selma and Montgomery. The march was still marred by violence. On the night of March 25, after stopping for the night to rest in Lowndes County, Viola Luizzo, a white mother of five from Detroit, was assassinated by members of Ku Klux Klan. She had traveled to Montgomery to add her voice to the call for voting rights for people of all races. By the time marchers reached the Alabama State Capitol, they had become a crowd numbering 25,000.

On August 6, 1965, President Lyndon B. Johnson signed the Voting Rights Act, which prohibits racial discrimination in voting. The events in Selma had brought to the nation’s attention the need for change. Many young people today don’t fully realize how important “Bloody Sunday” and the events that followed were for America.

Throughout the month of March, there will be special events in Selma, Lowndes County and Montgomery to commemorate the 50th anniversary of the Selma to Montgomery March. President Barack Obama, former President George W. Bush, and other national, state and local leaders will visit Selma on March 7, the anniversary of Bloody Sunday. The Lowndes County Interpretive Center, which is located near where the marchers camped at “Tent City,” is open year-round with information about the historic Voting Rights March.

Montgomery will host a number of events as well. Alabama State University will host a concert with headliner Patti LaBelle on March 7 to honor the 50th anniversary of the march. The Southern Poverty Law Center (SPLC) will screen “Selma: The Bridge to the Ballot” on March 7. The film focuses on the role of teachers and students in the Selma-to-Montgomery March. The City of Montgomery, Montgomery County, the City of St. Jude, Alabama State University, Montgomery Public Schools, SPLC and others have partnered to craft educational experiences for students during the week of March 23-27, including the Dream Marches on Youth Tour. The tour will offer participants a tangible link to America’s history and the Civil Rights movement through visits to sites in Selma, Montgomery, Tuskegee and Lowndes County. There will be a Celebration of the Stars for Freedom Rally in Montgomery on March 24.

These are just a very few of the many, many activities planned throughout the month. Visit the official website for the anniversary at www.dreammarcheson.com for a full list of events in each participating area. It is amazing to stop and think of the world-changing events that have taken place in Alabama, and right here in Montgomery. We must all continue the fight that started at a bridge in Selma and work diligently to make ours a country where all men are truly not only created equally, but treated equally.

The right to vote is a cherished one and we can’t let racist politics take away that right from any segment of our population. We have seen in recent years overt attempts to dilute the political influence of African-American citizens. That can’t and won’t be tolerated. Hopefully, after the celebratory atmosphere surrounding the events of this month has dimmed, the fight for true equality in Congress will continue and actually intensify. It’s past time for Dr. King’s dream to become a reality. That it will come about soon is my prayer for America.

Sources: dreammarcheson.com; City of Montgomery, Montgomery Area Convention & Visitor Bureau

II. THE ONGOING SAGA OF THE GENERAL MOTORS SAFETY PROBLEMS

GM FACING 104 LAWSUITS PLUS CLASS ACTION TIED TO CAR DEFECTS

General Motors Co. (GM), which as we all know has been under intense media, congressional and courtroom scrutiny over fatalities caused by its defective and
highly dangerous ignition switches, is now defending 104 death and injury lawsuits brought by victims whose accidents were caused by defects in the company’s cars. Another 108 suits seeking class action status over depressed car prices are pending in federal and state courts. GM released the numbers in early February in a filing with the U.S. Securities and Exchange Commission (SEC). The company is also the target of investigations by state and federal agencies. GM had this to say in the SEC filing:

Such lawsuits and investigations could in the future result in the imposition of damages, substantial fines, civil lawsuits and criminal penalties. We cannot currently estimate the potential liability, damages or range of potential loss as a result of the legal proceedings and governmental investigations.

GM spent $2.9 billion last year on recalls and loaner cars after calling in 36 million vehicles for repairs worldwide. Recalls in the United States were a record 26.9 million. GM recalled 2.59 million vehicles because the ignition switch in some cars can slip out of the “run” position, shutting off the engine and safety features including air bags while the car is moving. GM now admits to at least 57 deaths having been linked to the defective switch. Based on what we have learned in the GM litigation, we believe the number to be much higher. The program set up by GM to settle claims by victims of accidents related to faulty ignition switches in the U.S. has paid out $93 million so far. We have learned that GM estimates the settlement program will eventually cost $600 million. GM had net income of $2.8 billion in 2014.

GM received another 33 claims for compensation for ignition switch defects in its cars during the week of Feb. 11-22, bringing the total to 4,345. This comes from a report by Ken Feinberg, the administrator of the company’s compensation program. At press time, GM had received 479 claims for death, 292 for catastrophic injuries and 3,574 for less-serious injuries requiring hospitalization. This puts the total injury claims at 3,866. According to the Feinberg report, the number of claims found to be eligible for compensation so far is 151. So far, Mr. Feinberg has determined that 57 deaths, nine severe injuries and 85 other injuries are eligible for compensation.

The report also said 666 claims have been deemed ineligible, while 1,457 are still under review. Another 1,104 lacked sufficient paperwork or evidence and 967 had no documentation at all. The deadline for filing claims was Jan. 31, but any claims postmarked by that date are eligible for review.

Detroit-based GM was aware of faulty ignition switches on Chevrolet Cobalts and other small cars for more than a decade, but it didn’t recall them until 2014. Feinberg’s office has said that it likely will take until late spring to sort through all of the claims it has received. It should be noted that those who agree to payments give up their right to sue the automaker.

While GM set aside $400 million to make payments, it has now conceded that the payouts could grow to $600 million. GM placed no cap on the amount of money that the Feinberg fund can spend. At the end of last year, Feinberg had paid out $93 million in claims, according to GM’s annual report. But it should be noted that GM still faces 104 wrongful death and injury lawsuits due to the faulty ignition switches, as well as 108 class-action lawsuits alleging that the ignition switch debacle reduced the value of customers’ cars and trucks. The lawsuit filed by Ken and Beth Melton got all of this started and it’s the one case—out of hundreds—that GM has no answer for.

Source: Insurance Journal

III. THE TAKATA AIRBAG SAGA CONTINUES TO EXPAND

TAKATA AIRBAG SUITS SENT TO FLORIDA JUDGE

The U.S. Judicial Panel on Multidistrict Litigation (JPML) has centralized five proposed class actions against automakers over the recall of faulty Takata Corp. air bags in millions of vehicles in a Florida federal court. The panel said that while the parties supported centralization, the Plaintiffs and the automakers had been split over the location of the venue. During a Jan. 29 hearing, a group of automakers—American Honda Motor Co. Inc., BMW of North America LLC, Subaru of America Inc., Ford Motor Co. and others—urged the panel to select the Western District of Pennsylvania because of its proximity to each of the Defendants.

The Plaintiffs had been split between the Central District of California, as a number of witnesses would be flying in from Japan, and the Southern District of Florida. They said the largest number of personal injury cases came from Florida and Puerto Rico due to high humidity triggering the alleged defect.

More than 70 potential class-action lawsuits have been filed claiming the air bags are defective because they can explode and cause injury or death with flying debris. At least six deaths have been linked to Takata air bags. “This litigation is nationwide in scope,” U.S. District Judge Sarah Vance, chief federal judge in New Orleans, said in the panel’s ruling.

Most of the lawsuits claim unspecified economic damages stemming from the lost value of the vehicles containing the air bags. None of the current cases seek damages for personal injury, but some could be added later, according to the panel’s order. Nine are currently pending around the country.

A key legal question is whether Takata knew of the defect but did not disclose that knowledge to regulators, according to court papers. The company has said it is still trying to identify the cause. The lawsuits also name several major automakers, including Honda Motor Co., BMW of North America, Ford Motor Co., Nissan North America Inc., Subaru of America and Toyota Motor Sales USA.

About 12 million vehicles in the U.S. and about 19 million globally have been recalled because of problems with Takata air bags. Millions more vehicles have been recalled because of unrelated air bag problems, such as inadvertent inflation while vehicles are running but not involved in an accident. Takata announced this week it is projecting a $264 million loss for the fiscal period ending in March, worse than the previous forecast of a $214 million loss. There are more than 30 million Takata air bags in the U.S. and 100 million worldwide. The company controls about 20 percent of the world’s air bag and seat belt market.

Others still had argued for districts in New York, Louisiana and Texas, among others, according to the panel. In the transfer order, the panel noted the national scope of the litigation and that constituent and tag-along actions are
pending in more than two dozen districts across the country. The panel said:

**Takata and the various motor vehicle manufacturer Defendants have offices and other facilities in a number of different states. No one district stands out as the geographic focal point.**

The panel said that “given the litigation's many moving parts” including multiple Defendants, a related grand jury proceeding and the National Highway Traffic Safety Administration’s (NHTSA) ongoing investigation, it was particularly important to select an experienced judge to oversee the litigation. The panel said that U.S. District Judge Federico A. Moreno “is such a jurist,” and made the assignment. A federal judge since 1990, Judge Moreno oversaw the In re: Managed Care litigation, “a complex docket involving numerous health care defendants,” according to the panel.

It clearly appears that the automakers knew of the defect as early as 2008, when Honda first notified regulators of a problem with its Takata air bags. However, the automakers and Takata opted to not address the issue, leading to deaths stemming from the defect. The manufacturing defect in the air bags dates back to at least April 2000, and Takata became aware of it as early as 2001, but the defect allegedly wasn’t disclosed to federal regulators until 2008.

**NHTSA Hits Takata With A $14,000 Daily Fine For Noncompliance**

Based on an order from The National Highway Traffic Safety Administration, Takata and its stalling tactics will prove costly. NHTSA issued a $14,000-a-day fine on the manufacturer for every day it refuses to cooperate with the safety agency’s probe into the exploding airbag inflators. The exploding inflators have been blamed for six deaths, the latest of which occurred last month in Houston, Texas. So far, a total of 64 injuries have also been attributed to the flaw.

According to *Automotive News*, the automotive industry trade paper, the airbag manufacturer was fined because Takata had failed to “fully cooperate” with its probe. NHTSA also said that Takata may face Justice Department action if it doesn’t cooperate quickly. This action stemmed from the agency’s issuance last year of a series of special orders, which are the equivalent of judicial subpoenas, that demanded Takata produce documents relating to the airbag issue, as well as answer questions under oath regarding the faulty inflators. The action was announced in a letter to Takata’s lawyer on March 24 from Kevin Vincent, recently NHTSA’s chief counsel.

To date, Takata told *Automotive News*, it has supplied some 2.4 million pages of documentation to NHTSA so it can conduct its investigation into the defective parts. The order also stated that Takata was to provide NHTSA with descriptions of the content of the documents. Takata has so far failed to provide the descriptions. Vincent said, in his letter, the airbag manufacturer had failed to be forthcoming with the agency because it had failed to supply NHTSA with all of the documentation it was required to provide legally and that it had failed to be cooperative with the agency in another matter before the agency “earlier this week.” Vincent did not identify that second matter.

Vincent also warned the airbag manufacturer that it will move quickly to question employees in the United States and Japan. The agency imposed the fine to actually force compliance with the agency’s probe. Potentially, Takata could face a total $420,000 fine for every month it refuses to rectify the situation. On a yearly basis, the potential fine could add up to more than $5 million. Transportation Secretary Anthony Foxx, in a statement issued on March 24, said that:

**Takata’s failure to cooperate with our investigation is unacceptable and will not be tolerated... For each day that Takata fails to fully cooperate with our demands, we will hit them with another fine.**

At the same time, Secretary Foxx asked Congress to pass the Obama administration's transportation bill, the Grow America Act. The bill, if enacted, will give regulators the ability to increase the maximum fine it can levy to $300 million. The present maximum civil fine is $35 million. The new tools in the bill will help safety regulators to “change the culture of safety for bad actors like Takata,” according to Foxx.

The Senate Commerce Committee, in a rare show of bipartisanism, has called on Takata to “do everything possible to aid” NHTSA and carmakers looking for the cause of inflator explosions. The Senate panel continues to probe the airbag manufacturer and held a series of hearings late last year into the many airbag recalls last year. Committee Chair Sen. John Thune, R.S.D., and Sen. Bill Nelson, D-Fla., ranking minority member, told Takata they were “extremely troubled by the Department of Transportation’s report that Takata is not fully cooperating with such a serious safety investigation… We cannot tolerate delays or limited cooperation when people’s lives are at stake. The committee leaders also reintroduced a bill recently that gives whistleblowers who divulge information about safety defects part of the fines collected by NHTSA if the information uncovers a safety defect. The Senate panel was set to act on the bill last month.

**Source:** *Automotive News*

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**Sixth Death Due To Defective Takata Airbags Exposes Recall-System Flaws**

It has been reported Takata’s defective airbag inflators have now killed a sixth person. Carlos Solis IV was driving a 2002 Honda sedan when he became involved in a relatively minor collision with a 2003 Infiniti G35. The airbag in the Solis car exploded, sending pieces of metal into his neck. The 2002 Honda was purchased by Solis from a used-car dealer- ship in Cypress, Texas, but he was not informed that it was subject to a recall.

The original owner of the Honda Accord had received several mailed recall notifications starting in 2011 but never took the car in to be repaired. The Accord was also included in the June 2014 recall that covered high-humidity regions, including Texas. That recall was later expanded to cover 5.4 million vehicles nationwide. Still, the Accord was never repaired.

A recall is only successful if manufacturers, consumers and dealerships work together. Manufacturers must issue effective notifications and follow up on those notifications. Consumers must voluntarily return the car to dealerships for repairs. Dealerships must efficiently repair the defects subject to recall. Locating and notifying affected customers can take weeks or months, and actually getting the repairs done can take much longer, depending on the availability of parts. Meanwhile, used cars aren’t subject to many of the consumer-protection laws that prevent the sale of recalled vehicles.

Honda does not dispute that Solis was never informed of the recalls. April Strahan, the lawyer for the Solis Family,
TakaTa muST PreServe recalled air BaG

Source: Jtration (NHTSA) or an automaker. Mr. National Highway Traffic Safety Adminis-
tation (NHTSA) has ordered Takata Corp. to preserve all air bag inflators removed in recalls of some 17 million vehicles, saying the potentially deadly parts would be used as evidence in a federal investigation and in private litigation cases. U.S. Transportation Secretary Anthony Foxx said in a written statement:

There’s insufficient tracking of the recall notifications that are sent to the dealerships as well as the owners of the vehicle, and there’s virtually no follow-up, she said, noting that the system has no way to confirm that recall notices are received by owners.

Consumers who purchase used cars are especially vulnerable to defects that are subject to recalls. It appears that there is no federal law that requires a dealer to repair or disclose the presence of an open recall prior to the sale of a used vehicle. That’s the position taken by Steve Jordan, executive vice president of the National Independent Automobile Dealers Association, a trade group representing used-car dealers.

Instead, to find out that his Accord had been recalled, Solis, the owner in this case, would have had to type the VIN into online databases managed by the National Highway Traffic Safety Administration (NHTSA) or an automaker. Mr. Jordan added:

Right now, the three entities that control the recall data are the federal government, OEMs [original equipment manufacturers] and the franchised new-car dealers. Currently, used-car dealers do not have any more access to open recall data than consumers do. We feel as an association that the system is hugely flawed.

Lawyers in our firm are currently investigating cases involving a Takata airbags. They are looking at cases that resulted in catastrophic injury or death. Several lawyers in the firm are working on these cases. For more information on this subject, contact Cole Portis, who heads up our firm’s Product Liability Section, at 899-898-2034 or by email at Cole.Portis@beasleyallen.com.

Source: Automotive News

AUTOMAKERS HIRE ROCKET SCIENCE COMPANY TO FIND CAUSE OF EXPLODING AIR BAGS

The auto industry has hired a Virginia rocket science company to investigate and find out why some air bags explode with too much force. Ten automakers whose vehicles have been recalled because of problems with Takata Corp. air bags stated that they have jointly hired Orbital ATK to come up with an answer. The suburban Washington, D.C., company makes rocket propulsion systems, small arms ammunition, warhead fuses and missile controls.

The companies also named David Kelly, a former acting administrator of the National Highway Traffic Safety Administration (NHTSA), as project manager for the investigation. As we have repeatedly reported, air bags inflators made by Takata of Japan can explode with too much force, sending shrapnel into car and truck cabins. At least six people have been killed and 64 injured due to the problems. So far, about 17 million cars and trucks have been recalled in the U.S. and 22 million worldwide to replace the inflators, but Takata has been unable to pinpoint the cause.

Takata co-founder Shigehisa Takata had been aware of the problem for years, but took no action until this year. Several lawyers in the firm are working investigating cases involving a Takata airbags. They are looking at cases that resulted in catastrophic injury or death. Several lawyers in the firm are working on these cases. For more information on this subject, contact Cole Portis, who heads up our firm’s Product Liability Section, at 899-898-2034 or by email at Cole.Portis@beasleyallen.com.

Source: JereBeasleyReport.com

IV. MORE AUTOMOBILE NEWS OF NOTE

THE SAFETY INSTITUTE ANNOUNCES QUARTERLY VEHICLE SAFETY WATCH LIST

The Safety Institute has released its latest quarterly Vehicle Safety Watch List. For the third quarter in a row, potential power steering issues affecting the 2012 Ford Focus top the list. In addition,
Toyota continues to occupy several spots for potential structure and unintended acceleration claims. General Motors also remains on the list for potential service brake issues. None of these issues have been investigated by the National Highway Traffic Safety Administration (NHTSA). Neither have they been remedied by the manufacturers.

The Safety Institute launched the Watch List in June to document the early signs of defects in the U.S. motor vehicle fleet. The reports also help identify potential failures to effectively fix known vehicle issues and provide evidence-based data for directing investigatory resources. The Watch List is a tool for researchers, safety advocates, attorneys, consumers, journalists and federal agencies to identify trends.

This release comes at a time when NHTSA has recently come under fire by Congress for failing to investigate defects in GM ignition switches and Takata airbags. On Jan. 8, NHTSA levied a $70 million fine against Honda—the largest in agency's history—for failing to report by law the death and injury claims. Sean Kane, The Safety Institute's founder and president of the board, stated:

**The Vehicle Safety Watch List is an example of leveraging already available data to help prioritize investigative resources. This type of tool can help identify and potentially prevent costly safety crises that not only cause harm to consumers but take extra resources to manage.**

Using publicly available data such as NHTSA consumer complaints in the Vehicle Owners Questionnaire (VOQ) database, manufacturer-reported Early Warning Reports on deaths and injuries, and the Fatality Analysis Reporting System (FARS), The Safety Institute Vehicle Watch List identifies potential motor vehicle safety defects that merit additional engineering and statistical review. The Safety Institute queried all reports forwarded to NHTSA from the third quarter of 2013 through the second quarter of 2014 for all deaths and injuries claims involving light vehicles made by the following manufacturers: BMW of North America; Chrysler Group, Ford Motor Company; General Motors; American Honda Motor Co.; Hyundai Motor Company; Jaguar Cars; KIA Motors Corporation; Land Rover; Mazda Motor Corp.; Mercedes-Benz USA; Mitsubishi Motors North America, Inc.; Nissan North America Inc.; Porsche Cars North America Inc.; Saab Cars North America Inc.; Subaru of America Inc.; Suzuki Motor of America, Inc.; Tesla Motors, Inc.; Toyota Motor Corporation; Volkswagen of America Inc.; and Volvo Cars of N.A.

Other potential defects that continue to be seen on the Watch List include structure issues in the 2005 and 2006 Toyota Sienna in 6th and 12th place. The 2011 and 2012 Chevy Cruze are in 4th and 7th place for potentially malfunctioning service brakes. Speed control complaints are again a standout for the Toyota Camry—the 2007 Toyota Camry, the 2006 Camry, the 2010 Camry, and the 2005 Camry occupy the 5th, 10th, 14th, and 15th places in the current Watch List.

Some manufacturers have initiated recalls that may be related to issues on the list, but death and injury claims continue to mount. These complaints may indicate that the recall repairs were improperly performed or that they did not resolve a potential defect, or the root cause has not been properly identified.

For example, Toyota initiated a safety recall in 2008 to replace the Liftgate struts in approximately 196,222 model year 2004-2006 Toyota Sienna vehicles equipped with power rear Liftgate struts. Toyota also issued a recall for certain Model Year 1998 through 2010 Sienna passenger vehicles manufactured between Aug. 7, 1997 and Jan. 4, 2010, due to the corrosion of the spare tire carrier when high concentrations of road salt reach the carrier.

In August 2103, General Motors recalled 293,000 2011MY and 2012MY Cruze vehicles for intermittent loss of the brake assist. Consumer complaints to NHTSA continue to mention brake failures even after the recall repair was performed.

My friend, Lance Cooper, the well-respected lawyer from Marietta, Ga., says that the Watch List can prevent future tragedies. Lance added:

**We are pleased that the Vehicle Safety Watch is serving its intended purpose. This data should be used to further investigate potential defects in order to save lives and reduce injuries.**

The Quarterly Vehicle Safety Watch List is a product of the Institute’s Vehicle Safety Watch List Analytics and the NHTSA Enforcement Monitoring Program. Lance and his law firm sponsor the program in memory of Brooke Melton, the young lady who was killed because of GM’s wrongdoing. The Watch List is compiled using peer-reviewed analytic methods, with support from Quality Control Systems Corp. These reports are intended to help the public recognize emerging problems in the U.S. fleet and to identify continuing failures potentially associated with known problems.

Source: Safety Institute Press release

**CLASS ACTION SOUGHT FOR TOYOTA’S ELECTRIC POWER STEERING DEFECT**

Plaintiffs, in a lawsuit filed in California federal court, are attempting to certify a nationwide class of former and current owners of the 2009 and 2010 model year Corolla based on the electric power steering (EPS) system. In October 2012, two Toyota Corolla owners, Irene Corson of New York and Susan Yacks of Pennsylvania, filed suit. The Corolla owners alleged the steering system’s defect caused the vehicles to drift out of the driver’s control, which they said was a safety problem that Toyota was aware of and did not remedy. It was alleged further in the lawsuit that the defect caused the driver to spin out of control on a highway sending her into oncoming traffic before coming to a rest on an embankment, according to the complaint. The Plaintiffs allege the defect was significant and widespread, and requested that the class should be certified.

Toyota, which is still in the news for a vast recall due to defective air bags, argued the Plaintiffs should not be allowed nationwide class certification, claiming that the vehicles share no common problem. Instead of the defect being significant and widespread, Toyota contended that only a small number of Corolla owners reported any steering concerns. The automaker said those concerns related to the individuals’ preferences such as “steering feel” and “tire conditions.” Toyota said its own review of the reports found no steering problems.

In February 2010, The National Highway Traffic Safety Administration (NHTSA) opened an investigation into the EPS system in the Toyota Corolla and Matrix models. NHTSA says it found related consumer complaints dealt with operational issues, not failure of the steering elements. Therefore, the agency closed the investigation in May 2011 without taking action. After the conclusion of NHTSA’s investigation, Toyota issued a technical service bulletin offering to make changes to the steering...
systems. But the Plaintiffs contend the notice was not adequately disseminated to consumers and was arbitrarily applied.

Toyota filed a motion in March 2013 to dismiss the complaints saying they lacked specificity. Judge Bernal agreed with the Defendants and dismissed the claims relating to the technical service bulletin because the Plaintiffs failed to show the bulletin extended a warranty to all consumers and represented an adjustment program. But, on the other hand, Judge Bernal agreed with the Plaintiffs that Toyota had withheld information about the steering defects. He said withholding that information would have deterred the Plaintiffs from purchasing the vehicles had it been released and ultimately the lack of that information caused harm.

Not only did Toyota withhold essential safety-related information, but it also actively concealed the steering defects. Judge Bernal stated that because consumers had complained about steering defects, the automaker knew about the problem, but failed to make a repair procedure known to all affected customers or dealers. The individual dealers denied the problem existed.

For more information on this subject, you can contact Cole Portis, who heads up the firm’s Product Liability Section, at 800-898-2034 or by email at Cole.Portis@beasleynallen.com.

Source: Law360.com

V.
A REPORT ON THE GULF COAST DISASTER

COURTS SIDES WITH UNITED STATES ON BP’S MAXIMUM PENALTY

Previously, we reported that BP was contesting the company’s potential Clean Water Act maximum per-barrel penalty calculation. We can now report that Judge Barbier has rejected this argument. That was an expected result. Judge Barbier wrote:

BPXP claims that Clean Water Act Section 1321(b)(7) does not confer authority on the EPA or the Coast Guard to bring actions for civil penalties or make clear in any other way what agency has jurisdiction over the civil penalty.

According to Judge Barbier’s order, the EPA’s calculation was lawful because the Agency had proper authority over the Act and had permission to calculate for inflation. As we reported, the Federal Government’s maximum penalty rate of $4,300 per barrel was based on the Environmental Protection Agency’s (EPA) 2010 calculation of how much the $3,000 maximum penalty fine, as established in 1990, would be worth today. BP claimed that the EPA lacked authority to adjust the penalty for inflation and, as a result, the penalty should be capped at $3,000 per barrel.

BP FILES APPEAL CHALLENGING PHASE TWO ORDER

BP has filed a series of appeals challenging Judge Carl Barbier’s determinations on the company’s liability. Previously, the company appealed Judge Barbier’s Phase One order finding BP grossly negligent for the explosion aboard the Deepwater Horizon rig. Now, BP is appealing the federal judge’s ruling in the Phase Two proceedings, which determined the volume of oil spilled into the Gulf of Mexico at 3.19 million barrels of oil after taking into account 810,000 barrels collected during cleanup. Shortly after Judge Barbier’s ruling in January of this year, BP sought to reduce its maximum civil fine, but Judge Barbier rejected the company’s plea. As it stands, BP could be liable for as much as $13.7 billion in fines under the Clean Water Act.

In terms of eligible claims processed, a total of 87,195 claims have been deemed eligible with Coastal Real Property claims leading those determinations at 27,214, followed by Business Economic Claims at 17,643, Seafood Compensation Claims at 12,472 and Subsistence Claims at 7,030. A total of $5.386 billion in eligibility notices have been issued, with $5.183 billion having been accepted. The Facility has physically paid $4.810 billion in claims, with Business Economic Claims representing $2.504 billion in payments, followed by Seafood Compensation claims at $1.416 billion, Vessel of Opportunity (VoO) Charter payments at $277 million, Wetlands Real Property claims at $147 million, Coastal Real Property claims at $145 million, and Start-Up Business Economic Loss claims at $109 million.

Finally, in recent months, BP has consistently appealed almost every meaningful business economic loss determination. Current statistics show that BP has appealed 5,940 determinations, and this number should continue to rise as the company searches for all possible avenues to avoid paying claims. While some of its appeals may be justified, it has been our experience that many of BP’s appeals are oftentimes nothing more than a delay or payment avoidance tactic. Predictably, BP is losing many of those appeals while also having to foot a penalty for filing them.

Source: Public Statistics for the Deepwater Horizon Economic and Property Damages Settlement

MILLIONS OF GALLONS OF OIL RESTS ON THE GULF FLOOR

A team of researchers led by Florida State oceanography professor Jeff Chanton has concluded that six to 10 million gallons of oil originating from the Macondo Prospect well are buried on the Gulf floor 60 miles southeast of the Mississippi Delta. “This is the first direct evidence that there is oil sediment on the Gulf floor,” Chanton said. “This is the first time we’ve ever really demonstrated that this is happening. There was anecdotal information this was happening. This really quantifies it.”

Chanton said that oil sinking to the sea bottom may have seemed like a good thing because the water appeared clear, but in the long term, “it might be a bad thing.” “If it’s on the sea floor the oxygen would be lower so that might mean it would hang around longer and be a source of contamination in the future. It
would linger longer," he said. "This is going to affect the Gulf for years to come. Fish will likely ingest contaminants because worms ingest the sediment, the fish eat the worms. It’s a conduit for contamination into the food web."

Source: USA Today

**GUARD MEMBERS MOBILIZED FOR DEEPWATER HORIZON ELIGIBLE FOR VA BENEFITS**

Members of the National Guard who were mobilized in response to the 2010 Deepwater Horizon oil spill in the Gulf of Mexico may be eligible for medical benefits through the Department of Veterans Affairs (VA) as a result of duty in the Gulf. And filing a medical benefits claim with the Deepwater Horizon settlement program will not affect potential VA benefits, according to VA officials.

VA benefits may be granted if there were service related injuries, including long term illnesses. However, eligibility to receive those benefits will be determined on a case-by-case basis, VA officials said. "The determination as to whether activation of Reservists and members of the National Guard confers ‘veteran’ status for VA benefit purposes depends upon the statutes used to activate them and other factors, which VA must adjudicate on a case-by-case basis," said David J. Barrans, assistant general counsel with the VA.

However, state active duty status, or similar status outside of federal active duty status, is not eligible for VA benefits, according to Barrans. "Generally (it) may confer eligibility if the member was disabled or died during the period of service from an injury or disease incurred or aggravated in the line of duty," he said. However, a formal review of the claimed injury or illness would be needed before the extent of VA benefits would be determined, said Randy Noller, a spokesman with the VA, adding that other possible contributing factors would be reviewed as well. "Because of all this, it’s impossible to provide one clear-cut answer, thus the case-by-case evaluations," he said.

Guard members who were activated for Operation Deepwater Horizon may have received notification of a medical settlement as part of a court-supervised settlement program for all who participated in the clean-up efforts. If Guard members chose to take advantage of the settlement program, their VA benefits would not be affected. "The potential results of monetary awards from a (settlement) would not have an impact either way on potential VA benefits," said Noller.

**BP LOSSES BID FOR TRANSOCEAN INSURANCE IN SPILL CASE**

The Texas Supreme Court has ruled that BP isn’t covered under Transocean’s insurance policies for the doomed Macondo well project. The court’s order blocks the oil company’s access to $750 million to pay costs from the 2010 spill. The decision conflicts with an earlier ruling by a U.S. appeals court that Transocean’s carriers couldn’t deny coverage for pollution-related liabilities for a disaster that has already cost BP more than $28 billion. The appeals court later withdrew the opinion and asked the Texas justices to rule on contract interpretation.

The Texas Supreme Court said Transocean’s insurance policy had to be read in context with the company’s drilling contract with BP, as the two documents “are inextricably intertwined.” The Texas court said:

> BP can’t claim status as “an additional insured because of limits in the drilling contract. BP is not entitled to coverage under the Transocean insurance policies for damages arising from subsurface pollution because BP, not Transocean, assumed liability for such claims.”

Transocean owned the Deepwater Horizon drilling rig, which BP hired to drill the well off the Louisiana coastline. The Macondo blowout and the explosion that followed killed 11 workers and set off the worst offshore oil spill in U.S. history. The accident and spill led to thousands of lawsuits against BP and its partners and contractors. The cases over economic losses and personal injuries are now before U.S. District Judge Carl Barbier in New Orleans.

BP filed claims with Transocean’s carriers in 2010, seeking to tap a $50 million primary policy issued by Ranger Insurance and $700 million in excess coverage from Lloyd’s of London and other underwriters. The carriers asked the court overseeing the spill litigation to rule that BP wasn’t entitled to unlimited access to Transocean’s insurance.

BP lost its battle for coverage at a lower court, won reversal on appeal, then saw that victory eroded when the 5th U.S. Court of Appeals in New Orleans withdrew its original opinion. The appellate panel asked the Texas Supreme Court to determine whether the reversal conflicted with state law. The company has set aside $43.5 billion to cover all costs of the spill, BP said in a Feb. 3 regulatory filing. But BP says the ultimate amount is “subject to significant uncertainty.”

**BP CHERRY-PIcks STUDY TO DODGE BLAME FOR MASSIVE DEATHS OF GULF DOLPHINS**

BP’s latest effort to duck responsibility for the oil spill’s adverse environmental impact concerns a study of a massive die-off of bottlenose dolphins in the Gulf from 2010 through June 2013, occurring mostly after the April 2010 Deepwater Horizon blowout caused the worst oil spill in history. The study analyzes the strandings of 1,305 dolphins on the beaches or shores of the Gulf of Mexico from February 2010 through the present. About 94 percent of the stranded mammals were dead. This is the longest marine mammal die-off in the Gulf—known as an “unusual mortality event” or UME—ever recorded. In addition, the 2010 and 2011 figures for Louisiana are the highest annual numbers ever recorded for that state; for Mississippi and Alabama the 2011 figure is among the highest ever in those states.

In a carefully worded and illusory response, BP asserted that it “reiterates what other experts, such as the National Oceanic and Atmospheric Administration (NOAA), have stated: the UME started three months before the Deepwater Horizon spill, and the cause or causes have not been determined. The study does not show that the accident adversely impacted dolphin populations.”

While BP is correct in observing that the UME started in February 2010, three months before the Deepwater Horizon blowout occurred, it is more of a technical designation of the study period, rather than the identification of a starting point for an event. A look at the monthly data on dolphin strandings reveals how misleading BP’s interpretation is. Of eight data-collection sites stretching from the Texas gulf shore to Florida, the dolphin strandings in the three months before the oil spill were below average. In fact, almost all the data (minus two exceptions explained by a separate unrelated event) cited by the report show that the run of above-average strandings started in May 2010, after the spill.
It’s also true, but misleading, that the causes of the stranding and deaths “have not been determined.” The researchers acknowledge that many factors may be contributing to the dolphin die-off. But what BP doesn’t say is that the scientists have firmly determined oil as a major culprit.

The scientists observe that the most severe run of strandings occurred in Barataria Bay, La., “a coastal area heavily impacted by the spill.” They add that Barataria Bay dolphins displayed conditions, including lung disease, “consistent with adverse health effects that might be expected following oil exposure based upon the literature of documented effects in other animal species. “Outside Barataria Bay, the researchers note, “the location, timing, and magnitude of dolphin stranding trends observed following the DWH oil spill, particularly statewide for Louisiana, Mississippi, and Alabama, overlap with the location and magnitude of oil during and the year following spill.”

BP has also tried to link the dolphin die-off to brucella, an infectious bacteria. However, NOAA believes brucella is a red herring. “While brucella has been confirmed in many marine mammal species globally,” the agency says, “to date it has not been confirmed as causing epizootics [that is, unexpected increases in disease] or die-offs of multiple age classes in marine mammals, including dolphins.”

Sources: Los Angeles Times

BP Claims That Deepwater Claims Administrator Has Conflict

In another egregious attempt to attack the very settlement it negotiated and agreed to, BP is continuing its efforts to remove the court-appointed claims administrator overseeing payouts under its Deepwater Horizon oil spill settlement. The oil giant told the Fifth Circuit during a hearing that the administrator, Patrick Juneau, acted as a litigator against BP before he was appointed and failed to disclose it. BP is appealing Judge Carl Barbier’s decision denying its bid to disqualify Juneau. In November, Judge Barbier found that a claims administrator, appointed in a privately negotiated settlement agreement, is not bound by the same recusal rules as a federal judge or a special master under Rule 35, and therefore Juneau did not have to disclose possible grounds for disqualification when he was appointed. Importantly, Judge Barbier ruled that BP knew about Juneau’s prior work, pointing to records that completely contradicted BP’s attempts to oust him.

At the end of the day, BP is attacking Juneau for doing exactly what BP—and the Court—have asked him to do, which is to implement and process claims under the terms of the settlement agreement. BP is simply trying to remove Juneau to slow claims payments down and distract the Facility from doing its job. However, based on the recent history, BP’s actions should come as no surprise. The company has repeatedly pushed for frequent, widespread, cumbersome, intrusive and expansive investigation, examination, analysis and adjustment of claims, only to turn around and disingenuously attack the Claims Administrator with respect to expense and inefficiency. I will give BP credit for two things—one is that they are very good at the public relations game—and two, they don’t give up easily. Sadly their safety performance has been terrible. Hopefully, the corporate management group will eventually learn that safety has to be a top priority for the oil giant.

Sources: Law360.com

VI.

PURELY POLITICAL NEWS & VIEWS

Governor Robert Bentley Steps Up To The Plate

Governor Robert Bentley is showing tremendous courage in proposing $541 million in new revenues for the state of Alabama. The governor’s action is necessary because of the $700 million shortfall in the state’s general fund budget. It’s time for bold leadership in state government and it has to start with the governor of Alabama. For years the state has relied on borrowing and one-time sources of money and federal dollars to plug gaps in the state’s budget. In recent years things have gotten much worse. Gov. Bentley inherited a financial mess when he took office in 2011. The previous administration had borrowed from every possible source and left the state coffers empty. Interestingly, opposition to Gov. Bentley’s proposals appears to be coming from the Republican Party.

For years, politicians have run for governor and other offices promising that no new taxes would be imposed on the people of Alabama. During that same period of time, however, government services, by necessity, have increased. Anybody who has been around state government knows there are obvious problems that must now be dealt with. A prime example is the prison system. The state is on the verge of having the prison system taken over by the federal courts and if that happens it would be financially disastrous for the state. We have let the prison problems go virtually unnoticed for years and we are now facing a real crisis. We can no longer ignore the fact that action must be taken now and without delay.

Not only do we need new revenues, we need a total revision of our state’s tax system. In Alabama we heavily tax folks who can least afford to pay and that must change. A review of our tax structure should be high on the list of priorities for the Governor and Legislature. Reform of the tax code is long overdue. I commend Governor Bentley for taking a bold stand. Hopefully the people of Alabama will support him. I believe that he has the courage required to get the job done.

VII.

COURT WATCH

High Court Rules That It Is Unfair For Dentists To Limit Teeth-Bleaching Providers

The U.S. Supreme Court ruled Feb. 25 that a state regulatory board made up mostly of dentists violated federal law against unfair competition when it tried to prevent lower-cost competitors in other fields from offering teeth-whitening services. By a 6-3 vote, the justices rejected arguments from the North Carolina State Board of Dental Examiners that it was acting in the best interests of consumers when it pressured nondentists to get out of the lucrative trade in teeth-whitening services.

Justice Anthony Kennedy wrote the majority opinion saying that the Federal Trade Commission (FTC) was right to conclude that the state regulators also had a financial interest in the market for teeth-whitening. In dissent, Justice Samuel Alito warned that the decision “is likely to have far-reaching effects on the
states' regulation of professions" because
many boards are made up of practitioners. The high court long has accepted
that some actions that otherwise would
raise antitrust concerns are permitted if
they are done by states. The court in this
case had to decide whether the dental
board was acting mainly in the interests
of dentists or the public. If it was the
latter, that would protect the board's
decisions from complaints about unfair
competition.

The Supreme Court’s opinion was said
to confirm that the antitrust laws place
important limits on what collusive
actions private actors can take to advance
their own businesses under the cloak of
government action. That’s the opinion of
Jane Willis, an expert on antitrust law in
Boston. Bobby White, the dental board's
chief operations officer, said the court’s
decision would force broad changes in
how regulatory boards operate. White
said in a statement:

*And since all of those changes will
take time (and often legislative
activity), the opinion threatens to
massively disrupt professional
regulation.*

In 2006, the dental board warned oper-
ators of teeth-whitening kiosks in malls and
tanning salons that they were prac-
ticing dentistry without a license. The
board also sent cease-and-desist letters to
malls where the kiosks operated. Justice
Kennedy wrote:

*These actions had the intended
result. Nondentists ceased offering
teeth-whitening services in North
Carolina.*

Customers instead had to go to higher-
priced dentists who generally charged
$300 to $700 for over-the-counter kits.
Courts across the country have been
asked to rule on similar issues. In early
October, a judge in Alabama rejected a
complaint against that state’s dental
board and upheld restrictions on teeth-
whitening services as “reasonably
designed to protect the health of Alabama
citizens.”

The credit ratings giant Standard &
Poor's (S&P) has agreed to pay $1.4
billion to settle a series of lawsuits stem-
ing from the high ratings it gave to a
number of mortgage securities that
helped mask the problems that led to
the global financial crisis in 2008. S&P
fought the lawsuits for two years, claim-
ing its analysts did not produce overly
positive ratings for risky securities in
order to draw more customers. But the
Department of Justice (DOJ) said the
company shared some of the blame for
the crash. The DOJ said in a statement:

*On more than one occasion, the
company’s leadership ignored
senior analysts who warned that
the company had given top ratings
to financial products that were
failing to perform as advertised. As
S&P admits under this settlement,
company executives complained
that the company declined to down-
grade underperforming assets
because it was worried that doing
so would hurt the company’s
business.*

One half of the amount the company is
paying, or $687.5 million, will go to 19
states and the District of Columbia. S&P
was the only credit rating company tar-
geted by the Obama administration, even
though others gave similar strong ratings
for subprime-backed securities before the
financial meltdown. Experts say the
Justice Department’s lawsuit against S&P
could serve as the model for similar
action against Moody’s Corp. and
Fitch Ratings, the industry’s other
major players.

In previous litigation, S&P claimed the
Justice Department was unfairly targeting
the company because of a decision it
made in 2011 to downgrade U.S. sover-
eign debt to AA+ from AAA, at a time
when the White House and Congress
were battling over raising the federal
debt limit. The Justice Department has
denied there was any connection.

S&P has also agreed to pay the federal
government, New York state and Massa-
chussets more than $77 million to settle
separate charges by the Securities and
Exchange Commission (SEC) related to its
ratings of high-risk mortgage securities
after the crisis. The SEC had accused S&P
of fraudulent misconduct, saying the
company again loosened standards to
drum up business in 2011 and 2012.

Source: Washington Times

VIII. THE CORPORATE WORLD

S&P PAYS $1.4 BILLION IN SETTLEMENT WITH
DOJ FOR INFLATING RATINGS BEFORE 2008
MORTGAGE CRISIS

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government, New York state and Massa-

FTC’S PROVIGIL PAY-FOR-DELAY SUIT PASSES
ACTAVIS TEST

One of the Federal Trade Commission’s
(FTC) top priorities in recent years has
been to litigate a costly legal tactic that
more and more branded drug manufac-
turers have been using to stifle competi-
tion from lower-cost generic medicines.
This area of litigation, often referred to as
Pay-for-Delay litigation, has not only been
a hot topic with the FTC, but it has been
an emerging litigation across the country.

One of the cases filed by the FTC is
FTC v. Cephalon pending in the Eastern
District of Pennsylvania regarding the
drug Provigil. The Court in that case just
recently issued a very favorable ruling for
the FTC, which is also very promising to
future Plaintiffs.

On Jan. 28, 2015, U.S. District Judge
Mitchell S. Goldberg ruled that there is
no threshold burden for Plaintiffs to
prove that the brand manufacturer made
a “large and unjustified” payment to the
generic manufacturer. Instead, the Court
ruled that this determination will be
included as a factor in the rule of reason
analysis, as opposed to a threshold
burden. The Court further ruled that the
FTC and numerous private Plaintiffs pre-

sented sufficient evidence that these
series of reverse payment agreements
between Cephalon, Inc. and its generic
rivals were anticompetitive and, thus,
allowed the claims to go forward.

This antitrust litigation arose from
agreements termed “pay-for-delay” or
“reverse payment” agreements whereby
brand manufacturer Cephalon reached
an agreement with generic competitors
to resolve patent infringement litigation
over the drug Provigil after certain
generic competitors sought approval
with the FDA to enter the market. As part
of the deal, Cephalon allegedly paid the
generic competitors more than $200
million in exchange for agreements that
they would not sell their generic prod-
ucts until April 2012. These reverse
payment agreements have been attacked
across the country by several Plaintiffs,
including the FTC, on the grounds that they violate antitrust laws.

In FTC v. Cephalon, U.S. District Judge Mitchell S. Goldberg rejected Cephalon’s argument that the Supreme Court’s 2013 decision in FTC v. Actavis requires a Plaintiff challenging a reverse payment agreement on antitrust grounds to prove, as a threshold matter, that the reverse payment was both large and unjustified. Rather, the Court ruled that it comes down to the typical rule-of-reason test used in antitrust cases. Judge Goldberg’s order says:

After careful consideration of the Actavis case and several recent district court opinions interpreting the standards set forth by the Supreme Court, I conclude that Actavis primarily instructs that the familiar antitrust rule-of-reason analysis be applied to cases challenging reverse-payment settlements. This analysis does not include a threshold burden.

The Court stated that the FTC and numerous other Plaintiffs who filed their own private actions that were consolidated with the FTC suit satisfied their rule-of-reason burden of presenting evidence of anticompetitive effects, which includes a large reverse payment. Because Judge Goldberg is looking at the case through a rule-of-reason analysis, he ruled that the burden then shifts to Cephalon and the several generic-drug makers with which it’s accused of entering into a reverse settlement, to justify the reverse payment as “procompetitive.”

This is just another example of how this Pay-for-Delay litigation has been progressing favorably across the country. This ruling provides for a positive outlook for Plaintiffs in future Pay-for-Delay cases. If you would like to know more about this Pay-for-Delay litigation, contact Ali Hawthorne, a lawyer in our firm’s Consumer Fraud Section, at 800-898-2034 or by email at Alison.Hawthorne@beasleyallen.com.

Source: Law360

**Drug Companies Outsourcing Safety Monitoring to Cut Costs**

It has been reported widely that there is a great deal of “outsourcing” in manufacturing and technical support. But beyond the economic impact of sending jobs overseas, this practice could now be impacting the safety of prescription medicines. Some of the world’s largest drug companies are taking the concept a step further, farming out safety monitoring to companies based in India. AstraZeneca PLC, Novartis AG, and Bristol-Myers Squibb Co. are among the big names sending their pharmacovigilance operations overseas. Drug safety company Accenture PLC says its drug safety business has tripled in the last three years.

Before a new drug is approved, it must go through clinical trials. These trials are designed to show how well the drug works, and what sorts of risks come with it. Premarket trials include an average of 1,500 patients. However, rare side effects might not show up until 100,000 or more patients are exposed to the drug. Even drugs that have been on the market for years can have unknown and potentially deadly side effects.

Because of this possibility, manufacturers have a responsibility to continue collecting safety information about the drug after it is on the market. This monitoring takes the form of adverse event reporting. Patients and doctors contact the drug company to report side effects they experience while taking the medication. The company collects that information and enters it into a database. Drug companies and the U.S. Food and Drug Administration (FDA) then use that information to look for safety signals—patterns that show a connection between problems and a particular drug or combination of drugs.

Monitoring for safety signals in the pool of adverse event reports is a lot like looking for a needle in a haystack. Safety reviewers must have expertise in medicine, biochemistry, and pharmacology. Accenture, which runs its drug safety operation out of India, says that its reviewers are qualified and have gone through rigorous training. Moreover, they say, they have actually sped up the reporting process.

However, despite their training and qualifications, doctors and scientists employed by outside companies are likely missing key expertise on the specific products they are reviewing. They simply do not have as much knowledge about the company’s products as an in-house team. According to Scott Bass, a lawyer at Sidley Austin LLP who advises drug companies on compliance issues, “You can’t compare the quality of a full in-house multinational pharmacovigilance team with an outsourcing company.”

The stakes couldn’t be higher. Adverse drug reactions are the fourth leading cause of death in the U.S. Quality pharmacovigilance work is crucial to making sure that doctors and patients have the most complete and accurate safety information about the medications they use.

Sources: tda.gov; wsj.com

**President Obama Now Says He Wants To Reverse Citizens United**

President Obama has called for a constitutional amendment that would reduce the vast amounts of money flowing into and through American politics. The president wants to see some constitutional process that would allow the regulation of campaign spending. President Obama’s remarks are the latest to call for a radical shift in campaign finance law after several federal court rulings, including the U.S. Supreme Court’s infamous 2010 Citizens United decision, paved the way for unlimited corporate and union spending in candidate elections.

Rep. Jerry McNerney, D-Calif., has joined the ranks of politicians pushing for change. He introduced a proposal to amend the Constitution. His plan is dramatic. It would ban contributions from political action committees (PACs), for instance. Campaigns would be funded entirely by individual donations or money provided by a public-financing system. Rep. McNerney said radical change is needed. He stated:

The system was pretty bad before. Citizens United just made it worse. It changed from an arms race to a nuclear-arms race.

Outside spending in politics soared to more than $1 billion in the 2012 presidential and congressional elections. That was up from nearly $340 million four years earlier, according to a report by the nonpartisan Center for Responsive Politics. The Center found in last year’s midterm races for the House and Senate, outside groups outspent the candidates themselves in 28 races. Sixteen states have called for a constitutional amendment to overturn Citizens United.

Despite the high-profile calls for change, efforts to restrict campaign finance spending have failed to gain any traction in Congress. If anything, Congress and the courts are continuing to ease restrictions. For example, last year President Obama signed into law a $1 trillion spending bill that dramatically increased the amount of money political parties can raise from individual donors.

JereBeasleyReport.com
That seems somewhat inconsistent with his current stand. Hopefully, he has seen the light. But will Congress wake up and do something about out-of-control campaign spending in this country? What do you think?

Source: USA Today

IX.
WHISTLEBLOWER
LITIGATION

BANKS ARE PAYING EXECUTIVES TO GO INTO
GOVERNMENT WORK

Several major banks are trying to keep their practice of paying executives for entering government work on “lock down.” However, the payment of multimillion dollar awards no longer remains hidden. The three banks involved are Citigroup, Goldman Sachs, and Morgan Stanley. Last month, each of these sought exemption from the Securities and Exchange Commission (SEC) from a proposal that would require them to release the identity of executives eligible for the financial reward. Lots of folks, including the bank shareholders, are questioning what the banks believe they have to hide in seeking the exemption.

Recently, Antonio Weiss noted in financial disclosures that he would receive $21 million in unvested income and deferred compensation when he left his job as an investment banker at Lazard for a government position. Weiss now serves as counselor to Treasury Secretary Jack Lew. However, he also was being considered for the position of undersecretary for domestic finance. Many of these banks have policies found in their SEC disclosure filings that outline the awards. For example, Goldman Sachs lists that they offer a “lump sum cash payment” for government service.

Other banks are more subtle in their awards, such as allowing executives’ equity options to continue to vest or allowing the executives to keep retention bonuses if they leave for a government position. A major concern among critics is that the banks have filled government positions with their former executives and that these individuals may act in favor of their former employer.

In November, AFL-CIO President Richard Trumka wrote to seven major banks to ask for an explanation of how these incentives to executives for government positions benefit the banks’ shareholders. The AFL-CIO office reported that there was not much of a response to the inquiry. Instead of initially proposing an outright ban on the awards, the AFL-CIO filed proposals seeking full disclosure to be voted on at the companies’ annual meetings. These proposals ask for the names of each executive eligible for an award and the total amount of the award. This will give the federation a sense of how common this occurrence is before any kind of ban is set in place.

JP Morgan Chase is the only bank with a policy in place that has not asked for an exemption. Citigroup did not reach out to the federation before submitting a letter for exemption. In the letter, Citigroup argues it has substantially implemented the proposal already and that a disclosure of its award agreement with the SEC is satisfactory. Additionally, Citigroup states that its executives already disclose the information elsewhere and that it is not necessary to have to duplicate this information.

Lastly, Citigroup states that its executives receive the same treatment, as long as they do not leave the company for a competitor. Citigroup refers to a New York Times article that claims these benefits are a way to encourage public service. Goldman Sachs and Morgan Stanley have also filed no-action letters that essentially argue the same thing.

The SEC will probably make a decision on these letters in the next couple of months. AFL-CIO Investment Office Director Slavkin Corzo stated, “It would be really unfortunate if shareholders are not allowed to get basic information about what’s being done with their money.”

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


NEW DoD RULE IN PLACE RELATING TO
GOVERNMENT CONTRACTS

The Department of Defense (DoD) issued a rule last month that barred the use of the Department’s funds when such funds are used in certain contracts. The contracts at issue with the new rule are those with entities that require their employees or contractors to sign internal confidentiality agreements or statements that restrict their employees or contractors from reporting instances of waste, fraud or abuse to the investigative representative of the department or agency authorized to receive that information. The rule was effective immediately upon issuance and is codified in the Federal Acquisition Regulation (FAR) at Sections 252.203-7998 and 252.203-7999.

The new rule puts a halt on contractors requiring employees to sign non-disclosures so that they can resolve the issue internally. Rather, the new regulation protects employees and allows them to report any waste, fraud or abuse to the appropriate investigative or enforcement representative of the Federal agency or department that is authorized to receive such information. See § 252.3203-7998(c). To emphasize how important this new regulation is, Section 252.203-7999(b) requires that contractors notify employees that the restrictions of any internal confidentiality agreements that are now covered by this clause are no longer in effect.

Lawyers at Beasley Allen in our Consumer Fraud Section continue to investigate fraud against both the federal and state governments. We encourage anyone who knows of fraudulent activities to step forward. Potential whistleblowers have the right not to be retaliated against for doing the right thing and reporting the fraud they have witnessed. Any person considering doing the right thing and blowing the whistle is strongly urged to seek legal advice before doing so. Lawyers in our Consumer Fraud Section are very familiar with the federal False Claims Act and its state counterparts and can guide whistleblowers along the process. If you have any information and would like to speak with a lawyer, contact Andrew Brashier, a lawyer in our firm’s Consumer Fraud Section, at BeasleyAllen.com
**PHARMACEUTICAL COMPANY PAYS $39 MILLION TO SETTLE FALSE CLAIMS ACT CASE**

Daiichi Sankyo Inc., a global pharmaceutical company with its U.S. headquarters in New Jersey, has agreed to pay the United States and state Medicaid programs $39 million to resolve allegations that it violated the False Claims Act. The Department of Justice alleged that Daiichi was paying kickbacks to induce physicians to prescribe Daiichi drugs, including Azor, Benicar, Tribenzor and Welchol. Acting Assistant Attorney General Joyce R. Branda for the Civil Division stated:

＞＞＞ The Anti-Kickback Statute prohibits payments intended to influence a physician’s ordering or prescribing decisions. The Department of Justice is committed to preserving the independence and objectivity of those decisions, which are cornerstones of our public health programs. ＜＜＜

The government alleged in this case that Daiichi paid physicians improper kickbacks in the form of speaker fees as part of Daiichi's Physician Organization and Discussion programs, known as “PODs,” which were run from Jan. 1, 2005, through March 31, 2011, as well as other speaker programs that were run from Jan. 1, 2004, through Feb. 4, 2011. It appears that payments were made to physicians:

- even when physician participants in PODs took turns “speaking” on duplicative topics over Daiichi-paid dinners,
- the recipient spoke only to members of his or her own staff in his or her own office, or
- the associated dinner was so lavish that its cost exceeded Daiichi’s own internal cost limitation of $140 per person.

U.S. Attorney Carmen Ortiz for the District of Massachusetts, whose diligence and hard work brought the inquiry into this problem area, observed:

＞＞＞ Drug companies are prohibited from using lavish entertainment and padded speaker program payments to induce physicians to prescribe their drugs for beneficiaries of federal health care programs. Settlements like this one show that the government will continue to pursue health care companies that use kickbacks to promote their products. ＜＜＜

This case arose from a complaint filed by a former Daiichi sales representative, under the whistleblower provisions of the False Claims Act, which authorize private parties to sue on behalf of the United States, and to receive a portion of any recovery. The whistleblower will receive $6.1 million of the federal recovery.

Source: whistletbloweblog.org

**THE SECURITIES AND EXCHANGE COMMISSION IS REVOLUTIONIZING WHISTLEBLOWER LAWS**

Whistleblowers Against Fraud (WAF), a group founded by Joseph Piacentile, helps individuals report fraud and collect compensation for the information they provide. WAF explains how the Dodd-Frank Act and the Securities and Exchange Commission (SEC) are influencing whistleblower laws around the world.

The U.S. Securities and Exchange Commission paid a foreign SEC whistleblower $30 million in September 2014. The SEC Office of the Whistleblower (OWB), in partnership with the Dodd-Frank Act, has rewarded hundreds of individuals for providing information that uncovers corporate fraud. The same applies to the False Claims Act, which pays to investigate crimes against the U.S. government and taxpayers.

Additionally, the international community is incorporating provisions to protect whistleblowers from retaliation. In the United States, for example, it is illegal for employers to fire workers for reporting fraud. Many whistleblowers file their claims after being fired, which means this policy is a strong motivator behind revealing fraud. The SEC and its subsidiaries are also enforcing sanctions that are changing the way Americans view whistleblowers. Most notably, the protection and rewards provisions are motivating hundreds of people to report illegal misconduct, proving how well the system is working in the United States.

Now, the rest of the world is taking notice. These programs are recovering billions of dollars, and international governments are realizing the benefits of protecting whistleblowers and compensating them for their bravery. In the United States, rewards are as high as 30 percent of recovered funds, ensuring whistleblowers have plenty of incentive to come forward.

Unfortunately, in most countries, people are too scared to report wrongdoing. There is no protection for them, and many lose their jobs, suffer from occupational hostility, or have trouble finding new employment. Even when whistleblowers do come forward, a lack of suitable policies prevents those who commit fraud from undergoing prosecution or paying penalties. The SEC is trying to change this by offering guidance to other countries that are attempting to deter fraudulent behavior.

Whistleblowers Against Fraud is dedicated to supporting individuals who have information about major fraud perpetrated against the U.S. government or its citizens. WAF partners with clients to develop the strongest case possible, recommend the right attorney for their case, and guide them through each phase of their case. With more than 21 years of experience developing whistleblower actions, WAF has successfully recovered billions of dollars on behalf of the U.S. federal government and numerous states. Partnering with WAF can help maximize any whistleblower reward one ultimately receives.

Source: PR Newswire

**CALIFORNIA, FLORIDA AND TEXAS IMPORTERS TO PAY THE U.S. GOVERNMENT $3 MILLION**

The Department of Justice (DOJ) recently announced that California-based C.R. Laurence Co. Inc., Florida-based Southeastern Aluminum Products Inc., and Texas-based Waterfall Group LLC, have agreed to pay the U.S. Government $3 million to settle allegations that they violated the False Claims Act (FCA) by allegedly evading customs duties on aluminum extrusions imported from China. Specifically, these three import companies allegedly schemed to avoid paying “anti-dumping” and “countervailing” duties on aluminum extrusions from manufacturer, Tai Shan Golden Gain Aluminum Products Ltd., based in the People’s Republic of China. C.R. Laurence, Southeastern, and Waterfall will each pay a portion of the $3 million settlement, with C.R. Laurence Co. Inc., agreeing to pay the largest portion of the settlement totaling approximately $2.3 million.

When foreign manufacturers sell goods in the United States at less than fair market value it can cause unfair pricing in the U.S. market—a practice is called “dumping.” Therefore, “antidumping” duties are imposed on goods from foreign manufacturers in order to bridge the gap back to a fair market value, while “countervailing” duties, assessed by the U.S. Department of Commerce (DOC) and collected by the U.S. Customs and Border Protection (CBP), offset foreign government subsidies.

According to the allegations in the case, knowing that countervailing and antidumping duties are country specific, C.R. Laurence, Southeastern, and Waterfall allegedly misrepresented that the “country of origin” of the aluminum extrusions was Malaysia, in order to pay lower duties on its goods. In fact, the aluminum extrusion products (primarily shower doors and shower enclosures) were actually manufactured in China, but then shipped through Malaysia to hide the fact that China was the country of origin—a practice called “transshipping.” In addition, the government also alleged that C.R. Laurence, Southeastern and Waterfall conspired with other domestic companies that purchased aluminum extrusions from China, and convinced them to evade duties by filing false country-of-origin declarations with CBP.

This case was originally filed in the U.S. District Court for the Middle District of Florida, on behalf of the government, under the qui tam provisions of the FCA, by whistleblower James F. Valenti, Jr. Provisions of the FCA allow a person or persons to file a qui tam lawsuit on behalf of the government in order to recover damages for fraud committed against the government. Once the case is settled, an award of up to 30 percent of the settlement is paid to the whistleblower for exposing the fraud. In this case, Mr. Valenti, the whistleblower, will receive $555,100 as his share of these settlements.

Source: TAF Education Fund

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PRODUCT LIABILITY UPDATE

AN UPDATE ON THE FIRM’S PRODUCT LIABILITY LITIGATION

Lawyers in our Personal Injury/Product Liability Section have been very busy handling cases in several states. The cases were filed in both state and federal courts. Our lawyers in the Section will investigate any product liability claim involving catastrophic injury or death. The following are some of the cases lawyers the Section are currently working on:

TAKATA AIR BAGS

U.S. government officials have issued an urgent warning to drivers about the potential dangers posed by air bags made by Takata Corp., which can explode with excessive force and kill or seriously injure the front seat occupants of affected vehicles. The defect is linked to the air bags’ inflator systems, which can shoot metal fragments from the devices into the car like shrapnel. Air bags on both the driver’s and passenger’s side can explode, even as a result of a fender bender or other minor collision. To date, more than 14 million vehicles with Takata-manufactured air bags have been recalled due to defects. Tokyo-based Takata is one of the world’s largest automotive suppliers. It manufactures air bags, safety belts, steering wheels and other auto parts for a variety of automakers. Vehicles containing the defective air bags include certain models made by Toyota, Honda, Mazda, BMW, Nissan, and General Motors. If you have more information on the Takata Litigation, contact Chris Glover at 800-898-2034 or by email at chris.glover@beasleyallen.com.

GM IGNITION SWITCH LITIGATION

General Motors (GM) has recalled more than 17 million vehicles related to a defective ignition switch problem, which can leave a vehicle without power and the driver unable to control the vehicle in sudden and dangerous situations. Court documents and other evidence reveal that GM knew about the ignition switch problem as early as 2001. GM has established a Victims Compensation Fund to address serious injuries and deaths resulting from the ignition switch defect. The deadline to file a claim with the fund was Jan. 31, 2015. Our firm submitted 55 claims with the Fund, and we are also still filing claims outside the fund. Cases that are determined to be viable after the fund cutoff date will be filed and pursued individually in state court. If you need more information on the GM Litigation, contact Mike Andrews or Ben Baker at 800-898-2034 or by email at Michael.Andrews@beasleyallen.com and Ben.Baker@beasleyallen.com.

HEAVY TRUCKING 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 (FMCS) 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.

Roof crush and seatbelt malfunctions are two defects we see in heavy trucking accidents. Greg Allen and Mike Andrews are set to try a case in Mobile involving roof crush and seatbelt defects this month. In that case, our client had taken his 2004 Freightliner M-2 truck in to be serviced because he felt that the truck was bouncing. The mechanic unnecessarily loosened the control rod, which stabilizes the trailer, and did not tighten it back up. The same day our client picked the truck up from being serviced, the loosened control...
rod caused the truck to become unstable and our client lost control of the truck. The truck rolled over. His seatbelt became unfastened, and the roof crushed down into his survival space. Our client was thrown out of the back window of the truck and now is permanently paralyzed. We are confident that the jury will diligently consider the evidence at trial and will award our client a just and fair award of damages for his injuries.

Quite often, heavy trucking crashes simply involve a driver’s negligent and wanton operation of the truck. Chris Glover recently handled a case involving driver negligence. On Dec. 13, 2013, Marilyn Nipper was driving her 2010 Pontiac G6 on AL Hwy. 14 in Elmore County, Ala. Lothario Swiggett was driving a 2006 Mack truck owned by Gale Creek Logging Company, on AL Hwy. 14 in front of Marilyn Nipper. Swiggett’s vehicle was carrying a load of logs at the time of the accident, and the load was in violation of §32-5-211 of The Code of Alabama in that the load was not properly marked. His vehicle was stopped at the time of the accident. Ms. Nipper’s vehicle ran into the back of Swiggett’s vehicle and a log came through her windshield and impaled her, causing injuries that ultimately led to her death. The Plaintiff brought claims against Defendants under Alabama’s Wrongful Death Act. Plaintiff claimed that Defendant Swiggett was acting within the line and scope of his employment with Gale Creek when he failed to display, notify or warn other motorists of his log load after dark, including but not limited to having any kind of light at the rear of his vehicle. Plaintiff also brought claims against Defendant Gale Creek which included negligent hiring, training and supervision of Swiggett, as well as agency Defendant claims. Plaintiff recently entered into a confidential settlement with Defendants concerning the amount of the settlement. If you have more information on the trucking litigation, contact Chris Glover at 800-898-2034 or by email at Chris.Glover@beasleyallen.com.

**Tire Defects**

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 detreads 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.

One serious problem with tires is that they wear down on the inside as they age, but they look brand new on the outside. Labarron Boone is getting ready to try a case involving the failure of a 16-year-old tire. The tire was the original spare tire on a 1995 Ford Explorer. The tire looked brand new. However, while driving down I-85, just two days after a mechanic shop put the spare tire on the 1995 Ford Explorer, the tire detreaded, causing the Explorer to roll over. This resulted in the deaths of our clients’ sister and son. Labarron has successfully handled cases like this in the past, and will try the case in January 2015.

Despite the dangers of tire aging, NHTSA has still refused to establish a tire aging standard. A tire aging standard would make it easier for consumers to determine the tire’s age. Right now, the only way to determine the age of a tire is to decipher the cryptic code on the tire’s sidewall. Also, a tire aging standard would make it mandatory for tire centers to take tires out of service at a specified date, regardless of what the tire looks like on the outside. Beasley Allen lawyers will continue to pursue claims based on tire aging until such standards are in place. If you have more information on the tire litigation, contact Rick Morrison, a lawyer in the section, at 800-898-2034 or by email at Rick.Morrison@beasleyallen.com.

**Other Auto Defects**

Kendall Dunson is currently handling a case against General Motors (GM) for removing a very important safety feature from its 2008 Chevy Impala—the side curtain airbags. These airbags protect occupants from head and neck injuries. In that case, our client was driving a 2008 Impala when her vehicle was struck on the rear driver side by another vehicle. Because side airbags, which were standard safety equipment on the 2008 Impala, had been removed or “deleted” from the subject Impala, our client suffered enhanced injuries in the collision that she would not otherwise have suffered. Our client was paralyzed as a result of the wreck and subsequently died.

Another prominent auto defect involves airbag failure to deploy. Graham Esdale and Cole Portis recently settled a case involving a 2011 Dodge Avenger. Our client was on his way to work, was driving the speed limit, and was properly belted. Another driver coming in the opposite direction crossed the centerline, and despite our client’s efforts to avoid the collision, they hit head on. Our client’s seatbelt did not restrain him properly and the airbag failed to deploy. The failure of the belt and airbag allowed so much forward excursion that his head was able make contact with the center of the windshield. While striking the windshield did not cause his fatal injuries, the failure of the belt and airbag to slow his forward excursion and provide the needed “ride down”, did cause his death.

The lawyers determined there were some issues with the airbag control module, which failed to deploy the driver’s side airbag. In addition, the seatbelt included a feature referred to as a load limiter. These devices allow for additional belt payout during an accident. The real benefit of these devices is that it allows the auto makers to pass Federal Motor Vehicle Safety Standards related to frontal crash protection. In real-world crashes, it allows occupants to experience dangerous excessive excursion and increases injury potential instead of reducing it.

In this case, Graham and Cole were able to contrast the performance of the Challenger with a defective system to one that performed as intended in the same crash. The driver of the vehicle that crossed the center line and struck our vehicle...
head on was alert and walking around the scene after the accident. His airbag deployed and his seatbelt did not allow excessive forward excursion. Airbags failing to properly deploy or failing to deploy altogether are not uncommon. This failure is not limited to the vehicle involved in this crash. In fact, we have seen several GM airbag failures that did not involve the ignition switch turning off.

**Nursing Home Litigation**

Ben Locklar is currently handling a number of cases against nursing homes for negligence and wanton care of residents. Typically, these cases involve nursing home employees allowing residents to develop bedsores, to choke, or to fall because the employees are not providing adequate medical care. The most prominent issue we have faced in nursing cases involves the arbitration agreements that nursing homes require residents to sign before the resident can be admitted for treatment. Often times, the resident is not able to sign the arbitration agreement because of physical or mental incapacities. When a resident is incapacitated, the nursing home lets whoever is with the resident sign the agreement, regardless of whether that person is the resident’s chosen legal personal representative. This practice forces the resident to unknowingly waive the resident’s Seventh Amendment right to trial by jury, which is against legal precedent and public policy. We are currently fighting this issue at the Alabama Supreme Court and will continue to fight this issue until nursing homes change their mandatory arbitration agreement practices.

If you need more information on any of the above, contact Sloan Downes, the Section Administrator, at 800-898-2034 or by email at Sloan.Downes@beasleyallen.com. Sloan will put you in touch with the lawyer who will be able to answer your questions on a specific area of concern.

**People Continue To Die In Vehicle Fires Linked To Defective Jeep Fuel Tank**

More than 70 deaths have been linked to fuel-fed fires in crashes involving Jeep vehicles manufactured by Fiat Chrysler. At issue in those cases is the placement of the gas tank, which is vulnerable in the event of a rear-end collision, where it can rupture and catch fire. The manufacturer recalled 1.56 million Jeep Grand Cherokee and Jeep Liberty SUVs in June 2013, but only after fighting the issue for weeks. Even then, when it finally issued the recall, Fiat Chrysler convinced the National Highway Traffic Safety Administration (NHTSA) to allow it to recall a smaller number of vehicles than originally called for, saving the automaker a great deal of money at the expense of consumer safety.

The initial recall included 1.56 million 1993-1998 Jeep Grand Cherokees and 2002-2007 Jeep Liberty SUVs. The compromise deal excluded a little more than 1 million 1999-2004 Grand Cherokees, which Chrysler says are designed differently than the other earlier models. Because the newer vehicles were not part of an official recall, they are not classified as technically “defective,” giving Chrysler ammunition to defend itself in any lawsuits involving those vehicles.

Instead of moving the gas tank in front of the axle, which would be expensive and difficult, Chrysler Fiat’s remedy is to install a trailer hitch on the rear of recalled Jeeps to provide additional protection for the gas tank in the event of a rear-end crash.

Clarence Ditlow, Executive Director for The Center for Auto Safety, a consumer advocacy group that has led the charge for a mandatory safety recall on all affected Jeep models with the defective gas tank placement, says the “fix” proposed by Chrysler is not enough. His organization wants Chrysler to install a shield over the fuel tank, and an improved check valve system that would cut off the flow of gasoline in the event of a crash where the hose is pulled loose from the tank.

The Associated Press notes that Jeep owners who have tried to get the automaker’s recommended fix implemented have often been unable to do so because the parts are not available. As of Jan. 14, only 12 percent of the recalled Jeeps have been repaired. NHTSA has 840 reports from consumers complaining Jeep dealers do not have the trailer hitches available in order to make the fix.

Among those who tried to have their 2003 Jeep Liberty repaired was 23-year-old Kayla White. She was involved in an accident in which her vehicle was struck from behind. Her Jeep turned over onto its side and burst into flames. Kayla, who was eight months pregnant, died of burns and smoke inhalation before rescuers could arrive. Kayla took her Jeep to the dealer after being notified of the recall, but was told the parts were not available.

Sources: Montgomery Advertiser, Associated Press, RightingInJustice.com

**Two Tires Being Recalled Because Of Tread And Belt Issues**

Goodyear has announced that it will recall about 48,500 of its 18-inch Fortera HL tires because it found cracks in the tire’s tread during testing. General Motors (GM) uses these tires on its Chevrolet Traverse, GMC Arcadia and Buick Enclave. Goodyear informed GM of these tires problems more than a month ago. GM has told dealers to stop delivery of about 6,300 of these vehicles. While the stop delivery notice should prevent thousands of these tires from being used, another 16,000 were made for the aftermarket. These tires also need to be replaced by consumers.

Goodyear just recently notified NHTSA of the recall. The agency had not posted the recall on its website at press time. There has been no date disclosed as to when the recall will be announced to consumers. Another tire that is being recalled is the Toyo Open Country. Toyo is recalling the Open Country M/T tires 40X15.5R22 manufactured in late October 2014. These tires were made with their belts off center which can lead to tread separation during use.

Toyo has notified NHTSA of these safety issues but as of Feb. 19, 2015, the automaker had not notified its customers. Toyo has announced that it will begin notifying customers in the near future and will replace the tires. If these tires are on a vehicle, they need to be replaced immediately. If you need more information on this subject, contact Rick Morrison, a lawyer in our firm’s Personal Injury/Product Liability Section, at 800-898-2034 or by email at Rick.Morrison@beasleyallen.com.

**Accident Reconstruction**

Vehicular accident reconstruction is the scientific process of investigating, analyzing, and drawing conclusions about the causes and events during a vehicle collision. Reconstructionists are employed to conduct in-depth collision...
analysis to identify the cause of different types of collisions. This includes the role of the driver(s), vehicle(s), roadway and the environment. The laws of physics and engineering principles such as the conservation of linear momentum, work-energy methods, and kinematics are the basis for these analyses and may make use of software to aid in this task.

The accident reconstruction provides rigorous analysis that an expert witness can present at trial. Accident reconstructions are done in cases involving fatalities, and often when personal injury is involved. Results from accident reconstructions are also useful in developing recommendations for making roads and highways safer, as well as improving safety aspects of motor vehicle designs. These reconstructions are often conducted by forensic engineers, specialized units in law enforcement agencies, or private consultants.

Scene inspections and data recovery involve visiting the scene of the accident and investigating all of the vehicles involved in the collision. Investigations involve collecting evidence such as scene photographs, video and measurements of the scene, eyewitness testimony, and legal depositions. Witnesses are interviewed during accident reconstruction, and physical evidence such as tire marks and gouge marks are examined. The length of a skid mark and the location of gouge marks can often allow the location and speed of a vehicle to be determined. Inspection of the road surface is also vital, especially when traction has been lost due to black ice, diesel fuel contamination or obstacles such as road debris. Data from an event data recorder also provides valuable information.

All new vehicles are equipped with an onboard “Crash Data Recorder” or “Event Data Recorder” (CDR or EDR), commonly referred to as a “black box.” There are commercially available tools that will download the data contained on the black box. Information contained on the black box may include pre-crash data such as vehicle speed, brake status, throttle position, ignition cycles, seat belt status and others. The black box also records conditions at the time of the collision such as impact velocities and the timing of airbag deployment.

 Accident reconstruction analysis includes processing data collected, evaluating possible hypotheses, creating models, recreating accidents, testing, and utilizing software simulations. Like many other technical activities, accident reconstruction has been revolutionized by the use of powerful, inexpensive computers and specialty software. Various types of accident reconstruction software are used to recreate crash scenes and to perform other useful tasks involved in reconstructing collisions. Accident reconstruction software is regularly used by law enforcement personnel and consultants to map vehicle damage profiles and debris fields in 3-D. It can also be used to analyze collisions, and to simulate what occurred in an accident. Examples of types of software used by accident reconstructionists are total station mapping, CAD (computer aided design) programs, vehicle specification databases, momentum and energy analysis programs, collision simulators, and photogrammetry software.

After the analysis is completed, forensic engineers compile report findings, diagrams, and animations to form their expert testimony and conclusions relating to the accident. Forensic animation typically depicts all or part of an accident sequence in a video format so that non-technical parties, such as juries, can easily understand the expert’s opinions regarding that event. To be physically realistic, an animation needs to be created by someone with knowledge of physics, dynamics and engineering. A reliable animation must be based on physical evidence and calculations that embody the laws of physics, and the animation should only be used to demonstrate in a visual fashion the underlying calculations made by the expert analyzing the case. Accident reconstruction follows a reverse chronological order of events, working from the point of rest of the vehicle backward to a point in time before the start of the accident sequence to help determine information such as vehicle speeds and positions before the crash sequence began.

Some important phases involved in an accident reconstruction are Perception-Reaction time, Avoidance-Braking/Steering, Impact, and Post-Impaction Motion. These phases will be explained below:

- **Perception-Reaction:** This is the phase where the driver perceives a hazard and decides on a response. Perception-reaction time is estimated at 1.1 to 1.5 seconds.
- **Avoidance—Braking/Steering:** In this next phase, the driver typically engages in some type of avoidance using steering, braking or a combina-
trointestinal bleeding, brain bleed and death.

This is important litigation involving very serious injuries to thousands of individuals. Judge Fallon has appointed a group of excellent lawyers to serve on the Plaintiffs Steering Committee. Andy says he is “honored to be in a leadership position.” Together, the lawyers in leadership roles look forward to advancing the cause of those injured by this prescription drug.

Xarelto is a novel oral anticoagulant approved in the United States for six indications including reducing the risk of stroke in patients with nonvalvular atrial fibrillation; treating deep vein thrombosis and pulmonary embolism, and reducing the recurrence of these conditions; and preventing blood clots in patients following knee or hip replacement surgery. The Xarelto lawsuits follow a recent $650 million settlement related to another blood-thinning drug, Pradaxa, manufactured by Boehringer Ingelheim Pharmaceuticals. Pradaxa was linked to more than 500 bleeding deaths.

Judge Fallon presided over the massive litigation against Merck & Co. involving its painkiller Vioxx. In 2005, Andy was chosen as Co-Lead Counsel for the Vioxx Litigation MDL PSC. He was lead counsel or co-lead counsel in five Vioxx trials, including one that resulted in a $51 million verdict against Merck. Ultimately, in 2007, Merck agreed to a $4.85 billion settlement for Vioxx litigation.

I am confident that Andy will do an outstanding job in this most important litigation. If you have any questions, contact Andy at 800-898-2034 or by email at Andy.Birchfield@beasleyallen.com.

**AN UPDATE ON OUR MASS TORTS SECTION**

Lawyers in our firm are continuously being asked about what all our Mass Torts Section is doing. So we will again give an update on activity in the section. Lawyers in the Section will investigate any potential claim involving either a specific drug or medical device claim where a catastrophic injury or death is involved. The following are some of the drugs and devices lawyers in the section are currently working on:

**Xarelto**

Xarelto has been linked to serious side effects including internal bleeding, gastrointestinal bleeding, brain bleed and death. Xarelto is approved by the U.S. Food and Drug Administration (FDA) for six indications including reducing the risk of stroke in patients with nonvalvular atrial fibrillation; treating deep vein thrombosis and pulmonary embolism, and reducing the reoccurrence of these conditions; and preventing blood clots in patients following knee or hip replacement surgery. Lawsuits filed against Johnson & Johnson subsidiary Janssen Pharmaceuticals and Bayer Corp. over the blood thinner Xarelto have been consolidated in Louisiana federal court.

Lawyers: David Byrne or Melissa Prickett
Primary Staff Contacts: Susan Harding or Penny Davies

**ACTOS**

The FDA has approved updated warning labels for Actos, a prescription medication used to treat Type 2 diabetes. The updated label states that Actos usage for more than one year may cause bladder cancer. Actos, manufactured by Takeda, has been under FDA review since September 2010. In June 2011, the FDA issued a warning for Actos, while at the same time, drug regulators in France and Germany suspended use of the drug. We are currently investigating claims involving usage of Actos, Actoplus Met, Actoplus Met XR, Duetact and bladder cancer.

Lawyer: Roger Smith
Primary Staff Contact: April Worley

**TRANSVAGINAL MESH**

The FDA has issued an updated safety communication warning doctors, health care professionals and patients that the placement of surgical mesh through the vagina to treat pelvic organ prolapse and stress urinary incontinence may present greater risk for the patient than other non-mesh procedures. This is also called transvaginal mesh. According to the FDA, reported complications from the transvaginal placement of the mesh include erosion of the mesh into the vaginal tissue, organ perforation, pain, infection, painful intercourse and urinary and fecal incontinence. Often women require surgery to remove the mesh. In some cases, this can require multiple procedures without successful removing all of the mesh. Currently, we are investigating cases involving mesh manufactured by American Medical Systems, Bard, Boston Scientific, Caldera, Coloplast and Johnson & Johnson.

Lawyers: Chad Cook and Leigh O’Dell
Primary Staff Contacts: Tabitha Dean or Melissa Bruner

**TALCUM POWDER**

Johnson and Johnson has known for decades that its talcum products, such as Shower to Shower and Baby Powder, can cause ovarian cancer. But J & J has failed to warn women of the risk of using these products in the genital area. A Harvard medical doctor says that he has studied the link between talc and cancer for 30 years and believes talc is the likely cause for as many as 2,200 cases of ovarian cancer each year.

Lawyer: Ted Meadows
Primary Staff Contacts: Katie Tucker, Gwyn Harris or Amy Brown

**ANTIDEPRESSANTS**

SSRI-antidepressants such as Celexa, Lexapro, Luvox, Paxil, Prozac and Zoloft are prescribed to treat depression. Studies over the last several years have shown an increased risk of heart birth defects in children born to mothers who took SSRI-antidepressants in the first trimester. Most of the cardiac defects observed in these studies were atrial or ventricular septal defects, conditions in which the wall between the right and left sides of the heart does not completely develop. We are currently investigating claims of birth defects involving children whose mother was taking an SSRI, Wellbutrin or Effexor during pregnancy.

Lawyer: Roger Smith
Primary Staff Contact: April Worley

**BYETTA**, **JANUVIA**, **JANUMET** and **VICTOZA**

These drugs are used to treat Type 2 diabetes. They have been prescribed to millions of people in the United States. Since approving the medications, the FDA has issued several
warnings about links between them to complications related to pancreatic diseases. Recent studies have linked these two drugs to acute pancreatitis and pancreatic cancer. We are currently investigating claims of pancreatic cancer and thyroid cancer.

Lawyer: David Dearing
Primary Staff Contact: Penny Davies

**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 increase in the risk of cardiopulmonary arrest and sudden cardiac death. The manufacturer, Fresnius Medical Care, was aware of the dangers and injuries associated with these products but failed to warn patients and doctors until 2012. We are currently investigating death claims as well as claims of heart attack, cardiopulmonary arrest or any other serious injury.

Lawyer: Frank Woodson
Primary Staff Contact: Renee Lindsey

**LIPITOR®**

Lipitor, a statin drug to treat high cholesterol, was approved by the FDA in 1996 and is one 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 25. Of the 153,840 women evaluated, more than 10,000 had developed Type 2 diabetes by the end of the study.

Criteria: Injured is female; took Lipitor consistently for at least 2 months; Injured was diagnosed with diabetes while taking Lipitor, or within 6 months of last dosage of Lipitor; Body Mass Index (BMI) of 30 or less at time of diabetes diagnosis; Injured has no or limited family history of diabetes.

Lawyer: Frank Woodson
Primary Staff Contact: Renee Lindsey

**METAL-ON-METAL HIP REPLACEMENTS**

Metal-on-Metal hip replacement manufacturers have been under heavy scrutiny over the past few years regarding the dangers of their metal on metal hip devices. The main hip devices under scrutiny are:

- Johnson & Johnson/DePuy: ASR Total Hip Replacement and ASR Resurfacing System hip *(Recalled on August 24, 2010)*;
- Johnson & Johnson / DePuy: Pinnacle metal-on-metal hip;
- Zimmer: Durom Cup hip;
- Stryker: Rejuvenate and ABG II Stems *(Recalled on July 4, 2012)*;
- Biomet: M2a and 38 Diameter hips
- Wright: (a) Conserve, (b) Dynasty, (c) Lineage and (d) Profemur (femur fracture) hips; and
- Smith & Nephew: R3 Liner hips *(Recalled on June 1, 2012)*.

Metal-on-metal hip patients from the above manufacturers have similarly reported problems after their initial implant surgery resulting in revision surgery. All have reported a variety of symptoms, including pain, swelling and problems walking. These symptoms are normal for patients following a hip replacement, but can be a sign that something is wrong if they continue or come back frequently. Additionally, metal debris spreading in the hip area has been reported due to the metal-on-metal friction involved from the metal components moving together.

Lawyers will be glad to review any cases involving individuals who have had any of the above metal-on-metal hip devices implanted and all individuals unsure of the type of hip device implanted if the person has had revision surgery, or the person is experiencing hip pain, hip swelling or difficulty walking.

Lawyers: Navan Ward and Melissa Prickett

**MIRENA® IUD**

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.

Lawyer: Roger Smith
Primary Staff Contact: April Worley

**POWER MORCELLATOR**

The Power Morcellator is a surgical instrument used to divide and remove masses during hysterectomies, fibroid removal and other laparoscopic surgeries. The device is inserted through small incisions and removes tissue after aggressively cutting and shredding it. The device can put women at increased risk for a number of deadly uterine cancers. According to FDA analysis, 1 in 350 women undergoing surgical treatment for fibroids has an unsuspected uterine sarcoma that cannot be reliably detected before surgery. During power morcellation, there is a chance pieces of tissue may be left behind. If the tissue is malignant, cancer may be spread. The FDA issued a safety alert in April 2014 discouraging the use of these devices in uterine and fibroid removal procedures.

Lawyer: Melissa Prickett
Primary Staff Contact: Penny Davies

**Risperdal®**

Risperdal® is an atypical antipsychotic drug used to treat schizophrenia and certain problems caused by bipolar disorder and has been linked to the development of gynecomastia in boys and young men. Gynecomastia is a condition that causes boys to grow breasts. A jury verdict in Phila-
A preliminary study indicates that 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 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.

Lawyer: Melissa Prickett  
Primary Staff Contact: Penny Davies

**Viagra®**

A preliminary study indicates that 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 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.

Lawyer: Melissa Prickett  
Primary Staff Contact: Penny Davies

**Testosterone Replacement Therapy**

Testosterone Replacement Therapy 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. 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. We are currently investigating claims of heart attack, stroke and prostate cancer.

Lawyer: Matt Teague  
Primary Staff Contact: Heather Hall

**STEVENS-JOHNSON SYNDROME**

Stevens-Johnson Syndrome is an immune complex hypersensitivity reaction that can be caused from an infection or immune response to drugs. It is a severe expression of a simple rash known as erythema multiforme. SJS is also known as erythema multiforme major. It affects all ages and genders including pediatric populations. The most severe form of SJS is toxic epidermal necrolysis (TENS). SJS occurs twice as often in men as in women. Most cases of SJS appear in children and young adults younger than age 30. Females with SJS are twice as likely as males to develop TENS, and have an even higher chance if taking a category of drugs known as NSAIDs, non-steroidal anti-inflammatory drugs.

Lawyer: Frank Woodson  
Primary Staff Contact: Renee Lindsey

**A $2.5 MILLION VERDICT WAS RETURNED IN FIRST Risperdal TRIAL IN PHILADELPHIA**

A Philadelphia jury returned a $2.5 million in damages against a Johnson & Johnson unit in the first verdict over the antipsychotic drug Risperdal's connection to abnormal breast growth in males. The jury found the drugmaker failed to warn an autistic boy's parents and physicians of the risks. The verdict came after a lengthy trial in the Philadelphia County Court of Common Pleas. The jury heard evidence that Janssen Pharmaceuticals Inc. had worked for years to obscure evidence that the drug was linked to growth of female breast tissue—a condition known as gynecomastia—in adolescent boys.

While thousands of product liability lawsuits are pending nationwide over Risperdal's links to gynecomastia, this verdict is the very first. More than 1,250 Risperdal-related cases are lined up as part of a mass tort docket in Philadelphia. A second trial got underway there on Feb. 20. Meanwhile, some 700 suits have been filed in state court in Los Angeles. The family of 20-year-old Austin Pledger, who had grown large breasts after a five-year course of Risperdal treatment beginning in 2002, when he was 7 years of age.

At the time, the drug was approved by the U.S. Food and Drug Administration (FDA) only for use in adults. The jury, however, was told that Janssen sales representatives visited Pledger's prescribing physician, a pediatric neurologist, multiple times between 2002 and 2004 to distribute samples of the drug. According to testimony in the case, about 20 percent of the Risperdal prescribed before the early 2000s was used in children and adolescents. When the drug was ultimately approved for treating behavioral disorders in autistic children in 2006, the label was updated to indicate that that gynecomastia had been seen in 2.3 percent of pediatric patients. Previously, the label had said the condition was considered rare.

The trial featured several days of testimony from a former FDA commissioner, David Kessler, who said that he believed J&J had engaged in a conscious effort to massage data in scientific literature to downplay the association between the drug and gynecomastia.

The company agreed to admit criminal misconduct and pay $2.2 billion in November 2013, to resolve federal False Claims Act allegations that it paid kickbacks to doctors and illegally promoted three of its drugs, including Risperdal, for off-label use. As part of the accord, J&J unit Janssen will plead guilty to a misdemeanor count of misbranding, for improperly encouraging prescribers to treat dementia with Risperdal despite its being approved only to address schizophrenia when the conduct took place in 2002 and 2003.

In August 2012, the company agreed to pay $181 million to 36 states and Washington, D.C., to resolve similar claims of off-label marketing. Despite facing other sizable damage awards in cases brought by state attorneys general, the company has managed to prevail in several appeals. While Janssen had faced the prospect of a $1.2 billion fine after Arkansas’s attorney general accused the company of making false representations about the drug’s safety in a bid to defraud the state’s Medicaid program, the Arkansas Supreme Court upheld the award in March 2014. The Louisiana Supreme Court, meanwhile, struck down a $258 million damages award against Janssen in January 2014, ending similar claims leveled by the attorney general there.

The Plaintiffs are represented in the case by Tom Kline of Kline & Specter PC; and Christopher Gomez of Sheller PC. The case is in the Court of Common Pleas.
of the State of Pennsylvania, County of Philadelphia.
Source: Law360.com

$327 Million Risperdal Fine Against J&J Unit Cut In Half

The South Carolina Supreme Court cut more than half of a $327 million penalty levied on a Johnson & Johnson subsidiary for whitewashing links between its anti-psychotic drug Risperdal and diabetes, limiting claims to a three-year statute of limitations. The state high court cut the penalty to $136 million, limiting claims to three years from a January 2007 tolling agreement between the subsidiary and the state.

The court agreed with Ortho-McNeil-Janssen Pharmaceuticals Inc.'s argument that the trial court erred in granting the state's motion for a directed verdict on the statute of limitations on claims over alleged labeling violations. The court said:

The procedural dilemma we confront is that the statute of limitations issue concerning the labeling claim was resolved at trial through principles of equitable tolling. A determination in equity is not proper for a directed verdict motion insofar as determining what matters should be submitted to the jury.

The state supreme court rejected Janssen's argument that the statute of limitations bars all the state's claims over the Risperdal labels. The court's opinion stated further:

We reject Janssen's position, for Janssen misapprehends the statute of limitations and the concept of continuous accrual of this ... cause of action. The labeling claim presents a series of discrete, independently actionable wrongs that are at the core of the typical unfair trade practice action.

Janssen also argued that the statute of limitations applied to claims that it violated the South Carolina Unfair Trade Practices Act by sending "dear doctor" letters that glossed over diabetes risks from Risperdal. The November 2003 "dear doctor" letter spurred the U.S. Food and Drug Administration (FDA) to send a warning letter to Janssen in April 2004, according to the ruling. The court ruled that until the FDA sent its letter, Janssen's deceptive conduct couldn't have been discovered before then.

Janssen introduced Risperdal in 1994. Starting in the mid-1990s, evidence began to emerge that Risperdal and other atypical anti-psychotic drugs were associated with diabetes and other metabolic side effects, according to the ruling. The state of South Carolina filed suit in 2007, arguing that Janssen sent misleading letters to more than 7,000 to protect billions of dollars in Risperdal sales. The trial court ordered Janssen to pay $327 million in 2011. States such as Louisiana and West Virginia launched cases against J&J after the FDA ordered the company in 2003 to revise prescribing information for Risperdal to include a warning for an increased risk of diabetes among users.

Source: Law360.com

$3.6 Million Verdict Returned Against Takeda In Actos Case

A $2.3 million verdict was returned against Takeda Pharmaceuticals Inc. last month in an Actos case. A Philadelphia jury concluded that the diabetes drug had been a significant cause of a retired Pennsylvania teacher's bladder cancer and that the man's doctor had been inadequately warned about the risks. The jury awarded John Kristufek $318,000 in past medical expenses and an additional $2 million in noneconomic damages. This was the second successful effort by Plaintiffs in the Philadelphia County Court of Common Pleas to hold the Japanese drugmaker legally responsible for injuries caused by the use of Actos.

The jury also opened the door for punitive damages against the company by finding that Takeda had acted with reckless disregard for patients in its development and marketing of the drug. One day after the $2.3 million compensatory damages award, the jury handed down an additional $1.3 million in punitive damages against the drug company for its reckless indifference in the health of the Plaintiff.

Kristufek was represented in his case by Michael Miller of the Miller Firm, which has offices in Orange, Va., and McComb, Miss. The Kristufek case is in the Court of Common Pleas of the State of Pennsylvania, County of Philadelphia. If you have any questions about any aspect of the Actos litigation, contact Roger Smith, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Roger.Smith@beasleyallen.com.

Source: Law360.com

Supreme Court Decides Not To Review Challenge By Generic Pharmaceutical Manufacturers To Failure-To-Update Labeling Claims

The United States Supreme Court has declined to review a California appellate court's decision allowing a state law failure-to-warn claim to proceed against several generic drug manufacturers, including Teva Pharmaceuticals USA, Inc, Barr Pharmaceuticals LLC, and Caraco Pharmaceutical Laboratories, Ltd.

The action was brought by Plaintiff Olga Pikerie for injuries she sustained as a result of ingesting sodium alendronate manufactured by Teva, Barr, and Caraco. Sodium alendronate belongs to a family of drugs known as bisphosphonates, and is primarily prescribed for treatment of osteoporosis in postmenopausal women.

JereBeasleyReport.com
The brand-name version of the drug is called Fosamax, which is manufactured by Merck.

Ms. Pikerie filed her action in Orange County Superior Court, and it was coordinated with other individual actions for discovery and pre-trial purposes. Her Complaint contained traditional state law tort claims, including claims for negligence and strict liability failure-to-warn. The failure-to-warn claims focused on the generic manufacturers’ failure to warn about the risk of femur fracture and the warning signs of fractures.

The generic manufacturers sought dismissal of Ms. Pikerie’s case on the theory that all her claims were preempted under the Supreme Court’s decision in *PLIVA v. Mensing*. In *Mensing*, the Court barred Plaintiffs from pursuing traditional state law claims (specifically, failure-to-warn and design defect claims) against generic drug manufacturers by holding that federal law preempts state law claims targeting generic drug warnings and designs.

The trial court refused to dismiss Ms. Pikerie’s claims, and the generic manufacturers filed a petition for writ of mandate to the state appellate court. The appellate court denied the petition, holding that Ms. Pikerie’s claims were not preempted because federal regulations did not make it impossible, prior to Ms. Pikerie’s injury, for the generic manufacturers to include in their generic drug labels a warning about femur fracture and warning signs of fracture, because such warning had already been included in the brand-name label. The addition of a warning, therefore, was not barred by the requirement that generic drug labeling generally be the same as the labeling of the brand-name counterpart.

The court further held that in these circumstances, unlike in Mensing, federal regulations allowed the generic manufacturers to send a “Dear Doctor” letter or other communication to Ms. Pikerie’s doctors informing them about risks contained in the FDA-approved label.

The appellate court also rejected the generic manufacturers’ argument that Ms. Pikerie’s claims are preempted by *Buckman Co. v. Plaintiffs’ Legal Comm.*, finding that her claims “are not based on a fraud-on-the-FDA theory, but on state law tort principles of a drug manufacturer’s duty to the consumers of its product.”

The generic manufacturers sought review in the Supreme Court of California and the United States Supreme Court and were denied. The issue may now be decided by the FDA, which plans to issue a new rule later this year that would permit generic drug makers to update labeling independently in response to new risk information. The FDA proposed the rule in response to the 2011 Supreme Court ruling, although a final version has been delayed amid protests from generic drug manufacturers. If you have any questions about this litigation, contact Beau Darley, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Beau.Darley@beasleyallen.com.

**The Fosamax Femur Fracture Litigation**

Fosamax is an oral bisphosphonate intended to help reduce bone loss and fracture risk associated with osteoporosis, typically in postmenopausal women. However, long-term Fosamax use can cause very unusual mid-shaft femur fractures, now referred to in the medical literature as bisphosphonate-induced atypical femur fractures. These fractures often occur without any precipitating trauma. In fact, many of our clients have sustained complete, displaced femur fractures while simply standing or walking. Needless to say, these were quite traumatic experiences for our clients, and nearly all required extensive rodging surgeries to repair. As news of these fractures spread, fewer Fosamax prescriptions were written. Although some physicians still prescribe Fosamax, they typically limit treatment to 2-3 years at a time.

Although Fosamax was first released on the American market in 1995, the label did not contain any type of femur fracture warning until the FDA ordered Merck to include one in October 2010. Today, the Fosamax label warns of low trauma, atypical femur fractures in its “Warnings and Precautions” section. But for some women, the 2010 label change is of little consequence, as the residual fragility effects of long-term Fosamax use can last years after they stop taking the drug. It is not until the femur has had years of healthy remodeling after Fosamax is discontinued that the femur fracture risk begins to diminish.

We continue to investigate, review and file Fosamax cases involving femur fractures. A multidistrict litigation (MDL) court was established in US District Court, District of New Jersey. A similar state multicity litigation court was also established in New Jersey. Last September, all of the New Jersey state court cases were reallocated from Atlantic County to Middlesex County, N.J. A
similar multicounty litigation court has been established in California.

If you have a prospective client, friend or relative who suffered a femur fracture after taking Fosamax, a lawyer in our firm would like to speak with you. If you have any questions about this litigation, contact David Dearing, who is in our Mass Torts Section, at 800-898-2034 or by email at David.Dearing@beasleyallen.com.

XII. BUSINESS LITIGATION

APPLE ORDERED TO PAY $533 MILLION FOR PATENT INFRINGEMENT

Apple Inc. has been ordered to pay $532.9 million in a patent infringement case. A federal jury in Texas found that Apple’s iTunes software infringed three patents owned by patent licensing firm Smartflash LLC. Even though Smartflash had been asking for $852 million in damages, this verdict was said to still be a blow to Apple. The jury determined Apple had not only used Smartflash’s patents without permission, but did so willfully. That’s a most significant ruling.

Apple, which said it would appeal, said the outcome was another reason reform was needed in the patent system to curb litigation by companies that don’t make products themselves. Apple said in a statement:

“We refused to pay off this company for the ideas our employees spent years innovating and unfortunately we have been left with no choice but to take this fight up through the court system. Smartflash sued Apple in May 2013, alleging its iTunes software infringed its patents related to accessing and storing downloaded songs, videos and games.

The trial was held in Tyler, Texas, which in the past decade has become a focus for patent litigation. Smartflash’s registered office is also in Tyler. It was also in a federal court in Tyler that a jury in 2012 ordered Apple to pay $368 million to VirnetX Inc. for patent infringement. A federal appeals court later threw out that damages figure, saying it was wrongly calculated. U.S. District Judge Rodney Gilstrap, who presided over the case, ruled that Smartflash’s technology was not too basic to deserve the patents.

Apple had asked the jury to find Smartflash’s patents invalid because previously patented inventions covered the same technology. It was alleged in Smartflash’s suit that around 2000, the co-inventor of its patents, Patrick Racz, had met with executives of what is now European SIM card maker Gemalto SA, including Augustin Farrugia, who is now a senior director at Apple. Smartflash has also filed patent infringement lawsuits against Samsung Electronics Co Ltd, HTC Corp and Google Inc. The case is in the U.S. District Court for the Eastern District of Texas.

Source: Reuters

XIII. INSURANCE AND FINANCE UPDATE

METLIFE TO PAY GOVERNMENT $123.5 MILLION IN MORTGAGE SETTLEMENT

MetLife’s home lending unit will pay $123.5 million to end the ongoing investigation into the company’s giving of government-backed mortgages to folks who didn’t meet federal requirements. According to the Justice Department, MetLife knew the business was issuing hundreds of loans that didn’t meet federal requirements. That meant the loans weren’t eligible for insurance by the Federal Housing Authority. But MetLife made the mortgages anyway. The FHA and taxpayers were the losers when defaults—as should have been expected—resulted.

During some periods between January 2009 and August 2010, according to the Justice Department, MetLife Bank knew that a majority of the loans it was originating had material or significant deficiencies. While those rates improved later, MetLife also altered its practices so fewer mortgages appeared to be deficient. The Justice Department says MetLife Bank’s CEO, board of directors, and other members of senior management were aware that many of the mortgages didn’t meet government standards.

MetLife says it cooperated with the investigation and set aside money for the settlement. The New York-based company got out of the business in 2012. MetLife Bank was also among 16 major mortgage lenders and servicers cited by U.S. regulators in April 2011 for improperly foreclosing upon homeowners in 2009 and 2010. The Federal Reserve imposed $3.2 million in penalties against MetLife.

Source: Insurance Journal

STATE FARM SETTLES TEXAS RESIDENTIAL OVERCHARGE CASE FOR $352.5 MILLION

State Farm subsidiary, State Farm Lloyds, has agreed to a settlement of its long-running dispute with the state of Texas over premium overcharges. The Texas Office of Public Insurance Counsel (OPIC) says that under the settlement the company will refund $352.5 million in premium overcharges and interest to its Texas policyholders.

State Farm Lloyds, with nearly 27 percent of the market, is the largest homeowners insurer in Texas. The settlement applies to residential policies that were issued or renewed between Sept. 7, 2003, through July 31, 2008. Interestingly, the amount is a far cry from the almost $1 billion in overcharges and interest that OPIC alleged the company owed in a court filing in 2009. However, the current settlement amount is more than the $310 million the company was ordered to pay in 2009 by then-Texas Insurance Commissioner Mike Geeslin.

Texas Public Counsel Deeia Beck said in a statement:

OPIC is very pleased to settle this long-standing rate dispute with significant refunds to policyholders. We are particularly glad that OPIC’s legal arguments resulted in the inclusion of policyholders from September 2006 through July 2008 in the settlement. These policyholders will receive $119.1 million in refunds that they would not have otherwise obtained.

Texas Department of Insurance Commissioner David Mattax said he was relieved that the more than decade-long dispute with State Farm Lloyds was finally over. He said in a release:

I am pleased to finally resolve this matter and begin returning money owed to State Farm Lloyds policyholders who were charged too much for their homeowners insurance between September 2003 and July 2008.
Texas' regulators have long held that the company began overcharging its customers in 2003 and State Farm has been defending its practices in court ever since. The dispute has its origins in Senate Bill 14, which the Texas Legislature passed in 2003 after homeowners insurers increased rates in the aftermath of what was labeled the "mold crisis." Between 2000 and 2003 Texas homeowners insurers paid out $4 billion in homeowners claims over toxic mold, the Insurance Council of Texas reported in May 2005.

SB 14 required homeowners insurers to file their rates with the Texas Department of Insurance. The department then had a mandate to conduct rate reviews of all homeowners insurance companies in Texas at that time to determine if existing rates complied with rating standards. The rate reviews were completed in September 2003, with regulators finding that homeowners rates were excessive for 29 of the 61 insurers reviewed and ordered reductions. Of the 29 companies ordered to lower rates 12 companies appealed, including State Farm, which had been ordered to reduce its homeowners rates by 12 percent.

Until the current settlement, State Farm was the last insurance carrier fighting the rate cuts and refunds. In August 2004, Allstate Texas Lloyds, an affiliate of the Allstate Corp. and the state's third largest homeowners carrier, agreed to issue refunds of 8.75 percent of the premium paid by its Texas homeowners insurance customers for policies with effective dates from Sept. 7, 2003, through Sept. 6, 2004. In 2013, Farmers Insurance, Texas' second largest homeowners insurance company, agreed to settle for $117.5 million the state's claim that it had overcharged and underserved customers.

The company expects the refunds to go out to policyholders over an 18-month period, but they won't begin immediately. Apparently, it will take a few months to determine the refund amount for each affected policyholder. The company estimates the first eligible policyholders will start receiving refund checks later this year and that the process would likely extend through August 2016.

The Insurance Department says policy refunds will vary between 2.6 percent and 6.2 percent of premium paid by individual customers, depending on the effective date of their policies. Interest rates will either be 5.25 percent or 9.25 percent depending on policy effective date. The Department has posted a copy of the settlement and a companion "frequently asked questions" document on its website.

Source: Insurance Journal

XIV. EMPLOYMENT AND FLSA LITIGATION

Publix Reaches $30 Million Settlement With Employees In Overtime Litigation

Publix Super Markets Inc. will pay $30 million to settle a collective action alleging the grocery chain failed to pay the required amount of overtime to department managers based on a "fluctuating workweek" calculation method. A settlement agreement was filed in Tennessee federal court. Under the proposed deal, Publix—which operates about 1,000 supermarkets in six states—will pay $7.7 million to all opt-in Plaintiffs, as well as $15.5 million to all other department managers and assistant managers who were paid overtime based on a "fluctuating workweek" during roughly the past three years. One-third of the settlement amount—or about $6.6 million—will be allocated for Plaintiffs' attorneys' fees and expenses, which is subject to court approval.

The Plaintiffs also requested payments of $7,500, $2,500 and $2,500 to Plaintiffs Amanda Ott, Bruce Bogach and April White, respectively, for their work in representing the class. The suit, filed in 2012, claims the company failed to pay the required amount of overtime under the Fair Labor Standards Act (FLSA) because it didn't include employee bonuses in calculating regular rate of pay. In 2013, the court conditionally certified a class of all current and former department managers and assistant managers who worked more than 40 hours in one or more weeks during the relevant period. Subsequently, 1,583 individuals opted into the suit, according to the settlement. Last March, Bogach and White joined as named Plaintiffs. Another case pending before the same court accuses Publix of failing to include overtime pay considerations in holiday bonuses and other benefits for hourly employees.

The settlement requires the Plaintiffs and their attorneys to refrain from speaking to the media about the agreement other than to confirm that the information is available through public records. Lawyers for the Plaintiffs are also prevented from specifying the gross settlement amount on their website, though they may indicate the case has been settled, according to the agreement. The case is in the U.S. District Court for the Middle District of Tennessee.

Source: Law360.com

Colorado Jury Returns Verdict In Racial Discrimination Case

A federal jury has awarded nearly $15 million to 11 warehouse workers in a racial discrimination case. The workers accused a trucking company in Denver, Colo., of segregating workers by race, calling black people "stupid Africans" and punishing those who complained. The verdict against Sacramento, Calif.-based Matheson Trucking and Matheson Flight Extenders, Inc. included $13 million in punitive damages. The company transports mail for the U.S. Postal Service and private vendors, including UPS and Federal Express. It was reported that black employees worked on one side of the Commerce City warehouse and whites worked on the other side. White supervisors and staff were accused of calling employees racial epithets and "lazy, stupid Africans."

Source: Insurance Journal

XV. PREMISES LIABILITY UPDATE

Recent Study Reveals Dramatic Increases In Collapses and Failures Of Decks and Balconies

The number of injuries caused by the collapse and failure of outdoor decks and porches has dramatically increased according to a recent study by the Consumer Product Safety Commission (CPSC) since 2003. The study analyzed three categories, all involving wood structures:

- decks, porches, balconies and open floors;
- railings; and
- stairs.

BeasleyAllen.com
Based on the statistics from the CPSC, 224,000 people were injured nationally due to a deck or porch in the five-year study period. Nearly 15 percent of these injuries were a result of a structural failure or collapse. Another study conducted in 2007 by Morse Technologies reported that deck collapses were increasing at an average rate of 21 percent per year.

Of those injuries, 33,000 were a result of a structural failure or collapse. The estimate for "serious" injuries resulting from those failures exceeded 18,000. Serious injuries included head trauma, concussion, major fractures such as those associated with the back, and paralysis. Most injuries were preventable if a proper deck inspection had been performed each year by a qualified professional.

This is a growing epidemic in our country. Frankly, I was surprised when I began researching this topic at the number of incidents. They are much more common than you think. In 2013, in Gulf Shores, Ala., authorities said six spring break vacationers were sent to the hospital after a deck collapsed at a gulf-front home. In July 2010, in Hoover, Ala., a second-floor deck collapsed at a condo complex, killing one person. A week later, at the same complex, a second deck collapsed, injuring four. The most tragic deck collapse occurred in June of 2003 when a porch gave way in Chicago, killing 13 people and injuring 57. This incident created a concern for deck and porch safety across the country. There have also been numerous other deck collapses in recent years:

- 6/11/2012 Manchester, N.H.: Portable classroom trailers at five city schools were closed after children were injured when a wooden platform attached to a trailer collapsed at one school.
- 5/19/2012 Ashland, N.H.: Rear deck porch collapse
- 5/2012 Churubusco, Ind.: A report of a collapse at a pre-prom gathering where 12 teenagers tumbled.
- 9/20/2011 Castleton, Vt.: Seven Castleton State College students were injured when a deck holding revelers collapsed.
- 9/26/2004 Milford, Conn.: Eight people were injured, including a soon-to-be bride, when a deck at the back of a house "collapsed like a house of cards."

Most failures of decks, balconies and railings can be avoided if properly designed. Unfortunately, many older decks were built before code requirements were in place and have now degraded or weakened over the years. According to the North American Deck and Railing Association (NADRA):

It’s estimated that 2.5 million new or replacement decks were built last year. Almost every new home being built today includes an elevated deck or porch. And, existing decks on older homes are being replaced at a very high rate. In fact, the number of personal injuries and deaths related to decks each year is likely to continue to rise because more decks are being constructed each year and existing decks are deteriorating.

Deck, porch and balcony failures and collapses are avoidable with proper construction and upkeep. Here is a quick checklist of some items to look for if you have a deck, balcony or porch:

- Rotting or splitting wood framing members;
- Loose or missing nails, screws or anchors;
- Missing, damaged or loose support beams;
- Unstable, shaky handrails or guards;
- Corroded connections at deck ledgers and hangers;
- Proper type, use and size of connectors (bolts versus nails);
- Perimeter house flashing at the deck or balcony interface; and
- Height and location of railings.

The International Residential Code and the International Property Monitor Code apply to the owners and operators of commercial properties such as apartment complexes. The requests and standards established by these codes must be fully understood and followed.

The International Residential Code (IRC) recommends specific minimum live and dead load requirements for decks, balconies and porches, including snow and wind loads. The hand railings and guards have similar specific loading requirements. Inspections are an absolute must. Deck inspections are absolutely critical to the safety of the tenants and are the most effective way to prevent and/or eliminate deck, balcony and railing collapses. Owners and managers must also be familiar with and comply with the International Property Maintenance Code (IPMC). This code is routinely adopted by cities and counties. For example, the City of Montgomery has adopted it.

If you live in an older apartment or condo complex, I recommend that you ask your building supervisor when the owners last hired a professional engineer to inspect the stairs, railings, decks, walkways and balconies. I hope that you will not be shocked by their answers. If you need more information on this subject, contact Kendall Dunson or Dana Taunton, lawyers in our firm’s Personal Injury/Product Liability Section, at 800-898-2034 or by email at Kendall.Dunson@beasleyallen.com or Dana.Taunton@beasleyallen.com.

Jury Finds For Man Injured in Apartment Complex Gas Explosion

A jury in Atlanta, Ga., found in favor of Plaintiff Steve Wells, who was severely injured in an explosion in his apartment on May 31, 2010, caused by an uncapped dryer gas line. As a result of the explosion, Mr. Wells was burned on more than 20 percent of his body, requiring skin grafts. The explosion also damaged his vocal cords, leaving him with permanent injuries to his voice. He also was forced to quit his teaching career at McGinnis Day School, where he had been head of IT. The jury awarded $17.9 million in compensatory damages and $47.9 million in punitive damages. The jury also awarded just over $7 million in attorneys' fees, for a total verdict of $72,960,000.

During the course of the trial, Plaintiffs' lawyers presented evidence to the jury that the owners and managers of the Edgewater at Sandy Springs apartment complex failed to establish policies to inspect apartments to identify and correct uncapped gas lines on their premises. They allowed Mr. Wells to begin moving into a vacant apartment without first inspecting the unit, and therefore failed to inspect the gas dryer line, which was uncapped. While Mr. Wells was away, gas began flowing into the apartment. When he returned and entered through the front door, the gas ignited,
sending a fireball through the apartment and seriously injuring Mr. Wells.

It was discovered that the Defendants did not have any policies or procedures in place for capping a gas line when a resident moved out and removed a gas dryer, and they did not train or supervise their employees on inspecting or capping gas lines prior to a new tenant moving into an apartment. While investigating Mr. Wells’ case, the Plaintiffs’ lawyers found that there were uncapped gas lines in 57 other apartments at the property.

Upon post-trial motions by Defendants, the Court reduced the punitive verdict to $250,000, based on Georgia’s statutory cap. Plaintiff is challenging the constitutionality of the cap in the Supreme Court of Georgia. The Plaintiff in this case was represented by Peter Law, Mike Moran and Chris Newburn, who are with the Law & Moran law firm in Atlanta, Ga. They did a very good job for their client, and ultimately helped ensure the safety of all residents at the apartment complex involved in this case.

Sources: CNN and The Atlanta-Journal Constitution

XVI. WORKPLACE HAZARDS

JURY IN IOWA AWARDS $25 MILLION IN WORKERS’ COMPENSATION SUIT

A Pottawattamie County, Iowa, jury has awarded a former semitrailer truck driver $25 million in punitive damages in a civil case filed against his workers’ compensation insurance provider. The Plaintiff, Toby Thornton, was paralyzed from the chest down in a crash of his vehicle in June 2009. At the time, he was an employee of Clayton County Recycling.

It was alleged in the lawsuit that American Interstate Insurance Co. of DeRidder, La., the recycling company’s insurance carrier, delayed and fought paying workers’ compensation benefits for years after the accident. The employer denied that Thornton was disabled, resulting in filing of this civil suit. The jury found that American Interstate Insurance acted in bad faith in its dealings with Thornton. Jurors awarded Thornton $284,000 in damages, along with an additional $25 million in punitive damages.

Source: World-Herald News Service

XVII. TRANSPORTATION

DRUGGED DRIVING INCREASES IN THE U.S.

It appears that the nation’s decades-long campaign to combat drunk driving is making our roads safer. But use of marijuana and prescription drugs is increasingly prominent on the highways. This creates new safety questions, according to two studies released by the Department of Transportation’s National Highway Traffic Safety Administration (NHTSA). One study, the latest edition of NHTSA’s Roadside Survey of Alcohol and Drug Use by Drivers, found that the number of drivers with alcohol in their system has declined by nearly one-third since 2007, and by more than three-quarters since 1973. But the same survey found a large increase in the number of drivers using marijuana or other illegal drugs. In the 2014 survey, nearly one in four drivers tested positive for at least one drug that could affect safety.

One-third reduction in alcohol use over just seven years “shows how a focused effort and cooperation among the federal government, states and communities, law enforcement, safety advocates and industry can make an enormous difference,” according to NHTSA Administrator Mark Rosekind. However, he said, the survey raises “significant questions about drug use and highway safety. The rising prevalence of marijuana and other drugs is a challenge to everyone who is dedicated to saving lives and reducing crashes.”

The National Roadside Survey, conducted five times during the last 40 years, is a voluntary, anonymous survey that gathers data in dozens of locations across the country from drivers who agree to participate. The reports are consistent with another study released in June by Public Health Reports. This study found that since 1993, the profile of a drugged driver has changed substantially. More drivers are now testing positive for prescription drugs, cannabis, and multiple drugs, and they are more likely to be older than 50. “While we’ve seen a decrease over the years in motor vehicle fatalities involving people under the influence, the nature of those crashes is changing,” said the Public Health Reports study author, Fernando Wilson, Ph.D., associate professor at the University of Nebraska Medical Center. Dr. Wilson found that the percentage of drugged drivers with three or more drugs in their system nearly doubled from 1993 to 2010, increasing from 11.5 percent to 21.5 percent.

The latest edition of the NHTSA survey shows that the prevalence of alcohol use by drivers continues to drop. About 8 percent of drivers during weekend nighttime hours were found to have alcohol in their system, and just over 1 percent were found with 0.08 percent or higher breath alcohol content—the legal limit in every state. This is down by about 30 percent from the previous survey in 2007 and down 80 percent from the first survey in 1973. But even as drinking and driving continues to fall, use of illegal drugs or medicines that can affect road safety is climbing. The number of weekend nighttime drivers with evidence of drugs in their system climbed from 16.3 percent in 2007 to 20 percent in 2014. The number of drivers with marijuana in their system grew by nearly 50 percent.

A second survey, the largest of its kind ever conducted, assessed whether marijuana use by drivers is associated with greater risk of crashes. The survey found that marijuana users are more likely to be involved in accidents, but that the increased risk may be due in part because marijuana users are more likely to be in groups at higher risk of crashes. In partic-
ular, marijuana users are more likely to be young men—a group already at high risk. This was a controlled study that measured the risk associated with marijuana at the levels found among drivers in a large community. Other studies using driving simulators and test tracks have found that marijuana at sufficient dosage levels will affect driver risk. Jeff Michael, NHTSA’s associate administrator for research and program development, stated:

*Drivers should never get behind the wheel impaired, and we know that marijuana impairs judgment, reaction times and awareness.*

The study, conducted in Virginia Beach, Va., gathered data over a 20-month period from more than 3,000 drivers who were involved in crashes, as well as a comparison group of 6,000 drivers who did not crash. The study found that drivers who had been drinking above the 0.08 percent legal limit had about 4 times the risk of crashing as sober drivers and those with blood alcohol levels at 0.15 percent or higher had 12 times the risk.

Source: Claims Journal

### Calls for Safety Upgrades Follow West Virginia Oil Train Crash

A fiery oil train derailment in West Virginia last month exposes lax safety standards and strengthens the case for tougher U.S. rules governing such shipments, according to safety advocates. A 109-car delivery of crude oil from North Dakota’s Bakken energy patch derailed in West Virginia, setting at least nine cars ablaze. It was the latest accident to draw attention to risks of moving high volumes of fuel by rail. It’s abundantly clear that we need stricter regulations.

The U.S. Department of Transportation (DOT) last month sent a safety plan to the White House for final review. That proposal would have oil trains fitted with advanced braking systems to prevent pileups and tougher shells akin to those carrying volatile propane gas on the tracks. Oil and rail leaders have backed some safety upgrades but have said regulations should not unduly hinder commerce. The American Petroleum Institute and Association of American Railroads have worked together on oil train safety and are eager to see the final safety plan, a spokesperson for each trade group said.

The West Virginia derailment came on the same CSX Corp. line that crosses through Lynchburg, Va., where another oil train derailed in April. It also came a day after a delivery of crude oil jumped the tracks in a rural area of Ontario, setting several tankers ablaze. Canadian and U.S. officials have grappled with how to respond to oil train dangers since a runaway delivery of Bakken fuel killed 47 people in the Quebec town of Lac-Mégantic. “Incidents such as these are what kept us focused,” said Cynthia Quarterman, former administrator of the U.S. Transportation Department’s Pipeline and Hazardous Materials Safety Administration. Railside mayors and first responders say officials are finally hearing their pleas.

API and the Association of American Railroads (AAR) have said the oil and rail sectors have been ready for new safety standards for years. Ed Greenberg of AAR says: “Our industry awaits the final rule.” Several tank car companies including Greenbrier Company Inc., American Railcar Industries Inc., Trinity Industries Inc. and GATX Corp are expected to be affected by new oil tanker safety rules.

Source: Insurance Journal

### $1.5 Million Verdict For Georgia Child Injured By Texting Driver

A Fulton County, Ga., jury has returned $1.5 million verdict in favor of a girl who suffered a skull fracture and other injuries when the car she was in was struck at a red light by a pickup truck whose driver was texting. Chasity Anderson, now 15, has made a “fairly remarkable recovery” after being paralyzed for several weeks. She still has vision problems and mild attention deficit hyperactivity disorder as a result of the 2007 crash.

The accident happened when Chasity’s mother, Sharon Anderson, stopped on Peachtree Industrial Boulevard to wait for a light to change. A Ford F-250 pickup truck belonging to lawn service company Arbor-Nomics Turf Inc., driven by Kevin Brenner, slammed into the rear of the car. Chasity, then 7, was sitting in her car seat. The driver of the pick up, Brenner, subsequently admitted that he had been texting a customer he was on the way to see when he hit the Andersons’ car.

Chasity was thrown forward and hit her head on the front seat, resulting in two temporal skull fractures and a fractured left eye orbital, as well as soft tissue damage. En route to Gwinnett Medical Center, Chasity suffered a seizure and went into cardiac arrest in the ambulance. She again had a seizure and cardiac arrest at the emergency room. Jon Peters, a lawyer with the Altana firm Peter, & Monyak, represented the Plaintiff in this case. He did a very good job.

Source: personalinjury.com

### Kentucky Man Hit By Bus Awarded Almost $5 Million

A jury has awarded nearly $5 million to a courier for a Louisville, Ky., law firm who suffered a traumatic brain injury when he was hit by a Transit Authority of River City bus. The Jefferson Circuit Court jury awarded $4,951,073 to the Plaintiff, Adam Bibelhauser, who was in a crosswalk at Fourth and Market streets on Sept. 8, 2008, when he was struck. The plaintiff, then 27, worked full time for the Stites & Harbison law firm and was pursuing a master’s degree from the University of Louisville.

Because of his injuries, the Plaintiff was unable to complete his degree. The verdict included $3.5 million in damages for pain and suffering and $950,000 for lost future earnings. The Plaintiff sustained rib fractures, a broken thumb and four skull fractures, and had to undergo an emergency craniotomy, in which part of the skull is removed to access the brain. He now works in the Kentucky Humane Society’s spay and neuter clinic. Doug Farnsley and Julie McDonnell, lawyers located in Louisville, Ky., represented the Plaintiff. They did a very good job for him.

Source: personalinjury.com

### California Has Been Letting Oil Companies Dump In Protected Water Sources

Conservationists are calling on the state of California to shut down injection wells after a scathing *San Francisco Chronicle* report found the state has been letting oil companies drill and dump in protected, drinkable water sources during a historic drought. According to the *Chronicle’s* review of state data, since 1983 California’s Division of Oil, Gas and Geothermal
Resources has been allowing oil companies to dispose of produced water—leftover water from the drilling process that is contaminated with oil, brine and other chemicals—by pumping it into the earth through wastewater injection wells that reach into the state’s aquifers. Tainted water has been pumped through 171 wells in aquifers suitable for drinking and irrigation, 253 wells in saltier aquifers that could be usable with more rigorous treatment, and 40 wells in aquifers for which there is no water quality data.

Those groundwater-rich aquifers are considered protected by the Environmental Protection Agency (EPA), which is giving the state until Feb. 6, 2015, to determine how it will address the problem and prevent its recurrence. State officials say they haven’t found any sign of contamination at drinking water wells also located at the aquifers, but the EPA and the State Water Resources Control Board are conducting their own investigation on whether drinking water supplies have been put at risk. Conservationists are now calling on the state to shut down the injection wells immediately and issue a moratorium on any oil and gas activities that produce toxic water.

Most of the injection wells under scrutiny are in the Central Valley, the heart of the state’s agriculture industry, where residents rely on private groundwater wells for much of their water supply. As California suffers through its fourth year of drought, those supplies have become increasingly strained, at one point leaving one Central Valley community relying on bottled water.

As surface water sources dry up in drought, groundwater from these aquifers has become an incredibly important source for the region’s farmers, who produce nearly half the country’s fruits, vegetables and nuts. A report out of the University of California, Davis last summer found that the state’s farmers are pumping a whopping 62 percent more groundwater than usual. The researchers predicted that the farmers’ total groundwater use by the end of 2014 would be enough cover Rhode Island in 17 feet of water.

Sources: The Huffington Post

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XIX. UPDATE ON NURSING HOME LITIGATION

**Nursing Home Patient Rights**

There is an old saying that knowledge is power. The more information you have about a topic, the better educated you are, and the better able you are to deal with issues that may arise. Placing a loved one in a nursing home is a difficult undertaking. Nursing homes are inspected and regulated by both state and federal officials. In 1987, Congress saw the need to increase the oversight of nursing homes. As a result, it passed the Omnibus Budget Reconciliation Act of 1987. This act is commonly referred to as the Nursing Home Reform Act.

This Act requires that nursing home facilities that receive Medicare and Medicaid “must provide services and activities to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident in accordance with a written plan of care.” Individual states may, and in some cases do, impose even greater standards on nursing homes than those imposed by this federal Act.

The requirements that must be met by nursing homes are promulgated at 42 CFR Part 483. There are numerous regulations, but some of them are more significant than others. These would include:

- **Develop a comprehensive care plan for each patient.** (42 CFR § 483.20.) Once a person is admitted to a nursing home, a comprehensive care plan is to be performed by the appropriate disciplines (physician, nursing, physical therapy, occupational therapy, speech therapy, dietary, etc.) to ensure that the patient receives the appropriate care and the level of care to promote the improvement of the patient while under the facility’s care. Most facilities will involve family members in these care plan meetings, and a plan will be modified as the patient progresses or worsens under the care of the facility.

- **Undertake medical treatment methods to help prevent the deterioration of a patient’s ability to perform activities of daily living (“ADLs”), including bathing, toileting, dressing, grooming, transferring, ambulating, communicating, and eating.** (42 CFR § 483.25.) This provision requires nursing homes and their staffs to undertake measures not to make a patient worse under their care. There is a rule of medicine that holds “first do no harm,” meaning that whatever treatment is provided it should not make the situation worse. This rule of medicine applies equally to the nursing homes and their staff.

- **Prevent the development of pressure sores and provide the appropriate treatment where a patient has pressure sores.** (42 CFR § 483.25.) Proper skin care and frequent monitoring for residents of nursing homes are essential. Open wounds provide an avenue of exposure to bacteria and viruses that might be prevented in the absence of such wounds. Ensuring that a patient is in the proper type of bed, is turned or rotated frequently, is gotten out of bed frequently, is kept clean and dry if incontinent, and is given proper nutrition and care may be the most essential aspect of nursing home care that there is. Family involvement is important, and your loved one should be checked periodically by you for skin wounds as well.

- **Prevent falls, trips and other events where patients can be injured.** (42 CFR § 483.25.) Other than bedsores, falls in nursing homes seem to be the most prevalent events that occur. When a patient is admitted to a nursing home, a fall risk assessment should be performed. The fall risk assessment will determine what degree of assistance the patient needs to get out of the bed, out of the chair, to walk, to get to the bathroom, etc. The greater the instability exhibited by the patient results in a higher standard of care to help with fall prevention. Many methods exist in nursing homes to greatly reduce this risk, including assistive devices (such as wheelchairs, walkers, etc.), lifting devices (such as Hoyer lifts, gait belts, rails, etc.), standby assistance (one-person and two-person assist), and other aids (such bedside commodes, bedpans, adult diapers, etc.). It is imperative that the patients be monitored as regularly as possible and that all means available be utilized to reduce the risk of falls and injuries. Studies have shown that the older a person is the harder it is for that person to recover from a fall, especially where bones are fractured or other injuries occur. Be sure to discuss with

BeasleyAllen.com
your facility administrator any concerns that you may have about your loved one’s difficulty or inability to ambulate.

- **Provide proper nutrition and fluid intake to maintain hydration and nutrition levels.** (42 CFR § 483.25.) Oftentimes, elderly patients simply do not eat or drink enough. It is essential for the nursing staff to monitor the patient and ensure that he or she is adequately hydrated and fed. There are numerous ways to do this. Moreover, many of the medications that elderly patients take increase the risk of dehydration, which even furthers the responsibility to monitor the patient. Lack of hydration and nutrition can cause a host of medical issues, including kidney, heart, and lung problems. These problems are often fatal in elderly patients.

- **Avoid medication errors.** (42 CFR § 483.25.) Medication errors can result in a harmless oversight or a fatal event. Giving the right medication at the right time to the right patient is the rule of medicine. If a patient is given the right medications but at the wrong time, drug interactions, physical functions, and the like could result.

While there are many other similar rules or regulations, these are the ones that are the most pertinent and the ones that we see violated the most. Be sure to visit with your loved one regularly and the like could result.

XX. **An Update On Class Action Litigation**

**DEE MILES APPOINTED TO LEADERSHIP ROLE IN HOME DEPOT DATA BREACH MDL**

Dee Miles, head of our firm’s Consumer Fraud section, has been named to the Plaintiffs Steering Committee (PSC) for the Multidistrict litigation (MDL) in the massive Home Depot data breach litigation. Dee was appointed by U.S. District Judge Thomas W. Thrash in the Northern District of Georgia, who is overseeing the MDL.

The litigation involves consumers and financial institution Plaintiffs who were affected by the incident, which compromised up to 56 million credit and debit card numbers. The cyberattack is believed to have occurred at Home Depot stores between April and September of 2014. The litigation was centralized by the U.S. Panel on Multidistrict Litigation in December 2014. Dee had this to say:

“This is very important litigation that exposes the critical flaws in the way credit and debit card systems operate in the United States. Because Home Depot failed to maintain adequate computer data security, it exposed millions of people to the risk of fraud and identity theft, and violated their privacy rights. Unless something is fundamentally changed, consumers will continue to be at risk.”

Dee has a proven track record of leadership in MDL cases throughout the country. He has been selected by Federal Courts to leadership positions in previous MDL cases, and the firm has been selected to 17 different Plaintiff Steering Committees on MDLs ranging from the recent Toyota MDL to the BP MDL. Dee has also served as lead or co-lead counsel in national class actions. In May, he was named to the Financial Institution Cases Steering Committee for the Multidistrict litigation (MDL) surrounding the Target data breach.

Dee recently completed serving as lead counsel on behalf of eight separate states and their attorneys general (Alabama, Alaska, Hawaii, Kansas, Louisiana, Mississippi, South Carolina and Utah) in the Average Wholesale Price (AWP) / Medicaid Fraud Litigation. This effort resulted in $1.5 billion to the states by way of settlements and judgments, and these cases have made a significant social change in the way our Medicaid program operates nationwide.

**CLASS ACTIONS FILED AGAINST ANTHEM FOLLOWING DATA HACK**

Less than a day after it revealed hackers exposed the personal information of about 80 million customers and employees, Anthem, Inc., the nation’s second-largest health insurer, has been sued in putative class actions in California and Alabama federal courts. The suits accuse Anthem of failing to protect its customers. In what may be one of the first suits over the breach, California Plaintiff Samantha Kirby alleges Anthem didn’t have proper security procedures in place and waited too long to tell customers about the hackers. The suit says that Anthem detected the breach as early as Jan. 29.

Anthem has said cyberattackers executed a “very sophisticated attack” to gain access to one of its information technology systems, and that the hackers have personal information on current and former members. The information includes names, Social Security numbers, income data and email addresses. Robert Ahdoof of Ahdoof & Wolfson PC, representing Kirby, told Law360 that Anthem’s breach was more concerning than those affecting retailers in the past year because it potentially exposed medical information. Comparing this to the December 2013 Target Corp. hack that stole information on 70 million customers, it appears this one may be at least as bad. Ahdoof said:

“This is a different kind of breach. Anthem has a lot of information...
about its insureds and you have to assume all of that information has been compromised.

Alabama Plaintiff Danny Juliano also sued Anthem last month, claiming the insurer failed to properly encrypt user data and failed to live up to its promise to protect consumers. While Anthem said that credit card numbers and medical information was still safe, Kirby’s suit attacked Anthem’s statement as “carefully worded and conclusory.” Based on the phrasing, Kirby claims that information was also compromised. Ahdoot said: “They’re somewhat evasive, it seems to me.”

Anthem CEO Joseph R. Swedish had said that “based on what we know now, there is no evidence” that credit card or medical information was either targeted or accessed. Kirby’s suit further claims Anthem unreasonably delayed informing customers about the breach and still hasn’t said exactly when the systems were attacked, how long hackers had access to information or what specific steps have been taken to prevent future breaches. Kirby said:

**Plaintiff and the class she seeks to represent now face years of constant surveillance of their financial and medical records, monitoring, loss of rights, and potential medical problems.**

Anthem said it has contacted the FBI and is fully cooperating in the investigation. The company hired Mandiant, a cybersecurity firm that’s been used in many high-profile attacks in recent months. The company says it’s individually notifying each customer who was affected, offering credit monitoring services and has set up a toll-free number for people to call with questions. Kirby’s proposed class includes all California Anthem customers affected by the breach and claims Anthem is liable for negligence, bailment, conversion and invasion of privacy, along with violations of the California Confidentiality of Medical Information Act and Unfair Competition Law. Juliano’s proposed class includes all Anthem customers nationwide. His suit includes claims of invasion of privacy, unjust enrichment, negligence, wantonness and violations of the Fair Credit Reporting Act.

The California case is in the U.S. District Court for the Central District of California. The Alabama case is in the U.S. District Court for the Northern District of Alabama. These cases will be watched closely as they proceed through the system.

Source: Law360.com

**STATEWIDE CLASSES APPROVED IN CONAGRA “100% NATURAL” OIL DISPUTE**

On Feb. 23 U.S. District Judge Margaret M. Morrow, a California federal judge, signed off on a class certification motion in large part in a suit over ConAgra Foods Inc.’s alleged mislabeling of its Wesson oil products as “100% natural,” even though the products contain genetically modified ingredients. Eleven statewide classes were certified, but the court rejected an injunctive relief class. Although Judge Morrow did trim claims from some of the classes, she is allowing the Plaintiffs to pursue certain other claims brought under the states’ various consumer protection statutes. Judge Morrow concluded that the Plaintiffs had satisfied five of the threshold requirements for class certification.

Nevertheless, Judge Morrow found that because the named Plaintiffs could only show that they might consider purchasing the product in the future if it was properly labeled, they couldn’t seek to represent injunctive relief classes because they couldn’t prove a real threat of repeated injury. The injunction they sought would have required ConAgra to cease marketing Wesson oils as 100 percent natural.

Judge Morrow concluded that the class is ascertainable because even though some class members may not have been injured by the 100 percent natural claim, every class member had been exposed to the alleged misrepresentation. ConAgra’s arguments that class members could not be identified because they couldn’t provide basic information about qualifying purchases were rejected by Judge Morrow. She said that the argument would effectively prohibit class actions involving low-priced consumer goods.

ConAgra acknowledged that millions of consumers purchased Wesson oil products during the class period, satisfying the numerosity requirement. All the class members were exposed to the 100 percent natural label, satisfying the requirement that all class members’ claims shared a common contention. Judge Morrow concluded that the fact that some class members may not have relied on the 100 percent natural claim on the label before making their pur-

drive didn’t make the named Plaintiffs’ claims atypical of the rest of class members’ claims. The named Plaintiffs and class counsel were found to be adequate class representatives. The certified classes will consist of consumers from California, Colorado, Florida, Illinois, Indiana, Nebraska, New York, Ohio, Oregon, South Dakota and Texas.

Judge Morrow evaluated each of the 11 states separately under the various state consumer protection statutes on which the claims are based, and rejected claims from certain states after determining that individual issues predominated. Her decisions in many of the states turned on the significance of the allegedly misleading label, and whether it represented a material fact to consumers in each state.

Judge Morrow concluded that the Plaintiffs made a sufficient showing for the purpose of class certification that the 100 percent natural claim is material, and that consumers generally understand the term to mean that Wesson Oils do not contain GMOs. She found that they needn’t prove at this stage that every ConAgra consumer would find the 100 percent natural claim material, or whether they believed it meant the product contained no GMOs. It will be most interesting to see how this case winds up.

Source: Law360.com

XXI.
THE CONSUMER CORNER

**TOBACCO COMPANIES TO PAY $100 MILLION TO END 400 ENGLE CASES**

A trio of major tobacco companies including Philip Morris USA Inc. has agreed to pay $100 million to settle more than 400 cases pending in Florida federal court over smoking-related injuries. Philip Morris was joined by R.J. Reynolds Tobacco Co. and Lorillard Tobacco Co. in agreeing to the settlement, which ends claims brought by smokers and their families as part of the so-called Engle-progeny cases dating back to 1994. The settlement resolves only those cases pending in federal court and not the hundreds still working their way through the state court system.

Under the terms of the agreement, R.J. Reynolds and Philip Morris will each pay
$42.5 million and Lorillard will put in $15 million. R.J. Reynolds says it will continue to vigorously defend against the cases pending in state court. The settlement includes federal cases that have not gone to verdict, that are not on appeal, that have not previously settled and that have not been dismissed. The settlement is still subject to the approval of all of the individual Plaintiffs in the cases covered by the agreement. In the meantime, the affected cases have been stayed pending approval of the settlement.

The cases stem from the landmark Engle v. Liggett Group Inc. class action against tobacco companies that was decertified in 2006 by the Florida Supreme Court. Though the court decertified the class and overturned a $145 billion verdict, the court allowed up to 700,000 people who could have won judgments to rely on the jury's findings to file suits of their own. These findings include conclusions that smoking causes certain diseases and that tobacco companies hid smoking's dangers. The individual suits have since yielded hundreds of millions of dollars in damages.

In October 2013, Liggett Group LLC reached a $110 million settlement ending nearly all of the Engle progeny cases against the company. Under the terms of the settlement, Liggett parent company Vector Group Ltd. Agreed to pay a lump sum of about $61 million and will pay an additional $49 million over the next 15 years. That settlement resolves more than 4,900 pending personal-injury and wrongful-death claims. The Plaintiffs are represented by the firms of Lieff Cabraser and Motley Rice.

Source: Law360.com

MARIN MOUNTAIN BIKES RECALLS

**CHILDREN'S BICYCLES DUE TO FALL HAZARD**

Marin Mountain Bikes Inc., of Novato, Calif., has recalled its 2014 Marin MBX 50 and Tiny Trail Bicycles. The handlebars can loosen or separate during use. This can cause the rider to lose control and/or crash, posing the risk of injury. This recall involves Marin 2014 model MBX 50 and Tiny Trail boys and girls bicycles with 16-inch knobby tires. The single speed bicycles have high-rise handlebars and training wheels. The boy's bicycles were sold in red and have serial number HA14980XXXXXX. The girl's bicycles were sold in purple and have serial number HA14982XXXXXX. Serial numbers are printed on a foil label affixed to the underside of the base of the down tube. "Marin" is printed on the seat and the downtube. "Tiny Trail" or "MBX 50" is printed on the bicycles chain guard.

The bicycles were sold at bicycle stores nationwide from September 2013 through December 2014 for about $250. Consumers should immediately stop using the recalled bicycle and contact Marin for a replacement handlebar stem. Contact Marin Mountain Bikes at 800-222-7557 from 9 a.m. to 5 p.m. PT Monday through Friday, or visit the company's website at www.marinbikes.com and click on "Recalls/Safety" for more information.

SCOTT RECALLS VANISH EVO BICYCLE HELMETS DUE TO HEAD INJURY HAZARD

Scott USA, Inc., of Salt Lake City, Utah, has recalled about 1,450 2015 SCOTT® Vanish Evo Bicycle Helmets. The bicycle helmets do not comply with the impact requirements of the Consumer Product Safety Commission (CPSC) safety standards for bicycle helmets. The helmets have the brand name "SCOTT" printed on the outer shell of the helmet on the left side. For the Vanish Evo black and grey helmets, the lettering is black; for the Vanish Evo white and grey helmets, the lettering is white. The following serial number ranges are included in this recall: 2014-06/009359 through 2014-09/027210. The serial number is printed on a white sticker inside the back of the helmet.

The helmets were sold at authorized SCOTT dealers nationwide and online from July 2014 through December 2014 for about $200. Consumers should immediately stop using the bicycle helmet and take it to an authorized SCOTT dealer for a refund of the purchase price. Contact Scott USA toll-free at 888-607-8365 extension 12 from 8 a.m. to 6 p.m. MT Monday through Friday, email recall@scott-sports.com, or online at www.scott-sports.com and click on Safety and Recalls at the bottom of the page for more information.

SYSTEM SENSOR RECALLS COMBINATION CARBON MONOXIDE AND SMOKE DETECTORS

System Sensor, of St. Charles, Ill., has recalled about 1,450 i4 Series System Sensor combination carbon monoxide (CO)/smoke detectors. The detectors can fail to detect carbon monoxide gas in the home, posing a risk of carbon monoxide poisoning. This recall involves System Sensor i4 series combination carbon monoxide/smoke detector models COSMO-2W and COSMO-4W manufactured between 9/3/14 and 9/13/14. The detectors are round, white, and measure about 5.5 inches in diameter. Recalled units have date codes 4091 or 4092 printed on the lower left-hand corner of the label affixed to the back of the product and on the packaging.

The detectors were sold at security equipment dealers nationwide during September 2014 for about $75. Consumers should immediately contact System Sensor to obtain a free replacement combination CO/smoke detector. Consumers should keep using the recalled detectors until replacement detectors are installed. Contact System Sensor at 800-736-7672 from 8 a.m. to 5 p.m. CT Monday through Friday or online at www.systemsensor.com, and click on “Product Safety Notice” for more information.

JereBeasleyReport.com
Sea Gull Lighting Products, LLC., of Skokie, Ill., has recalled its light chandeliers. The chandelier’s screw collar that holds the chandelier to the ceiling mount can break causing the chandelier to fall and injure bystanders. Consumers should prevent people from going into the immediate area under the chandeliers. Contact Sea Gull Lighting immediately to receive a free replacement for chandeliers that have fallen, including shipping, or for free replacement hardware to repair the chandelier and instructions on being reimbursed for the full cost of the installation. This recall involves seven collections of Sea Gull Lighting chandeliers including: Brandywine, Laurel Leaf, New Verona, Newport, Parkview, Roslyn and Somerton. They are metal with various finishes and two or three tiers of glass shades. The chandeliers measure between 27 to 50 inches wide and 26 to 46 inches high, depending on the model. Visit the company’s website for a list of product numbers, located inside the ceiling canopy of the chandelier, included in this recall: http://www.cpsc.gov/en/Recalls/2015/Sea-Gull-Lighting-Recalls-Chandeliers. Sea Gull Lighting has received four reports of the chandeliers falling from the ceiling. Approximately $1,600 in property damage has been reported. No injuries have been reported.

The chandeliers were sold at Aztec Electric Supply, Ferguson, Lowe’s, State Electric Supply, Wesco and other retailers nationwide and online at Amazon.com, HomeDepot.com and other online retailers from November 2006 through August 2013 for between $250 and $750. Contact Sea Gull Lighting toll-free at 888-475-1136 from 8 a.m. to 5 p.m. ET Monday through Friday or online at www.seagulllighting.com and click on Safety Recall for more information. Consumers can also email the company at seagullproducts@seagulllighting.com.

About 17,000 Portable Space Heaters have been recalled by Source Network Sales and Marketing, LLC d/b/a/ lifesmart, of Plano, Texas. The screws used to attach the back plate to the heater are too short and allow the back plate to detach when removing the heater from the outlet, posing an electrical shock hazard to the user. This recall is for Lifepro brand portable infrared quartz space heater models LS-IQH-DMICRO and LS-IQH-MICRO. The recalled heaters are about 6 1/2 inches tall x 5 inches wide x 3 3/4 inches deep and made of black plastic. They have a three-prong plug built into the back to allow them to be plugged directly into an electrical outlet. The Lifepro logo is molded into the front bottom of the heaters. Model LS-IQH-DMICRO is a 400-watt heater with digital display on the top. Model LS-IQH-MICRO is a 450-watt heater with no display. The model name and wattage are printed on a label on the back of each heater below the plug.

The heaters were sold by Meijer stores, Northern Tool stores, QCI Direct stores and Tuesday Morning stores nationwide and online at Amazon.com, BJs.com, HomeDepot.com, QCIDirect.com, Samsclub.com, Walmart.com and Wayfair.com from January 2014 through December 2014 for between $40 and $50. Consumers should immediately unplug and stop using the recalled space heaters and contact Lifesmart to receive either a free repair kit consisting of four longer screws with instructions on how to install them; a free replacement heater with the modified screws; or a full refund. Contact Lifesmart at 866-484-2066 from 8 a.m. to 5 p.m. ET Monday through Friday or online at www.lifesmartproducts.com and click on “Lifesmart Recalls LifePro Brand Portable Mini Space Heaters” for more information.

The majority of the high chairs were given away at the May 9, 2014 taping of the Ellen DeGeneres television show. The remaining chairs were sold at children’s juvenile product stores in California, Colorado, Connecticut, Florida, Georgia, Illinois, New Jersey, New York, Puerto Rico, Texas and Virginia from February 2014 through September 2014 for about $500. Consumers should stop using the high chair immediately and contact Mima to receive a free replacement upper chair section or instructions on receiving a refund. Contact Mima at 800-392-1206 from 9 a.m. to 5 p.m. PT Monday through Friday or online at www.mimakidusa.com and click on “Mima Recall Information” for more information.

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Mima Recalls Moon 3-In-1 High Chairs Due To Fall And Impact Hazard

Mima Baby LLC, of Redondo Beach, Calif. has recalled about 1,470 Moon 3-in-1 high chairs. The high chair seat can loosen and dislodge, allowing the seat and child to fall. The chair can also fall onto a child crawling underneath the seat, posing an impact hazard to the child. This recall includes Moon model 3-in-1 high chairs which adjust to a newborn, high and junior chair with a unique design consisting of a base with two feet supporting a single post that holds up the seat in a clear shell. The shell has a white inner seat with a removable seat pad in white, camel or black. The high chair measures about 3 feet tall when in its highest position. There is a “Mima” logo on the side of the feet that form the base of the high chair. The serial model numbers are located on a sticker on the side of one of the two feet that form the base of the high chair. For a list of serial numbers included in this recall, visit the company website at: http://www.cpsc.gov/en/Recalls/2015/Mima-Recalls-Moon-3-In-1-High-Chairs. The company has received 14 reports of the high chair seat loosening. No injuries have been reported.

Lifepro Brand Portable Mini Space Heaters

About 254,000 Tough Treadz Auto Carrier Toy Sets have been recalled by Family Dollar Services, Inc., of Matthews, N.C. The die-cast metal cars can have sharp edges that pose a laceration hazard. This recall involves a plastic toy truck with a plastic case that holds six die-cast metal toy cars. The majority of the high chairs were given away at the May 9, 2014 taping of the Ellen DeGeneres television show. The remaining chairs were sold at children’s juvenile product stores in California, Colorado, Connecticut, Florida, Georgia, Illinois, New Jersey, New York, Puerto Rico, Texas and Virginia from February 2014 through September 2014 for about $500. Consumers should stop using the high chair immediately and contact Mima to receive a free replacement upper chair section or instructions on receiving a refund. Contact Mima at 800-392-1206 from 9 a.m. to 5 p.m. PT Monday through Friday or online at www.mimakidusa.com and click on “Moon Recall Information” for more information.

Family Dollar Stores Recall Tough Treadz Auto Carrier Toy Sets Due To Laceration Hazard

About 254,000 Tough Treadz Auto Carriers have been recalled by Family Dollar Services, Inc., of Matthews, N.C. The die-cast metal cars can have sharp edges that pose a laceration hazard. This recall involves a plastic toy truck with a plastic case that holds six die-cast metal toy cars.
in assorted colors. The truck is 14 inches long x 3 inches wide x 5 inches high. The cab of the truck comes in black, blue or red. The package is labeled as “Tough Treadz Auto Carrier” and has a white sticker in the upper right-hand corner with “$5” and “SKU 1004247” printed in red. The UPC code appears on a label on the back stating “Made in China.”

The following UPC codes are included in this recall: 678565114083, 678565114090, 678565114106.

The carriers were sold exclusively at Family Dollar Stores nationwide from September 2014 through December 2014 for about $5. Consumers should immediately stop using the recalled toy sets, take them away and return them to any Family Dollar Stores location for a full refund. Contact Family Dollar Stores at 800-547-0359 for a replacement fire extinguisher.

**Kidde Recalls Disposable Plastic Fire Extinguishers Due to Failure To Discharge**

Walter Kidde Portable Equipment Company Inc., of Mebane, N.C., has recalled their Kidde plastic valve disposable fire extinguishers. A faulty valve component can cause the disposable fire extinguishers not to fully discharge when the lever is repeatedly pressed and released during a fire emergency, posing a risk of injury. This recall involves 31 models of Kidde disposable fire extinguishers with Zytel® black plastic valves. The recalled extinguishers are red, white or silver and are either ABC or BC rated. The ratings can be found to the right of the nameplate. Manufacture dates included in the recall are July 23, 2013 through October 15, 2014. A 10-digit date code is stamped on the side of the cylinder, near the bottom. Digits five through nine represent the day and year of manufacture in DDDYY format. Date codes for recalled units manufactured in 2013 are XXXX 2014XX and for 2014 are XXXX 00114X through XXXX 28814X. A list of model numbers, that can be found on the nameplate affixed to the front of the fire extinguisher, can be viewed here: http://www.cpsc.gov/en/Recalls/2015/Kidde-Recalls-Disposable-Plastic-Fire-Extinguishers/.

Kidde has received 11 reports of the recalled fire extinguishers failing to discharge as expected. No injuries have been reported.

The fire extinguishers were sold at Home Depot, Menards, Walmart and other department, home and hardware stores nationwide, and online from August 2013 through November 2014 for between $18 and $65, and about $200 for model XL 5MR. Consumers should immediately contact Kidde for a replacement fire extinguisher toll-free at 855-283-7991 from 8 a.m. to 5 p.m. ET Monday through Friday, or online at www.kidde.com and click on Safety Notice for more information.

**SRAM Recalls Zipp 88 Bicycle Wheel Hubs Due To Crash and Injury Hazards**

About 12,000 Zipp 88 aluminum hubs for bicycle wheels have been recalled by Prodigy Group, Mooresville, Ind. The hub flange ring on the front hub can fail posing a crash and injury hazard. The aluminum hub shell is silver. The outside flange ring is gray aluminum in the standard option and blue, gold, gray, pink or red in the ZedTech options. The diameter of the two clinch nuts is approximately 1 inch. The first version of the 88 hub is the only one affected by the recall. The first version has the Z logo on the flange ring. The other versions—not affected by this recall—do not have the Z logo on the flange ring. The hubs were sold in five bike brands and sold separately. A listing of these brands and their model types can be viewed here: http://www.cpsc.gov/en/Recalls/2015/SRAM-Recalls-Zipp-88-Bicycle-Wheel-Hubs/.

The company reports two incidents of collapsed front wheels. Both resulted in stitches, bruises and lacerations, plus a concussion in one case.

The bicycle wheels were sold at specialty bicycle retailers nationwide. Front hub sold for about $215; front wheel with the hub sold for about $920; front and rear wheel set sold for about $2300 and bicycles with the wheel set containing the recalled hub sold for about $5,000 to $12,000. Items were sold between October 2008 and December 2010. Consumers should immediately stop using bicycles equipped with the recalled Zipp 88 front hub and contact SRAM for a free replacement hub. Contact SRAM at 800-346-2928 between 9 a.m. and 8 p.m. ET on Monday through Sunday and 9 a.m. to 6 p.m. ET on Friday, or visit www.sram.com or www.zipp.com and click on Recall Notice for more information.

**Jackco Transnational Recalls ZETA Battery Pack Due To Fire Hazard**

About 5,000 ZETA by Jackco Pocket Jump Starter—Deluxe Sets have been recalled by Jackco Transnational, Inc., of Azusa, Calif. The battery packs can overheat, split apart and melt the battery pack’s enclosure, posing a fire hazard. The ZETA by Jackco Pocket Jump Starter—Deluxe Set contains a battery pack used to jump start vehicles and charge cell phones, tablets, laptops and other devices. The set comes in a black canvas case with red trim and a black handle. When closed, the case measures about 9 inches long by 8.5 inches wide by 3 inches deep and weighs about 2 pounds. The interior is black with mesh pockets. ZETA is printed on the front of the case in red and blue letters. The set includes mini jump clamps, universal cable for laptop charging, 12V accessory cable and USB cable with adapters. The battery pack has three Power Ports—19 Volt, 12 Volt and 5 Volt—and can be plugged into an AC wall outlet or a 12-volt car charger for recharging. The lithium-ion battery pack is white and 6 inches long by 3 inches wide by 1 inch deep. A silver product label with Model Number ZT50420 printed in black on the backside of the recalled battery pack. Under this product label is the date code: XM201407XXXXX, which translates to July 2014, the date of manufacturing. Jackco Transnational has received 487 reports of battery failure, and two reports of a fire resulting in property damage. No injuries have been reported.

The battery packs were sold at retailers nationwide and at Amazon.com from July 2014 to January 2015 for between $110 and $140. Consumers should immediately stop using the recalled Pocket Jump Starter and
contact Jackco Transnational for instructions on how to dispose of the product and how to obtain a refund for the purchase price. Consumers without a receipt will receive $110. Contact Jackco Transnational toll-free at 888-452-2526 from 9 a.m. to 5 p.m. PT Monday through Friday, or online at www.jackco.com and click on “Pocket Jump Starter Product Recall” for more information or send an e-mail to recall@jackco.com.

**Pressmaster Recalls Cable Stripping Tool Due To Impact Hazard**

Pressmaster Inc., of Westmont, Ill., has recalled about 327 “Xcelite” cable stripping tools. The tool’s plastic end cap can fly off the product with force either during use or while in storage, posing an impact hazard. This recall involves the Pressmaster Xcelite professional stripping tool for round cables of all insulation types. The tool is black and is approximately six inches long. “Xcelite” “CJS 200” are printed on the face of the tool. No incidents or injuries have been reported.

The tools were sold at: Hardware and industrial supply stores nationwide and online at Amazon.com from August 2014 to November 2014 for about $90. Consumers should immediately stop using the cable stripping tool and contact Pressmaster to return the product for a free replacement. Call Pressmaster at 800-485-9184 from 8 a.m. to 6 p.m. ET Monday through Friday, or online at www.pressmaster.se and under Latest News “Pressmaster Recalls Cable Stripping Tool” for more information.

**Philips Lifeline Recalls Help Button Pendants With Non-Breakaway Neck Cords**

Philips Lifeline has recalled the non-breakaway neck cord version of its help button pendants. Cords without the breakaway design could pose a strangulation risk if the cord gets caught on a wheelchair, walker or other protruding objects. Health Canada and the company have had two reports of deaths in Canada since 2009 that were possibly related to the affected products. This recall involves the non-breakaway neck cord versions of the Lifeline Auto-Alert Personal Help Button, Classic Personal Help Button, and the Slimline Personal Help Button. The company said personal help buttons with breakaway cords are not affected.

More than 100,000 units of the affected products, which were made in the U.S., were distributed in Canada prior to June 2011. Since then, the Markham, Ont.-based company has taken steps to recall and replace them with the new breakaway version of the neck cord, but some affected products are still in the market. Consumers who don’t have a breakaway neck cord should contact Philips Lifeline Canada at 800-387-1215 or via the Philips Lifeline website to order a replacement neck cord with a breakaway feature or an alert button worn on the wrist.

**Fanimation Recalls Brewmaster Ceiling Fans**

About 9,300 Brewmaster Ceiling Fans have been recalled by Fanimation Inc., of Zionsville, Ind. The ceiling fan hub holding the blades can separate from the shaft when operating in reverse. If this happens, the fan blades and hub can fall and pose a risk of injury to bystanders. The recall includes Brewmaster belt-driven fans powered by a remote motor. The fans have two blades of various styles and colors, and were sold in a short neck assembly, extending 15 inches from the ceiling and a long assembly extending 26 inches from the ceiling. The fans were sold in antique brass, pewter and black hardware. A face plate on the lower part of the head assembly reads in part, “THE BREWMASTER by FANIMATION.” Fans with the following model numbers on their packaging are included in the recall: FP10AB, FP10AC, FP10BL, FP10PW, FP20AB, FP20AC, FP20BL and FP20PW. The firm has received two reports of the ceiling fan hub falling. No injuries have been reported.

The fans were sold at electrical distributors, fan specialty stores and lighting showrooms nationwide and online from June 2002 to December 2014 for between $800 and $2,500 per system. Consumers should immediately stop using the recalled fans and contact Fanimation for a retention collar for the Brewmaster fan. Contact Fanimation Recall Hotline toll-free at 888-250-6458 from 8 a.m. to 5 p.m. ET Monday through Friday, or visit the company’s website at www.fanimation.com and click on “Contact Us” for more information. Consumers also can email the firm at recall@fanimation.com.

**Kenmore Electric Ranges Recalled By Electrolux Due To Electrical Shock Hazard**

About 3,000 Sears Kenmore 24-inch electric ranges have been recalled by Electrolux Home Products Inc., of Charlotte, N.C. The heating element can fail to properly adhere to the cooktop, posing an electrical shock hazard to consumers. This recall involves Sears Kenmore 24-inch wide freestanding electric ranges with model number 790.90152 with serial numbers from NF408 through NF424 and model number 790.90153 with serial numbers from NF408 through NF427. The ranges have smooth cooktops and are white or black with stainless steel accents. The model and serial numbers are located on the bottom right frame of the range inside the storage drawer.

The ranges were sold at Sears and Kmart stores nationwide from April 2014 through October 2014 for between $650 and $860. Consumers should immediately stop using and unplug the recalled electric ranges and contact Sears to schedule a free inspection and repair if necessary. Contact Sears toll-free at 888-281-3915 between 6 a.m. and 10 p.m. CT Monday through Saturday, or between 7 a.m. and 10 p.m. CT Sunday or online at www.sears.com and www.kmart.com and click on Product Recall for more information.

**Cosco Recalls Convertible Hand Trucks Due To Injury Hazard**

About 273,000 Hand trucks have been recalled by Cosco Home & Office Products, of Columbus, Ind. The wheel hub can separate or break and eject pieces during inflation, posing a risk of injury to the consumer and bystanders. This recall involves Cosco Home & Office Products 3-in-1 convertible aluminum
hand trucks. The handles can be moved to allow the hand truck to be used in a vertical or horizontal position. Recalled hand trucks have model numbers 12-301 ABL and 12-301 ABL1 and were manufactured from January 2009 to October 2011. The model number and manufacture date are on the Cosco label on the rear side of the bottom cross member. Cosco has received 10 reports of wheel hubs separating or breaking and ejecting pieces including four reports of bruises or lacerations.

The hand trucks were sold at Ace Hardware, Cosco Wholesale Club, Lowe’s, Price Mart and United Stationers and online at The Home Depot.com from March 2009 to October 2011 for between $100 and $150 dollars. Consumers should immediately stop using the recalled hand trucks and contact Cosco for a free repair kit. Contact Cosco Home & Office Products toll-free at 888-250-9299 from 8 a.m. to 5 p.m. ET Monday through Friday, email handtruck@coscoproducts.com or online at www.coscoproducts.com and click on Safety Notice at the top of the page for more information.

**CHILDREN’S PAJAMAS AND ROBES RECALLED DUE TO VIOLATION OF FEDERAL FLAMMABILITY STANDARD**

About 8,400 children’s pajamas and robes have been recalled by Lazy One, Inc., of North Logan, Utah. The footed pajamas and robes fail to meet the federal flammability standard for children's sleepwear, posing a burn hazard to children. This recall involves 100 percent polyester Lazy One children's sleepwear garments, including footed pajamas and two robes. The one-piece “footeez” style footed zip-up pajama is beige with a red, pink, blue and yellow owl print with the wording “I’m OWL yours.” It has blue trim at the neck, cuff and right-hand side single pocket. The pajama has a foot-to-neck zipper, non-slip soles and a rear opening on the behind. It was sold in sizes children’s small through extra-large. One of the recalled robes is pink with moose graphics and “Don’t Moose With Me” printed on it. It has solid green trim, two front pockets and belt. The second robe is red with printed moose graphics and solid black trim, two front pockets and belt. Both robes were sold in sizes 4T through 14. “Lazy One”, the size and “Made in China” are printed on the garments’ neck label. Garments with “Flame Resistant” printed on the neck label are not included in this recall.

The pajamas were sold at department stores and children's boutiques nationwide and online at www.lazyone.com from October 2013 through June 2014 for about $22 for the pajamas and about $15 for the robes. Consumers should immediately take the recalled pajamas and robes away from children and return them to Lazy One for a free replacement garment, including shipping. Contact Lazy One toll-free at 866-340-5278 between 9 a.m. and 5 p.m. MT Monday through Friday, or online at www.lazyone.com and click on the Product Recall link on the bottom of the page for more information.

**AIRPLANE AND BUTTERFLY PUSH TOYS RECALLED BY LS IMPORT DUE TO CHOKING HAZARD**

LS Import, of Houston, Texas, has recalled about 660 airplane and butterfly push toys. The wheels of the airplane and the balls at the tip of the butterfly’s antenna can detach, posing a choking hazard to young children. This recall involves plastic airplane and butterfly push toys. The airplane push toy is red and has a blue, yellow and red rotor above the cockpit’s canopy and eyelids on the nose of the airplane that open and shut when the toy is been pushed on the floor. The airplane push toy has a pink plastic rod with a handle that connects to the back of the toy to push it. The butterfly push toy’s body is yellow with pink wings and has a pink plastic ball at the end of each of two antennas and a pair of wings that flap up and down when the toy is being pushed on the floor. The butterfly push toy has a green plastic rod with a handle that connects to the back of the toy to push it. The toys are sold at LS Import stores in Houston, Texas from May 2014 through July 2014 for between $1 and $2. Consumers should immediately take the recalled toys away from children and contact LS Import for a full refund.

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

**XXIII. FIRM ACTIVITIES**

**GRAHAM ESDALE NAMED TO ELITE LAWDRAGON 500 LIST**

Graham Esdale, a lawyer at Beasley Allen, has been selected as one of the 2014-2015 Lawdragon 500 Leading Lawyers in America. Being a member of the Lawdragon 500 is one of the most elite honors in the law profession. Recipients of this honor are determined by a combination of editorial research by Lawdragon staff, submissions from law firms and an online nomination form.

Graham, who is in the firm's Personal Injury/Products Liability Section, was a leader in the investigation of claims of personal injury and death related to the sudden unintended acceleration problems in Toyota vehicles. Graham was one of the first lawyers in the country to file a lawsuit against Toyota alleging that sudden unintended acceleration caused a personal injury and wrongful death.

In January of 2010, Toyota Motor Sales U.S.A. announced the suspension of manufacturing and sales of many of its best-selling models after a series of safety recalls involving millions of vehicles. The recalls involved both Toyota and Lexus vehicles, and mainly had to do with the problem of sudden unintended acceleration. Graham had been actively investigating SUA problems for about two years prior to the first recall, which happened in September 2009.

In October 2013, an Oklahoma City, Okla., a jury in the Bookout case against Toyota found that electronic throttle defects were to blame for a 2007 crash that killed one woman and left another
seriously injured. The jury awarded $1.5 million to the families of both women, who were riding in a 2005 Camry when it suddenly accelerated off an Oklahoma highway and careened into an embankment. Before the jury could deliberate on punitive damages, Toyota quickly agreed to a separate confidential settlement with the two families.

*The New York Times* notes the verdict “most likely spurred Toyota to pursue a broad settlement of its remaining cases.” In March 2014, the U.S. Department of Justice announced Toyota would pay fines of $1.2 billion to settle a four-year criminal investigation into its handling of sudden unintended acceleration defects in millions of its vehicles. Graham was one of the Beasley Allen lawyers on the trial team in the Oklahoma case.

Graham was selected as a finalist for Public Justice’s 2014 Trial Lawyer of the Year, along with the other members of the trial team, for his work in the verdict against Toyota in Oklahoma. This award is given by Public Justice to the lawyer or trial team making the most outstanding contribution to the public through precedent-setting litigation in the last year. Graham also was named Beasley Allen’s 2014 Products Liability Section Lawyer of the Year.

**Whitney Gagnon**

Whitney Gagnon has been with the firm for a year and she works as a Legal Assistant in our Consumer Fraud Section. She works with Archie Grubb and Andrew Brasher, two of our lawyers in the Section, and assists the lawyers with their work. Whitney assists both of the lawyers in keeping their calendars current and also in the scheduling of meetings. She is involved with the investigation of claims, preparation of legal pleadings, including briefs and other court filings. Currently, Whitney is assisting in a number of MDL cases, class actions and whistleblower suits.

Whitney grew up in Montgomery and is a graduate of Robert E. Lee High School. She has over 10 years’ experience in civil litigation. Whitney has a few classes left to complete her B.S. in Criminal Justice with concentrations in Crime Scene Investigations at South University.

Whitney has worked at Lakeview Baptist Church in the nursery for 5 years. She enjoys exercising, yoga, camping/hiking with her pup, a Boxer named Harper. Whitney enjoys listening to music and going to see live bands around the south. Whitney is a very good employee and we are fortunate to have her with us.

**XXIV. SPECIAL RECOGNITIONS**

**Fred Gray Honored With Historic Marker**

Fred Gray, legendary civil rights lawyer and activist, was honored Feb. 4 with the placement of a historic marker in downtown Montgomery. The marker celebrates Fred’s work in pursuit of civil rights. His clients included Rosa Parks, Claudette Colvin, and Martin Luther King, Jr. The marker was placed at the corner of Dexter Avenue and Hull Street in downtown Montgomery where Fred’s law offices were once located. The site is now the location of Alabama’s highest court, the Heflin-Torbert Judicial Building.

Fred represented Ms. Parks and Ms. Colvin in 1955 after they were charged with disorderly conduct for refusing to give up their seats on Montgomery city busses to white passengers. The action led to the Montgomery Bus Boycott, which drew national attention to the civil rights movement. Fred also represented participants of the Selma-to-Montgomery March, which eventually led to the passage of the Voters Rights Act of 1965. He is depicted in the new movie, *Selma*, released just prior to the 50th anniversary of the march.

In addition to his civil rights work, Fred was an advocate on behalf of survivors of the Tuskegee Syphilis Study, in which the federal government withheld medical treatment for syphilis from hundreds of black men. They suffered horribly as a result of being used as human guinea pigs to study the effects of the disease. The marker reads:

Fred David Gray
Civil Rights Attorney and Legislator

Born in 1930 in Montgomery, Gray was among the foremost civil rights attorneys of the 20th century. Forced by segregation to leave Alabama to attend law school, he vowed to return and “destroy everything segregated I could find.” Over a six-decade career, his cases desegregated transportation, education, housing, law enforcement, public accommodations, and government. In the U.S. Supreme Court, Brouder v. Gayle won the Montgomery Bus Boycott and Gomillion v. Lightfoot ended gerrymandering of Tuskegee and set the stage for “one man, one vote.” Lee v. Macon desegregated all Alabama public elementary and secondary schools. Dixon v. Alabama extended the rights of college students. His clients included Rosa Parks, Martin Luther King Jr., John Lewis, Vivian Malone, Harold Franklin, Freedom Riders, Selma-to-Montgomery marchers, and Tuskegee Syphilis Study victims. In 1970, he and Thomas Reed were the first African Americans since Reconstruction elected to the Alabama Legislature. In 2002, he was the first African American president of the Alabama Bar Association.

Honored guests assembled for the marker unveiling included elected officials, business leaders and friends. Montgomery Mayor Todd Strange presented Fred with a key to the city. In his remarks, Fred had this to say:

In addition to those acknowledged by this marker, I extend thanks on behalf of all of my clients and all others, unknown heroes whose names never appeared in print media and whose faces never appear on television; these are the persons who laid the foundation so that you may honor civil rights heroes.

Fred and I have been very good friends for years. He is an outstanding lawyer and a good man. Fred Grey will go down in history as a great American and a man who was on the right side of important issues that helped shape our nation’s future. Fortunately, he is still hard at work!

Sources: Montgomery Advertiser, al.com, WSFA

**Equal Justice Initiative Director Bryan Stevenson Publishes Best Seller**

Just Mercy: A Story of Justice and Redemption, authored by Equal Justice Initiative (EJI) Executive Director Bryan Stevenson, is a *New York Times* Bestseller. The non-fiction book tells the story of EJI, which is based in Montgomery, Ala., and the important work it does in the pursuit of human rights and the
advancement of justice. EJI is a non-profit organization that provides legal representation to indigent defendants and prisoners who believe they have been denied fair and just treatment in the legal system.

Brian has been recognized nationally for his work challenging bias against the poor and people of color in the criminal justice system. He has assisted in securing relief for dozens of condemned prisoners, advocated for poor people and developed community-based reform litigation aimed at improving the administration of criminal justice. Just Mercy is described by publisher Random House as:

A powerful true story about the potential for mercy to redeem us, and a clarion call to fix our broken system of justice—from one of the most brilliant and influential lawyers of our time.

Bryan Stevenson was a young lawyer when he founded the Equal Justice Initiative, a legal practice dedicated to defending those most desperate and in need: the poor, the wrongly condemned, and women and children trapped in the farthest reaches of our criminal justice system. One of his first cases was that of Walter McMillian, a young man who was sentenced to die for a notorious murder he insisted he didn’t commit. The case drew Bryan into a tangle of conspiracy, political machinations, and legal brinksmanship—and transformed his understanding of mercy and justice forever.

Just Mercy is at once an unforgettable account of an idealistic, gifted young lawyer’s coming of age, a moving window into the lives of those he has defended, and an inspiring argument for compassion in the pursuit of justice.

Among its core missions, EJI works on behalf of children who have been sentenced as adults and sent to adult prisons; those who have been sentenced to the death penalty, to help correct the serious legal errors that “infest the administration of capital punishment;” to address race and poverty in America and the astounding number of black men who are incarcerated; as well as working for prison and sentencing reform. Bryan and the Equal Justice Initiative do an excellent job for the folks they serve. I recommend this book.

Source: EJI

ARCA DRIVER GRANT ENINGER WINS AGAIN AT DAYTONA

Professional ARCA race car driver Grant Enfinger, a good friend of Beasley Allen, took the checkered flag at Daytona International Speedway on Valentine’s Day, winning the ARCA season opener at that track for the second time in a row. Grant dominated at Daytona for GMS Racing in the No. 23 Alamo Rent-A-Car and Allegiant Travel sponsored Chevrolet, taking the lead at the halfway point in the race and not budging.

Grant led 36 laps in the race, more than any other driver, and never moved out of the front position for the last 27 laps of the race. Daniel Suarez finished second, followed by Brett Hudson, Cody Coughlin and Frank Kimmel. The race was broadcast to a national audience on FOX Sports1. After the race, Grant told viewers, “I can’t say enough about GMS Racing and this opportunity they gave me. We’re going to savor this one for a while. It’s an incredible feeling.”

Next up on the ARCA circuit, Grant will travel to Mobile for the ARCA Mobile 200 at Mobile International Speedway, which he also won last year. He said he’s hoping for big things in the race, set for the Irvington track on March 14. Grant had this to say:

It’s definitely exciting anytime you can win at Daytona and it’s our biggest race of the season, so this win is special for me. It’s also great to have my family there, and our supporters able to be there. None of this ever would have happened if Beasley Allen hadn’t supported me to get me started in this. I feel like the win this year is even bigger than last year.

There’s a little bit of pressure about the upcoming race in Mobile because he won it last year, but Grant says he feels good about it and is hoping to carry the energy from Daytona into it. Grant says they have got a really good team this year. They have run really well on all of the short tracks. Grant says it makes him feel good because the energy is high going into that race. I predict Grant will continue to do well and we will be watching his progress with great interest.

Sources: NBC Sports, al.com

XXV. FAVORITE BIBLE VERSES

Genie Pruett, who is an employee in our Mass Torts Section, sent in two of her all-time favorite verses. Genie says the first one tells her that God is with her every step of the way, regardless of the path she takes.

The LORD is my shepherd; I shall not want. He maketh me to lie down in green pastures: he leadeth me beside the still waters. He restoreth my soul: he leadeth me in the paths of righteousness for his name’s sake. Yea, though I walk through the valley of the shadow of death, I will fear no evil; for thou art with me; thy rod and thy staff they comfort me. Thou preparest a table before me in the presence of mine enemies: thou anointest my head with oil; my cup runneth over. Surely goodness and mercy shall follow me all the days of my life: and I will dwell in the house of the LORD for ever. Psalms 23 KJV

Genie says the other verse is one she has turned to many times and for all kinds of reasons. She says being able to turn everything over to God when life gets so complicated and overwhelming is what’s carried her along this far in life.

Come to me, all who labor and are heavy laden, and I will give you rest. Take my yoke upon you, and learn from me, for I am gentle and lowly in heart, and you will find rest for your souls. For my yoke is easy, and my burden is light.”

Matthew 11:28-30

My friend Jerry Glover sent in a verse for this issue.

Now thanks be to God who always leads us in triumph in Christ, and through us diffuses the fragrance of His knowledge in every place.

2 Corinthians 2:14
Lisa Courson furnished a verse this month. She says the verse in Matthew is very special to her. Since most of Lisa’s family members are in the healing arts, they have always been a family that did what they could for each other and others. Lisa says her grandfather was a rural small town doctor who made house calls and got paid sometimes in chickens and pies, so this speaks to me as a reminder of his legacy to always try to help people without expectations; you do it because it is the right thing to do.

The King will reply, “Truly I tell you, whatever you did for one of these brothers and sisters of mine, you did for me.”

Matthew 25:40 (NIV)

Kesha Nowell also sent in a timely verse this month. She says Philippians 4:13 has been her favorite since her first year of law school. Like lots of law students, Kesha says she was overwhelmed at times with her studies. To add to her stress level, she was driving from Dothan to Montgomery and back every day—about 200 miles roundtrip.

Kesha says her verse has given her so much peace through times that were difficult for her. Of course, she survived law school (even the birth of her daughter during her second year), and Kesha became a lawyer. She says that would not have been possible without the Lord being there to lead and strengthen her every step of the way.

I can do all things through Christ who strengthens me.

Philippians 4:13 NKJV

My friend Laurice Kern sent in a verse for this issue. Laurice worked with Dr. Paul Hubbert for years before she retired. She attends St. James United Methodist Church and is very active in the church.

From the rising of the sun to its going down The Lord’s name is to be praised.

Psalm 113:3

Anne Graham Lotz, the daughter of Dr. Billy Graham, and a dedicated Christian, heads up Angel Ministries. Leigh O’Dell, a lawyer in our Mass Torts Section, worked for Anne and tells me that this lady is the “real deal.” Anne furnished a verse this month.

For all things are for your sakes, that grace, having spread through the many, may cause thanksgiving to abound to the glory of God.

2 Cor. 4:15

XXVI. CLOSING OBSERVATIONS

PUBLIC CITIZEN KEEPS ITS EYES ON BIG PHARMA

People trust their health and safety to the makers of drugs and medical devices. They expect—and rightly so—that products are properly tested and have passed all types of screenings to make sure they are safe before they are placed on the market and sold to the public. Unfortunately, not too often, these expectations are wrong. Big Pharma is in the business of selling drugs and devices, and making money. The U.S. Food & Drug Administration (FDA), like so many government agencies, simply doesn’t have the staff, the time or the money to adequately oversee these giants. That’s where consumer watchdog Public Citizen comes in.

Public Citizen, which was founded in 1971, is a non-profit organization that champions citizen interests. There are five policy groups: Congress Watch, Energy Program, Global Trade Watch, Health Research Group and Litigation Group, with the key mission of making sure all citizens are “represented in the halls of power.” Public Citizen provides a voice for those who often would not be able to be heard.

One of the key areas where Public Citizen works on behalf of consumers is as an advocate against unsafe drugs. Research indicates that every year more than 100,000 people die from adverse drug reactions, and another 2 million people are seriously injured.

Here is just one example. Many of our readers are familiar with the 2012 fungal meningitis outbreak, which was discovered to have originated with a compounding pharmacy, New England Compounding Center (NECC). At least 751 people were sickened and 64 died after receiving contaminated steroid injections manufactured by NECC. About 18,000 tainted shots were distributed to medical facilities in 23 states and an estimated 14,000 people were exposed to fungus after receiving the shots, commonly used to treat back, neck and joint pain. As a result, hundreds of patients developed fungal infections including meningitis.

In the wake of this tragic—and entirely preventable—situation, Public Citizen has been in active communication with the U.S. Secretary of Health and Human Services, the FDA and Congress, calling for an independent investigation of the compounding pharmacy industry. In 2014, Dr. Michael Carome, director of Public Citizen’s Health Research Group, was appointed to serve on the FDA’s newly established Pharmacy Compounding Advisory Committee. The Committee will provide advice on scientific, technical and medical issues surrounding drug compounding. Dr. Carome will aggressively advocate for rigorous FDA safety standards for all compounded medications in order to safeguard the public.

Other ways Public Citizen advocates on behalf of consumers against Big Pharma include:

• Formally petitioning the FDA for stronger drug-safety standards;
• Formally petitioning the FDA to remove unsafe drugs from the market or issue black-box warnings;
• Carefully scrutinizing FDA proposals regarding the drug industry’s promotion of its products;
• Testifying regularly as medical experts at FDA advisory committee meetings about the safety of drugs; and
• Taking an active role in stopping Congress from destroying Medicare.

As a nonprofit organization, Public Citizen does not participate in partisan political activities or endorse any candidates for elected office. It accepts no government or corporate money but relies solely on foundation grants, publication sales and support from its 300,000 members.

Public Citizen provides information and warnings about developing situations involving dangerous drugs and medical devices in its Worst Pills, Best Pills newsletter, edited by Sidney M. Wolfe, M.D. The newsletter contains vital information about drug safety and effectiveness, and supplies information about the industries surrounding the drug industry, dangerous dietary supplements, and other drug-related news. The newsletter is available in printed form and also online.

I hope our readers will see fit to help Public Citizen continue its critical, life-
saving work by subscribing to Worst Pills, Best Pills or making a financial donation. Public Citizen does not accept money or advertisements from drug companies, the government or corporations, allowing it to remain independent. Become an advocate for your health by supporting Public Citizen’s work to keep dangerous drugs off the market. Contributions or subscription requests may be sent to Public Citizen at 1600 20th Street, N.W., Washington, D.C., 20009, or online at www.citizen.org.
Sources: Public Citizen and FDA

MONTHLY REMINDERS

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

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

Woe to those who decree unrighteous decrees, Who write misfortunes, 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

XXVII.
PARTING WORDS

Since I was involved in a month-long trial, which ended on Feb. 23, my daughter, Julia Anne Beasley, volunteered to write this part of the report for me this month. Julie, a dedicated Christian, walks the walk daily. She is an outstanding lawyer and a successful cutter. For the uninformed, that means Julie competes around the country in “cutting horse” competition. In the unconfined, that means Julie competes with the #1 cutter in the country.

I find that certain Bible verses help me deal with my work each day. It’s good to keep scriptures with you at all times. I will discuss two verses that are good companions.

May the God of hope fill you with all joy and peace in believing, so that by the power of the Holy Spirit you may abound in hope.
Romans 15:13

I like to also read this verse in the Amplified Bible—May the God of your hope so fill you with all joy and peace in believing [through the experience of your faith] that by the power of the Holy Spirit you may abound and be overflowing (bubbling over) with hope.

Isaiah 41:10

This verse in the Amplified Bible is also wonderful. A bold statement, that there is nothing to fear because God is with us. We are faced with so many fears in life, but God promises to give us strength and to hold us up as we face that is such an assurance that we can trust God to stop fear in its tracks before it takes a hold of us.

I believe God wants us to experience more peace and real hope in our lives. So often, we allow fear to creep into our minds and it can prevent us from experiencing what God intends for us. It is so easy to get anxious about events or people or outcomes. I pray we ask God to help us be aware of that fear tactic of the enemy. May hope fill the place where fear wants to linger. Then, we can allow God’s joy and peace (that we cannot create ourselves) to sink in deep within our minds, our hearts and our spirit. God wants us to truly experience that type of faith—to believe that He is our strength at all times…and watch as real joy shows up and overflows (in spite of and in the midst of our situation).

Julie’s message is one that all young lawyers need to hear. It will help them—actually all of us—to deal with the activities of daily living. I am very proud of Julie and blessed to have her as my daughter.

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No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.
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Jere Locke Beasley, founding shareholder of the law firm Beasley, Allen, Crow, Methvin, Portis & Miles, P.C., is one of the most successful litigators of all time, with the best track record of verdicts of any lawyer in America. Beasley's law firm, established in 1979 with the mission of “helping those who need it most,” now employs 44 lawyers and more than 200 support staff. Jere Beasley has always been an advocate for victims of wrongdoing and has been helping those who need it most for over 30 years.