



THE
JERE BEASLEY REPORT

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I. CAPITOL OBSERVATIONS

THE LASTING EFFECTS OF BLOODY SUNDAY

We wrote last month about the events relating to Bloody Sunday. Now that the events commemorating that fateful day and its consequences have passed, I will reflect on the effect that remembering Bloody Sunday will have on America. March 7, 2015 marked the 50th anniversary of Bloody Sunday, and once again the eyes of the world were on Selma, Ala. As the first African-American President of the United States, Barack Obama, stood at the foot of the Edmund Pettus Bridge, it was impossible not to wonder just how far we have actually come, and how much work is left to do. The scars of Bloody Sunday—and the legacy of slavery in America—are still painfully obvious today. Hopefully and prayerfully, most of us believe it's time to move forward and not drift backward. I believe we in America are at a crossroads and must decide what path we should take.

It is always good to reflect back on past events, to learn from them and then move forward in a positive manner. On March 7, 1965, what had been planned as a peaceful protest to call for voting rights for African Americans was marred by violence. In Selma, Rev. Hosea Williams and young John Lewis were prepared to lead 600 people toward Montgomery, Ala., where they would gather at the steps of the State Capitol building. When the marchers had barely reached the edge of town, they were met at the Edmund Pettus Bridge with violent resistance by Alabama State Troopers and Sheriff's deputies. The event came to be known as "Bloody Sunday," and the eyes of the nation were drawn to the struggle for civil rights.

Now a member of Congress, John Lewis, who was beaten as he attempted to cross the bridge, was destined to play a major role in the civil rights movement. Rep. Lewis, a native of Pike County, Ala., had the high honor of introducing President Obama as a crowd of 40,000 people gathered for the anni-

versary event in Selma. He had this to say:

If someone had told me when we were crossing this bridge that one day I would be back here introducing the first African-American president, I would have said you're crazy.

But even as Rep. Lewis and President Obama noted the progress that has been made in the 50 years since Bloody Sunday, the occasion fell under the shadow of a particularly turbulent period of racial discord in America. Recent events in various parts of the country underscore the feelings that the ground is not yet level in America. In his remarks, President Obama addressed the still-festering racial conflict by saying:

We just need to open our eyes and our ears and our hearts to know that this nation's racial history still casts its long shadow upon us. We know the march is not yet over; we know the race is not yet won. We know reaching that blessed destination where we are judged by the content of our character requires admitting as much.

Perhaps even more poignant, on a day commemorating a literal battle for freedom and equality, is remembering the fact that the Voting Rights Act—the very legislation people bled and died for—was cut to the bone by the U.S. Supreme Court in 2013. In a move described as "cutting the heart out" of the law, the Court declared key sections unconstitutional in a 5-4 vote split along ideological lines.

Established in 1965, the Voting Rights Act restated the rights guaranteed to black Americans in the 15th Amendment, ratified in 1870. Many states had tried to circumvent the law by establishing discriminatory practices such as requiring literacy and "character" tests for black voters. The Voting Rights Act included strong federal oversight of elections in states and cities with a history of disenfranchising black voters. It has long been considered the most successful civil rights law ever passed. I believe it's one of the most important pieces of legislation ever passed by Congress.

Poll taxes, literacy requirements, and voter ID laws are tactics that have been

used to restrict voting rights, particularly among certain populations. This is exactly the opposite of what we in this country should be trying to do. We should be expanding access to voting for every American Citizen. We should encourage our citizens to vote and certainly should not be making it much harder to vote. Congress has an obligation to do whatever necessary to encourage voting and protect the right of every citizen to vote. That's the American way and nobody should dispute it.

True equality and justice for all will only come when everyone gets involved, and when everyone understands the importance of their free-

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doms, and the critical importance of protecting them. As President Obama noted in his remarks while in Selma:

What's our excuse today for not voting? How do we so casually discard the right for which so many fought? How do we so fully give away our power, our voice, in shaping America's future?

How great would it be if the lasting legacy of Bloody Sunday wasn't violence, or division, or discord, but instead a fervent passion for ensuring the opportunity for a bright future, for people from every walk of life. We all have a moral obligation to make the lasting effect of the celebration of Bloody Sunday a positive one for America. Our future as a nation depends on us taking the right path. My prayer is that we do so and very soon!

Sources: NPR, Los Angeles Times, The New York Times, thegio.com

U.S. SUPREME COURT REVERSES ALABAMA REDISTRICTING RULING

The U.S. Supreme Court has reversed a district court's ruling upholding Alabama's 2012 redistricting plan, saying the lower court had erred in upholding several aspects of the law. The 5-4 ruling said the Alabama Legislature—which adopted a very strict standard requiring maintenance of minority voters in certain districts—"asked the wrong question" in drawing its maps. The court wrote:

They asked how to maintain the present minority percentages in majority-minority districts, instead of asking the extent to which they must preserve existing minority percentages in order to maintain the minority's present ability to elect the candidate of its choice. Because asking the wrong question may well have led to the wrong answer, the Court cannot accept the District Court's conclusion.

It appears that the decision does not immediately affect the state's legislative map. The high court sent the case back to district court for further proceedings. The Alabama Legislative Black Caucus and the Alabama Democratic Conference sued to overturn the districts in

2013, arguing that the new maps amounted to "packing and stacking" by concentrating black voters in individual districts, where they would be unable to form alliances with like-minded white voters.

Republicans argued they were following Voting Rights Act requirements of not significantly reducing minority percentages in districts, and said they were trying to account for population losses in predominantly black districts. Not having read the opinion, I am not sure where this leaves things. It will be most interesting to see how the lower court will deal with the case now. It's rather ironic that both sides are claiming a victory from the Supreme Court's opinion.

Source: Montgomery Advertiser

II. THE ONGOING SAGA OF THE GENERAL MOTORS SAFETY PROBLEMS

THE MELTON CASE SETTLES

We were all highly pleased that I can now write that the Melton case has been settled. Ken and Beth Melton, whose daughter Brooke died because of a defective General Motors ignition switch, have agreed to a confidential settlement. This came after the Meltons exposed a more than 10-year cover-up on the part of the automaker. They were motivated to make their daughter's death a catalyst to change the way General Motors operates and also to protect thousands of folks who were driving defective GM cars with no idea of how dangerous those cars were.

Their lawsuits brought about all that the Meltons wanted to accomplish from their efforts. Now hundreds of other lawsuits are consolidated in a New York federal court awaiting further action. There are also lawsuits pending in a number of state courts. Importantly, millions of cars with defective ignition switches have been recalled. Lance Cooper and his firm in Marietta, Ga.,

along with our firm, represented the Meltons.

The settlement came after numerous discussions with GM victim compensation plan administrator Ken Feinberg. The settlement was actually reached during the week of Feb. 9, but couldn't be announced until a separate settlement was reached with the local dealer. This settlement—and all that led up to it—vindicates Brooke and it gives real and lasting meaning to her memory. Lance Cooper, whose work on the initial lawsuit uncovered the defective GM ignition switch, had this to say:

This is the right thing to do for Ken and Beth for a number of reasons. Ultimately, the litigation served its purpose and they accomplished what they set out to do. They are grieving parents who simply wanted the truth and for no one else to suffer a similar loss.

The fact that Ken and Beth Melton would be willing to take on a corporate giant and then go on to be directly responsible for alerting both the government and the public to a massive cover-up by General Motors is one of the most courageous things that I've experienced in my career as a lawyer. I will try to explain why in more detail below. The Meltons truly are American heroes. I am extremely proud of them and am honored to have been asked to help represent them in a most worthy cause.

The Meltons initially filed a lawsuit against GM after their daughter Brooke died in a March 2010 crash when the ignition switch of her 2005 Cobalt slipped into the accessory position as she was driving. Her car skidded into another vehicle and she was killed. The investigation revealed the vehicle was equipped with a faulty ignition switch that allowed the key to turn out of the "run" to the "accessory" or "off" position. This cut power steering, anti-lock braking, lights, and disabled the air bags that drivers and passengers need to protect them in a crash.

Believing GM had told the truth during discovery for the initial lawsuit, the Meltons agreed to settle with the automaker in September 2013 for \$5 million. In February 2014, however, the National Highway Traffic Safety Administration (NHTSA) and GM began announcing recalls for a number of vehicles—including the Cobalt—related to a

defective ignition switch. This was a direct result of what had been discovered in the first Melton lawsuit. The Meltons, realizing that GM was aware of the defect for years before the recalls, requested that NHTSA open a Timeliness Query. The Melton case touched off a national controversy and resulted in a full-blown Congressional inquiry into GM's handling of the problem. NHTSA's lackluster response to the safety defect was brought to light during the congressional hearings.

In April 2014, after the Meltons learned that GM had lied under oath in their case, our two firms joined forces and asked GM to rescind the original settlement, offering to return the \$5 million. Subsequently, a second lawsuit was filed, charging GM with both putting a known defective vehicle on the highway and with fraud in the handling of the original lawsuit and settlement. The new lawsuit was filed in the State Court of Cobb County, Ga.

The Meltons took GM at its word when they initially agreed to settle the case, but they later realized that GM had not been telling the truth. One of the most important issues for the Meltons was accountability. They were dealing with a company that concealed for years a dangerous defect key persons at GM knew about and covered up. Primarily, Ken and Beth Melton wanted to hold GM accountable, and that was exactly what refiling the second lawsuit accomplished.

The Melton lawsuit caused the GM ignition switch litigation to move forward, not just in the Melton case, but also in the multidistrict litigation (MDL) as well. In September 2014, U.S. District Judge Jesse M. Furman, who is overseeing the MDL, ruled against GM's efforts to halt discovery efforts in the Melton case, noting that discovery in the Melton case would also help the MDL process and the judge ordered discovery to proceed immediately. The first MDL case is scheduled for trial in January 2016. Lance Cooper should be the lead attorney for the MDL team in that trial. Without any doubt, Lance is the most knowledgeable lawyer on anything related to the defective ignition switch and deserves to be the lead attorney in that case. I am sure that the leadership in the MDL recognizes how valuable it would be to the MDL and to all of GM's victims to have Lance in that role.

It's important to note that the Meltons brought GM's conduct to the attention of the public and Congress. It also became evident that the government regulator, NHTSA, was not doing its job. As a result of the case and Lance Cooper's Timeliness Query to NHTSA, GM says it has changed the way it does business. Significantly, for the first time, GM has given NHTSA unprecedented access. Because of the Meltons' diligent pursuit of justice, NHTSA also fined GM \$35 million and made the automaker admit publicly that it had violated the Safety Act. Those are significant accomplishments that would never have happened had not the Meltons sought truth and justice from GM.

As we all know, GM also established a victim compensation fund to evaluate claims to determine eligibility and compensation amounts for drivers, passengers and pedestrians killed or injured by one of the defective GM vehicles. Neither would this fund have been created but for the Melton lawsuit. GM has paid claims to a good number of people who would never have known about the defective ignition switch had not the Meltons filed suit and discovered the defect.

But for the Meltons' efforts, none of these injured drivers and passengers would ever have received any compensation, much less fair and appropriate compensation from GM. The courageous act of rescinding a settlement by the Meltons, and their filing a new and different lawsuit, has helped hundreds of people receive compensation. Because of what Ken & Beth Melton have done, GM was exposed and the public has benefited. They have brought about significant change in both government regulation and in how GM operates.

Ken and Beth Melton are national heroes and they now know that Brooke's tragic death will have meaning for millions of persons who will benefit because of what they have done. Brooke's death, although a tragic loss for her parents, played a major role in how NHTSA operates and how a huge automaker deals with safety issues. That's the lasting legacy of Brooke Melton. Ken and Beth Melton have done their work and now can get on with their lives. May God bless them!

JUDGE IN GM IGNITION SWITCH MDL URGES SETTLEMENT TALKS

Judge Jesse Furman, at a hearing on March 13, suggested that General Motors LLC and Plaintiffs in the multidistrict litigation over faulty ignition switches should engage in settlement talks "at some point." Judge Furman made the comment at the end of a nearly three-hour court hearing. It's well known that the litigation arises from GM's recall of millions of vehicles due to the defect. Judge Furman said: "At some point there ought to be discussions in some form, and some kind of alternative dispute resolution that is pursued."

Judge Furman made it clear that he was not suggesting that the case should settle, but that he was just encouraging the parties to broach the subject. He scheduled another status conference for April 24. The Plaintiffs are pursuing claims against the automaker over more than 60 recalls affecting GM-branded vehicles sold in the U.S. from model years 1997 to 2014. As we have consistently pointed out, all of this stems from the work done in the original Melton lawsuit handled by Lance Cooper and the courageous actions of Ken and Beth Melton.

Source: Law360.com

"NEW GM" IGNITION MDL CLAIMS NOW UNDER HOME STATES' LAWS

Plaintiffs whose GM Inc. vehicles were made by "New GM" will have their claims governed by the laws of their respective home states in the multidistrict litigation (MDL) over the automaker's defective ignition switches. U.S. District Judge Jesse M. Furman, who presides over the MDL, entered the order on March 24. He noted that the parties didn't agree on variations in the laws, but had met and agreed to the stipulation, which affects 22 plaintiffs from 14 states who acquired their GM vehicles since July 11, 2009.

The parties agreed that the 14 states' laws should be applied individually to the fraudulent concealment and breach of implied warranty claims. Also, Judge Furman granted GM's motion to dismiss claims from 75 plaintiffs who have failed to submit fact sheets and other documents detailing repairs to their vehicles as well as their medical histo-

ries and other information. GM had sought to eliminate more than 300 claims.

Source: Law360.com

INVESTORS HAVE SUED GM DIRECTORS OVER THE FAULTY IGNITIONS

A number of pension funds have filed suit against General Motors Co. in a Delaware court. The investors are also suing the automaker's board of directors, saying they were asleep at the switch while the company produced cars with faulty ignition systems that led to a great number of fatal accidents. The investors are claiming that more than a dozen current and former GM directors failed to adequately oversee the company's operations for about three years starting in 2010 and had no system in place to ensure the Detroit-based company produced safe vehicles or reported problems to government regulators. The investors claim there was a total systemic failure to supervise that amounts to a conscious dereliction of duty. Delaware Chancery Court Judge Sam Glasscock, III, heard arguments in the case last month.

Source: *Claims Journal* By Jeff Feeley

III. THE TAKATA AIRBAG SAGA CONTINUES TO EXPAND

We have told you how Takata airbags can deploy violently and send metal fragments at passengers in collisions. This is a serious safety defect and it's only getting bigger. Honda manufactured hundreds of thousands of vehicles with these dangerous airbags. Recently, the automaker said it would recall certain 2008 Pilots, 2004 Civics and 2001 Accords. This adds almost 105,000 more vehicles to the list of vehicles recalled by Honda. These vehicles became the latest to join a growing recall of the driver's side airbag that can explode unexpectedly. No 2008 year Pilots had been recalled before for the defect.

Takata said in a regulatory filing that all of the vehicles had been identified on March 5 through a process of matching Takata airbag inflator part numbers to individual vehicle identification numbers, or VINs. Honda discovered that the more than 88,000 Pilots should have been included in last year's Takata-related recall, a limited regional action that was expanded nationally in December after pressure from federal regulators.

More than 18 million vehicles with the faulty airbags, including cars produced by Honda, Chrysler, Ford and other major automakers, have been recalled in the United States, and at least six deaths worldwide have been linked to the defect. Last month, safety regulators began to fine Takata \$14,000 a day for not fully cooperating with their investigation into the Japanese supplier's hazardous airbags. If you have questions about the Takata airbag problem, please contact Chris Glover, a lawyer in our firm's Personal Injury/Products Liability Section, at 800-898-2034 or by email at Chris.Glover@beasleyallen.com.

HONDA ADDS 105,000 VEHICLES TO ITS U.S. RECALL

Honda says it's adding nearly 105,000 vehicles to its growing U.S. recall of driver's side air bag inflators that can explode with too much force. The added vehicles include nearly 89,000 Pilot SUVs from the 2008 model year, as well as about 11,000 Civics from 2004 and another 5,000 Accords from the 2001 model year. According to Honda, this is the first recall of 2008 Pilots for potential problems with driver's air bags made by Takata Corp. of Japan.

As we have written in several issues, the inflators can blow apart a metal canister and spew shrapnel into drivers and passengers. At least six people have died worldwide due to the problem. Dealers will replace the driver air bag inflators for free. With the added vehicles, Honda has now recalled 5.5 million Honda and Acura cars and SUVs nationwide from the 2001 to 2011 model years because of the air bag problems.

Thus far, 10 different automakers have recalled more than 17 million cars and trucks in the U.S. and 22 million worldwide because of the air bag problem. There could be as many as 30 million

vehicles with Takata air bags across the U.S. Honda said in documents posted on March 19 by U.S. safety regulators that it found the additional vehicles by checking Takata inflator part numbers against Honda vehicle identification numbers in its factory records. Some 2001 Accords and 2004 Civics already were included in a recall from last year.

Honda said it will send letters to owners of vehicles in the expanded recall "over time" as replacement parts become available. The recalls are nationwide for driver's side air bags. There were separate recalls announced last year for passenger air bags in high-humidity areas including Alabama, California, Florida, Georgia, Hawaii, Louisiana, Mississippi, South Carolina, Texas, Puerto Rico and the U.S. Virgin Islands.

As I mentioned, NHTSA began fining Takata \$14,000 per day on Feb. 20 for failing to fully cooperate in the government's investigation. The fines had grown to \$392,000 as of March 19. The Justice Department also is investigating Takata for possible criminal prosecution. It should be noted that Takata has known about the air bag problems since at least 2004.

Source: Associated Press

IV. MORE AUTOMOBILE NEWS OF NOTE

TOYOTA CONTINUES TO SETTLE CASES IN THE ACCELERATION MDL

Lawyers on both sides of multidistrict litigation (MDL) over deaths and injuries caused by unintended acceleration in Toyota Motor Corp. vehicles told a California federal judge on March 16 that the settlement process continues to move along. It was reported that settlements were reached in 289 cases, up from 228 in October. The Plaintiffs and Defendants told Judge James V. Selna that they have resolved 132 of 171 cases in the multidistrict litigation, and 45 of the 84 cases in coordinated state proceedings. Outside of the MDL and state proceedings, the parties have resolved 112 cases, according to the status

report. The parties wrote in a joint status report filed with the court:

The [Intensive Settlement Process] is continuing to make good progress as the parties attempt to resolve the various personal injury, wrongful death and/or property damage cases pending before this court and in other courts.

It was reported that there are only 39 cases left pending in the MDL and, of those, only four did not request the expedited settlement process. There are also 39 cases in state courts and, of those, only two have not yet requested the process. The update comes about five months after a previous update in which Toyota said it had resolved more than half of the individual lawsuits in the MDL and state proceedings. In December 2013, the automaker entered into settlement negotiations with hundreds of consumers bringing personal injury, wrongful death and property damage claims related to the alleged unintended acceleration defect in the automaker's vehicles. The total value of the wrongful death and personal injury settlements won't be clear until all of the cases are resolved, as each settlement is being negotiated individually.

Toyota issued recalls of millions of cars and trucks in 2009 and 2010 after reports that several vehicles experienced unintended acceleration. The parties reached out to more than 300 Plaintiffs' lawyers with information on the proposed settlement process. Courts in the multidistrict litigation and coordinated proceedings approved the formal start of the process in January 2014. Judge Selna issued a stay for all of the cases involved in the intensive settlement process, forcing them to seek certification from the special master that they complied with the requirements of the process before returning to the trial court. It should be noted that all of this came about after the verdict and subsequent settlement in the *Bookout* case handled by our firm in Oklahoma City. Without any doubt, that case was what brought Toyota to the table, resulting in hundreds of cases being settled and our clients prevailed in a case in which Toyota had no settlement offers.

In another arm of the litigation, Toyota agreed to pay an estimated \$1.1 billion to settle claims that the alleged

acceleration defect diminished the vehicles' value. The economic loss settlement, which included a proposed class of roughly 23 million customers, won final approval in July 2013. That settlement calls for \$757 million in cash as well as \$875 million in "nonmonetary benefits," including getting brake override installation in cars that merit it.

The settlement also calls for Toyota to install a brake-override system in certain recalled vehicles. A spokeswoman for Toyota told Law360 they were pleased with the progress of the settlements so far. The Plaintiffs are represented by Elizabeth Cabraser and Todd Walburg of Lief Cabraser Heimann & Bernstein LLP, Mark Robinson Jr. and Don Slavik of Robinson Calcagnie Robinson Shapiro Davis Inc., and Dee Miles from our firm. Toyota is represented by John Hooper of Reed Smith LLP. The case is in the U.S. District Court for the Central District of California.

Source: Law360.com

NISSAN RECALLS 640,000 ALTIMA SEDANS

Nissan North America Inc. has recalled 640,000 Altima sedans after discovering the cars' hoods can fly open while in motion. This brings the total number of Nissan and Infiniti vehicles recalled for the defect in the past year to nearly 1.1 million. On March 3, Nissan notified dealerships of the recall after the manufacturer discovered certain model year 2013 through 2015 Altimas contain secondary hood latches that may not fully engage when the hood is closed. The defect increases the risk that it will fly open unexpectedly while the vehicle is in motion and cause a crash. According to Nissan, there have been no reports of collisions or injuries caused by the defect.

In January, Nissan recalled 216,000 Nissan Pathfinder and Infiniti JX35s and QX60s for the same problem. Three months before that, hood latch issues prompted the recall of 238,000 model year 2013 Altimas. According to its report to the National Highway Transportation Safety Administration (NHTSA), Nissan said it is continuing to investigate which vehicles are involved in the current recall and said its work is ongoing. So far it had pointed to 625,000

Altimas sold in the U.S. and 15,000 sold in Canada. The agency said:

Nissan is continuing to investigate the root cause of this issue. Once Nissan concludes its investigation, we may revise the defect description.

The manufacturer noted that it has not yet developed a remedy for the problem but plans to provide information as soon as it becomes available. The company plans to implement an interim procedure to inspect and lubricate the secondary hood latch assembly on all subject vehicles in dealer inventory prior to retail sale. "We will not include a statement in the Part 577 owner notification concerning reimbursement for the cost of obtaining a pre-notification remedy as the subject vehicles are under warranty," Nissan said.

Nissan should complete notifications to customers of the defect by the end of this month. The automaker's recalls so far this year have not been confined to only hood-related issues. In January, the automaker recalled 470,000 model year 2008 through 2014 Nissan Rogues that NHTSA found to be plagued by electrical shorts in a seat belt component due to a mixture of snow or water and salt seeping through the carpet on the driver side floor. The electrical shorts can cause a fire in the SUVs, according to NHTSA.

Source: Law360.com

NHTSA INVESTIGATES NISSAN AIR BAG FIX AS COMPLAINTS INCREASE

The U.S. National Highway Traffic Safety Administration (NHTSA) is investigating Nissan Motor Co.'s solution to a defect that deactivates passenger seat air bags and prompted the company to recall more than 1 million vehicles worldwide in 2014. NHTSA's Office of Defects Investigation reported that it has received 124 complaints from Nissan and Infiniti owners reporting issues with their cars' "occupant classification system," which uses weight to determine whether or not the front passenger seat is occupied and turns the air bag on and off accordingly.

NHTSA opened the investigation on March 18 to determine the effectiveness of software updates offered by Nissan to address the issue affecting air bag sensors in certain models of Nissan

Altima, Pathfinder, Sentra, NV 200 and LEAF, as well as Infiniti QX60 and Q50. Nissan reported last year that the sensors in some owners' vehicles mistakenly identify adult passengers as either children or empty seats and deactivate the frontal airbag. No deaths or injuries are known to have resulted from the defect thus far, according to NHTSA and Nissan. The automaker recalled about 990,000 vehicles in the U.S. as part of its April 2014 recall. But the owners' complaints said the sensor defect returned or appeared for the first time after the software update.

Reportedly, Nissan and Infiniti dealers are unable to provide any additional remedy without guidance from the company. Owners have taken their vehicles in for software updates as many as nine times without success, according to the complaints.

Source: Law360.com

KIA RECALLS 209,000 SOUL VEHICLES FOR ACCELERATOR DEFECT

Kia Motors America Inc. has recalled approximately 209,000 Soul and Soul electric vehicles because a portion of the cars' accelerator pedal has the potential to bend and fracture if the driver applies excessive force. The agency acknowledged the recall in a letter to the automaker, in which it said the defect in certain model year 2014-2015 Soul and Soul electric vehicles causes the accelerator pedal to bend or break. The letter says further that this can cause drivers to have difficulty in accelerating the vehicle and increases the risk of an automobile accident. Kia said in a statement that it was "not aware of any injuries or accidents as a result of this issue." Kia started to notify vehicle owners last month.

Kia says dealers will add supporting rubber underneath the pedal stopper on affected vehicles for no expense to the car owners. The recall began March 24 and affects cars manufactured between July 2013 and January of this year. Kia first notified NHTSA about the recall on Feb. 27. In documents submitted to the agency, the automaker said it was conducting regular monitoring on Oct. 23 when it first identified accelerator pedal warranty claims that may indicate accelerator pedal fractures. No customer complaints had been received, and no

accidents or loss of control were identified at that time, according to Kia.

On Oct. 31, Kia says it searched for and inspected two fractured accelerator pedals it collected from the field, with "inconsistent" fracture locations identified. The automaker then sent a quality information report to its parent company Kia Motors Corp. requesting evaluation, and in November sent three pedals in for fracture evaluation. Kia Motors Corp. identified nine accelerator pedal replacement warranty claims on Nov. 14. After an investigation, the company says in late December it concluded that the accelerator pedal can fracture because an unsupported pedal section can bend from application of an "unanticipated excessive force" when the vehicle is stationary.

Under these circumstances, if the driver continues to operate the vehicle, this could impair acceleration. Kia says it made changes to its manufacturing process to address the issue on Jan. 9 of this year. On Feb. 17, the automaker identified three additional accelerator pedal replacement warranty claims. It says all of this caused the automaker to conduct the recall. The automaker says it has received 12 warranty claims thus far.

Source: Law360.com

FORD RECALLS 221,000 POLICE VEHICLES, AMBULANCES AND HEARSE

Ford Motor Co. issued three separate recalls on March 25 involving approximately 221,000 vehicles, including police cars, ambulances and some of the automaker's Lincoln-brand hearses. The largest part of the recall involves 213,000 Ford Explorer and Police Interceptor Utility vehicles that the automaker is concerned about after identifying issues with a spring in the vehicles' interior door handle, which it says could spring open in the event of a side-impact crash. As you may know, the Police Interceptor Utility vehicle is basically an amped-up Ford Explorer. The vehicles are the country's top-selling law enforcement car.

Ford said 194,484 of the model year 2011 through 2013 Explorers and police SUVs were sold in the U.S., 12,392 in Canada and 6,035 in Mexico. Dealers will replace the door handles at no cost to consumers. Ford is also recalling

6,500 model year 2011 through 2015 F-Series Super Duty ambulances and emergency vehicles over problems with their temperature sensors. The automaker said the vehicles' exhaust gas temperature sensors can malfunction, which causes them to warn drivers of overly high temperatures when there isn't actually a problem.

While 96 of the emergency vehicles were sold in Canada and 54 in Mexico, the rest were sold in the U.S. As with the police cars, Ford said it would replace the impacted parts at no cost to owners. A third Ford recall in this batch involves approximately 1,700 Lincoln MKT limos and hearses over an issue with their vacuum pump relays that can cause a fire under the vehicles' hoods. The company said it knows of two fires caused by the problem. Ford will pay to replace all applicable parts on the affected vehicles.

According to Ford, there are 1,586 vehicles in the U.S. at risk of fire and 139 in Canada. Ford said it is unaware of accidents or injuries caused by any of the recalled vehicles. It added that it is unaware of any patients riding in the recalled emergency vehicles who have been harmed.

Source: Insurance Journal

V. A REPORT ON THE GULF COAST DISASTER

FINANCIAL FILING SHEDS MORE LIGHT ON THE TYPE OF COMPANY BP IS

BP recently released its corporate financial report. They say you can tell a lot about someone based on where they spend their money. When it comes to BP, that old saying is certainly true. Last year, BP imposed a company salary freeze for its 84,000 employees while cutting another 300 jobs because of the harsh oil trading environment. However, BP's new financial report revealed that BP CEO Bob Dudley received a 25 percent pay increase, bringing his annual compensation to \$12.7 million.

While no one can fault a company for rewarding its employees with pay

increases, this pay increase is especially curious considering it was based on the company's financial and safety targets. In fact, safety records accounted for 30 percent of BP executive directors' annual bonuses despite BP reporting a 40 percent increase in serious spills and a near 10 percent increase in the number of less serious spills. All the while, BP has not been shy in publicly complaining about the costs of its settlement with Gulf Coast residents as well as the overall economic conditions of the oil industry.

The company has used these very topics to generate sympathy from anyone that would listen. One would think the company would be in complete shambles after reading the headlines from BP's advertising campaigns. In reality, the company is still making billions in profits, causing spills, paying its executives millions in bonuses while freezing employee pay over the same time period. At the same time, the oil giant is paying its advertising consultants, lawyers and experts millions to avoid responsibility in its settlement with Gulf Coast residents. Indeed, the manner in which the company spends its money is truly indicative of its priorities.

Source: *The Guardian*

BP ADMITS IN ITS FINANCIAL STATEMENT WHAT WE HAVE KNOWN ALL ALONG

Lawyers in our firm who have been working on the BP litigation are well aware of the tactics BP has used for two years to derail the settlement it agreed to with Gulf Coast residents. Our firm, having worked on significant litigation all over the nation for many years, has never seen or even heard of such an unprecedented and public effort to renege on a settlement after having totally supported the settlement just months earlier. Understandably, almost any casual observer who has followed this settlement and BP's efforts has been dumbfounded by the company's media campaign.

Yet, in BP's recent financial statement, the company was required to tell its shareholders the truth because of laws requiring disclosure of events concerning its financial performance. The financial statement referenced the recent Supreme Court ruling that rejected the

company's campaign against the settlement, and stated: "the settlement agreement did not contain a causation requirement beyond the revenue and related tests."

BP makes this statement now because it has no choice. But make no mistake—the company has proven time and time again that it will only do what is most convenient and financially beneficial at a particular time. Currently, we are seeing the company having to experience extremely unfamiliar territory. Historically, BP is used to getting everything it wants. If the company cannot buy its way to achieve whatever it desires, it will spend inordinate sums of money to bully its way to accomplishing its goal. These tactics have likely worked in the past. Thankfully, the court system has protected the settlement (and in the process, clear precedent on contractual precedent) notwithstanding the company's unprecendented bullying tactics to destroy it.

BP DROPS ITS REQUEST TO REMOVE CLAIMS ADMINISTRATOR

As we reported in previous issues, BP threw another firebomb on the Settlement Program by attempting to remove Claims Administrator Pat Juneau from his role as overseer of the settlement. Curiously, BP made this move notwithstanding two audits that confirmed the process was being implemented correctly, as well as numerous court decisions rejecting BP's contentions that the Claims Administrator was improperly administrating the settlement. With its previous settlement interpretation arguments in ruins, BP sought to remove Mr. Juneau based upon a claim that he had a conflict of interest and failed to disclose the conflict to BP.

Predictably, these claims were proved to be completely untrue. In fact, Court documents established that there was no conflict and, further, the supposed "conflict" was known by BP even before Mr. Juneau took control of the Program. Frankly, BP was making this argument because it had no other argument to make. Just a few months before filing its motion to remove Mr. Juneau, an independent audit of the Claim Center's activities concluded that 99.5 percent of claims were being processed correctly. Faced with the possibility of being seen

as petty before the Fifth Circuit, BP dropped its effort to remove Juneau.

BP made the obvious and right decision to drop this appeal, but the company's effort is another in a long line of examples of how far it will go to get what it wants. BP's contentions were completely ridiculous, but the purpose was clear—disrupt the Facility to slow payments down and intimidate the Claims Administrator. Sadly, more money was spent on legal briefs and bully tactics instead of putting the money in the hands of Gulf Coast citizens. The more things change the more they stay the same.

Source: Law360.com

VI. DRUG MANUFACTURERS FRAUD LITIGATION

AN UPDATE ON DRUG MANUFACTURERS FRAUD LITIGATION

Our law firm, working with state attorneys general in eight states, has had a great deal of success in the Medicaid fraud litigation, referred to as the "AWP" litigation. Recently, in one of the AWP prosecuting states, the trial court refused to dismiss any claims that our firm is pursuing against the pharmaceutical manufacturer Defendants. In that case, in which we represented the state, a group of AWP Defendants sought to dismiss the state's claims. They worked very hard, trying to postpone all of the upcoming trials until the state's Supreme Court could rule on a pending appeal. That appeal was filed by another AWP Defendant in a related case. In the Feb. 25, 2014 order, the trial court allowed us, on behalf of the state, to proceed on its Medicaid Fraud Control Act, Consumer Protection Act, common law and injunctive relief claims.

The trial court determined that the Defendants had likely caused false claims to be submitted by pharmacies to the state's Medicaid division. The court further found the state's settlement attempts to be in satisfaction of the pre-suit negotiation requirement of the Consumer Protection Act, despite the state not technically being subject to the rule.

The court found all of the state's injunctive relief to be viable, specifically the AWP Defendants' past and present AWP and WAC price reporting practices. Accordingly, the state will pursue a stay of the Defendants' price reporting practices, damages for overpayment, along with restitution and an accounting for all ill-gotten gains that flowed from the illegal activities. The ruling puts the state on solid footing as it moves toward closing out the remaining AWP Defendants. If you need more information on the states' AWP litigation, contact Clay Barnett, a lawyer in our firm's Consumer Fraud Section, at 800-898-2034 or by email at Clay.Barnett@beasleyallen.com.

SANDOZ PAYING \$12.6 MILLION IN MEDICARE DRUG PRICING DISPUTE

Sandoz Inc. will pay more than \$12.6 million for reporting bogus drug prices in order to pump up its Medicare Part B reimbursements. This is the largest civil monetary penalty ever involving such charges, according to the government. The settlement centers on so-called average sales prices (ASP) used to determine payment for drugs covered by Medicare's outpatient care benefit.

Sandoz, a unit of Novartis AG and a major manufacturer of generics, misstated those prices from early 2010 to early 2012, according to the Office of Inspector General (OIG) at the U.S. Department of Health and Human Services. The OIG said:

Sandoz's misrepresentations undermined the integrity of the Medicare Part B drug pricing system. We will continue to penalize manufacturers that misrepresent or fail to timely file the required information.

Drugmakers are paid 106 percent of the ASP for drugs covered by a given billing code within Medicare Part B, which shelled out almost \$14 billion for medications in 2012. The OIG has increasingly shown interest in scrutinizing the accuracy of those prices, issuing a special bulletin in 2010 that warned Big Pharma of compliance concerns and the potential for enforcement. The inspector general also issued a report in July that found at least one-third of the

200 drugmakers required to submit ASPs for Medicare Part B had failed to do so for at least some of their products. And the inspector general's annual work plan for the past two years has vowed to look for outliers among the ASPs.

For all that focus, there doesn't appear to have yet been a huge number of recoveries for alleged ASP violations. Far more money has been recovered for alleged manipulation of so-called average wholesale prices (AWP) by drugmakers accused of exploiting Medicaid. Monday's payout from Sandoz stems from the inspector general's authority to levy so-called civil monetary penalties. A settlement agreement between the parties also describes a drug-pricing compliance program that Sandoz has implemented.

Source: Law360.com

VII. LEGISLATIVE HAPPENINGS

ISSUES BEFORE THE ALABAMA LEGISLATURE

The Alabama Legislature is moving at a rapid pace, passing most everything that the Republican majority in both the House and Senate wants. Unfortunately, a number of the real problems facing state government appear, at this juncture, to have been put on the back burner. I believe that Gov. Bentley's tax package deserves prompt attention. But I am not sure if his fellow Republicans are helping him gather support for revenues that state government badly needs.

Sadly, public education is again being placed at the back of the bus and that's most unfortunate. Hopefully, things will change on that front and soon. The state's overall financial condition is in crisis and that really can't be disputed. We have made it through the past 12 years by using federal money and borrowing from trust funds. Now we must face up to the reality that we need additional revenues. The state cannot afford to cut more services without that approach adversely affecting people. I believe we are at a crossroads and the governor and our legislators must take all steps necessary to keep the ship of state from sinking.

PUBLIC EDUCATION BADLY NEEDS HELP

Governor Robert Bentley has signed the charter school legislation into law. Frankly, I have mixed emotions about any real need for charter schools. I believe that passage of this law will wind up being a real blow to public education in Alabama. I am greatly concerned that charter schools will be run without adequate regulation and by persons and companies that are more motivated by making money than they are about being focused on the education of our children.

Maybe I'm missing something, but taking badly needed funds from public schools to fund charter schools is the last thing we need to do. Our public schools are already severely underfunded and taking funds away for use by charter schools makes little sense. Time will tell if I am wrong about charter schools. While I hope that I am, based on how they will be set up and what they will leave behind, I seriously doubt it.

ALABAMA'S COURT SYSTEM REMAINS UNDER ATTACK

Based on reports, it appears that Alabama's court system will continue to be underfunded. For the past several years the judicial system has been sorely neglected. There have been tremendous layoffs in courthouses around the state and a reduction in essential services rendered to the people of Alabama. Our trial judges at both the circuit and district court levels badly need staff personnel. The circuit clerks' offices are also in tremendous need of personnel and the public has suffered as a result. Hopefully, Gov. Bentley and the Legislative leadership will recognize the critical importance of the state's judicial system and fund it properly.

ALABAMA HAS LESS THAN HALF THE STATE TROOPERS NEEDED FOR HIGHWAY SAFETY

Most Alabama citizens would be shocked to learn that there is a tremendous need in Alabama for more state troopers. According to a study conducted by the University of Alabama's Center for Advanced Public Safety, the state needs a minimum of 1,016 State

Troopers on its highways to ensure public safety. There are currently 431 troopers assigned to highway patrol—less than half the recommended number. This creates obvious problems as it relates to highway safety.

Troopers are spread thin across the state, serving 67 counties. Perry County has no trooper assigned to it. About a dozen other counties only have one trooper, according to Sgt. Steve Jarrett with the Alabama Law Enforcement Agency (ALEA). This means one trooper is on duty for an eight-hour shift. There is no coverage for the other 16 hours of the day. In the event of an emergency, troopers must travel from other counties to help, resulting in slow response time and putting the public at risk. That can't be tolerated. The shortage is due to a number of factors, including attrition—troopers not being replaced when they retire—and lack of funding to hire more personnel.

Alabama actually gained 142 troopers in January, when ALEA went into effect to and existing personnel were reassigned to highway patrol duties. ALEA consolidates 12 state law enforcement operations and functions into one entity. That newly found entity is responsible for the functions and missions of the Alabama Department of Homeland Security, Department of Public Safety, Alabama Bureau of Investigation, Fusion Center, Criminal Justice Information Center, Marine Police, Alcoholic Beverage Control Board Enforcement Division, Department of Revenue Enforcement, Forestry Commission Investigations, Agriculture and Industry Investigations, Public Service Commission Enforcement, and Office of Prosecution Services Computer Forensic Laboratories. Hopefully this consolidation of all these agencies, many of which had totally different missions, will work. Frankly, I have serious doubts. The plight of the state troopers could be considered exhibit "A."

Twenty-one troopers also were hired in 2014 as a result of a Community Oriented Policing Services (COPS) grant from the U.S. Department of Justice. The COPS Hiring Program grant provides up to 75 percent of the approved entry-level salaries and benefits of full-time officers for a 36-month grant period, with a minimum of 25 percent local cash match requirement in order to hire new officer positions or rehire

officers laid off due to budget restrictions. Again, federal money is being used to fund a state government responsibility.

We are facing a real crisis because of a shortage of troopers. There are more vehicles on the highway as the population increases, and the troopers simply can't keep up. Sgt. Jarrett was absolutely correct when he said that when there are fewer troopers, motorists tend to have less regard for traffic laws because they have less fear of getting caught, resulting in more crashes. The shortage also reduces the troopers' ability to complete other duties in addition to highway patrol, such as catching criminals traveling through Alabama and creating and promoting a safe driving environment.

For our Alabama readers, if you agree that we badly need more troopers on our highways in Alabama, contact Gov. Robert Bentley and members of the House and Senate in your area. Let them know that safety on our highways is important.

Sources: AL.com, alea.gov, cops.usdoj.gov

THE PRISON SYSTEM PROBLEMS ARE PAST THE CRISIS STAGE

Sen. Cam Ward is leading the fight to bring about a total reform of Alabama's prison system. Hopefully he is making progress. If he fails in this legislative session to accomplish his goal, the system will very likely be taken over by the federal courts. The legislators have a duty to solve this critically important problem that has lingered for far too long. It's a miracle that we have gotten by this long without federal intervention. Hopefully, we will see a total reform of a broken system during this session of the Legislature.

VIII. THE NATIONAL SCENE

USS COLE BOMBING FAMILIES AWARDED \$48 MILLION IN DAMAGES

A federal judge in Virginia has awarded \$48 million in damages to family members of 17 U.S. Navy sailors

killed in the 2000 bombing of the USS Cole. These families had won an earlier lawsuit finding Sudan legally responsible for helping Al Qaeda carry out the attack. U.S. District Judge Robert G. Doumar awarded \$14 million in punitive damages and \$34 million in damages for emotional pain and suffering to 61 of the 63 Plaintiffs. Two of the Plaintiffs in the suits, one a fiancée of one of the service members and the other a half-brother, "regrettably," according to the judge, didn't meet the legal requirement of being immediate family members in order to recover on a claim for solatium.

Judge Dover awarded spouses of the victims \$1 million for their emotional pain and suffering, \$600,000 to children, \$300,000 to parents and \$50,000 to siblings. Andrew C. Hall, a lawyer with Hall Lamb & Hall, told Law360:

What we wanted was their pain and suffering to be recognized. We spent years fighting for it and we're very pleased with it.

Judge Doumar limited the punitive damages to \$14 million, because Sudan is liable for more than \$350 million in total damages from combined rulings in the present case and in two other cases arising out of the 2000 attack.

For those who may not remember, the Cole attack was a suicide bombing that occurred off the coast of Yemen, where the destroyer was refueling. A small boat carrying two men rammed the vessel and exploded, killing 17 sailors and injuring 270 enlisted personnel.

In April, Judge Doumar found Sudan's providing material support and resources to Al Qaeda led to the murders of the 17 service members and entered judgment against Sudan under the Foreign Sovereign Immunities Act (FSIA). The case is in the U.S. District Court for the Eastern Division of Virginia. The Plaintiffs are represented by Andrew C. Hall of Hall Lamb & Hall PA, and James Cooper-Hill, Nelson M. Jones III and Kevin E. Martingayle of Stallings & Bischoff PC. They have worked hard in this litigation and should be commended for it.

Source: Law360.com

IX. THE CORPORATE WORLD

GOVERNMENT CONTRACTOR SPENDS \$1 MILLION ON PARTIES AND PERKS

An investigative report by *The Washington Post* uncovered massive fraud, waste and abuse by the largest nonprofit contractor working for the U.S. Agency for International Development (USAID). It appears that International Relief and Development (IRD), based in Arlington, Va., collected hundreds of millions of federal dollars, ostensibly for relief work in war zones in Iraq and Afghanistan and projects in impoverished nations. However, records reveal that between 2007 and 2010 the company spent an estimated \$1.1 million on expensive “retreats” and perks for employees and executives.

Rules for federal contractors do allow parties and retreats as part of an organization’s overhead costs, but the money must be used for training staff and building morale. IRD booked retreats at posh, pricey resorts and treated themselves and staff to fancy dinner parties and open bars—specifically not allowable under federal contractor rules—and gifts including iPods customized with the organization’s name, cameras, special recreational classes and activities, and even gift certificates for personal employee spending.

In an investigative piece published in May 2014, the Post reports IRD was started in 1998 by a minister and his wife as an outreach mission to help war victims in Bosnia-Herzegovina. However, after the U.S. became involved in the wars in Iraq and Afghanistan, IRD contracts increased exponentially, with annual revenue growing from \$1.2 million to \$706 million, mostly from USAID. In fact, the Post reports, “IRD has received more grants and cooperative agreements from USAID in recent years than any other nonprofit relief and development organization” to the tune of about \$1.9 billion. Employees were paid million-dollar salaries and generous bonuses. Many former USAID employees left their positions with the federal agency and accepted lucrative positions with IRD.

Since 2007, IRD received 82 percent of its nearly \$2.4 billion operating budget from USAID for projects in Iraq and Afghanistan. John E. Bennett, a former career State Department official and ambassador who led a team in Baghdad that worked with IRD told the *Post*, “IRD is a nonprofit in name only. They built an organization designed to get USAID money.”

Current and former officials with IRD insist they are doing good work in a dangerous situation. Programs include cleanup projects, agricultural programs and other humanitarian aid. However, critics of the program say money pours in but is largely diverted or, at best, mismanaged. The Post noted IRD programs with USAID were often run under “cooperative agreements” rather than contracts, giving the contractor more flexibility and also requiring less oversight from the federal agency. These types of agreements can be easily changed to add cost to taxpayers and make it difficult to hold contractors accountable because deadlines and specific deliverables are seldom outlined, the Post reports.

Following on the heels of the May investigative report, IRD founders Arthur Keys and his wife, Jasna Basaric-Keys retired from the non-profit last summer. In January, USAID suspended IRD from receiving any more federal work, citing concerns about “serious misconduct.” IRD revenue from USAID dropped from \$587 million in 2010 to \$78 million last year. USAID spokesman Ben Edwards told the Post in a statement:

Waste, fraud, and abuse of American taxpayer funds are completely unacceptable and USAID is taking every measure at our disposal to recover misspent funds. The Agency suspended International Relief and Development in January from receiving U.S. Government awards based on our ongoing review of IRD’s performance, management, and financial controls.

IRD’s new chief executive, Roger Irvin, says he is working to streamline the company’s finances and is working with investigations launched by the inspectors general for USAID, the State

Department, and the Special Inspector General for Afghanistan Reconstruction.

Source: *The Washington Post*

LAWSUIT CLAIMS AUSTAL USA OVERBILLED THE MILITARY

A lawsuit filed against Austal USA claims the company, while building ships for the military, knowingly overbilled the federal government for work. It’s alleged that Austal misrepresented the rank and work hours of employees to sustain defense contracts for its Mobile River shipyard. The lawsuit was filed by four former employees, who sued as whistleblowers on behalf of the U.S. government. The Plaintiffs—William Gates, Clinton Roundtree, James Trainer and Tami Andrews—allege that Austal violated the False Claims Act. The suit, filed in June 2014, as required by law was kept under a seal. One of the original Plaintiffs, Hannah Christopher, filed for voluntary dismissal from the suit soon after it was filed.

U.S. District Judge Callie Ginny Granade ordered on March 2 the case be unsealed, allowing Austal to be served a copy of the complaint. The allegations focus mainly on several instances when the former employees say they witnessed the fraudulent acts. It should be noted that lawsuits filed under the False Claims Act require Plaintiffs to first file suit with the federal government before it is served to the defendant. The government does an investigation to determine if it will join the suit.

In her order, Judge Granade said the U.S. Attorney’s Office “declined to intervene” at this time. However, acting Assistant U.S. Attorney Joyce R. Branda had requested in a February court filing to be notified if the Plaintiffs “or any Defendant propose that this action be dismissed, settled, or otherwise discontinued, this Court solicit the written consent of the United States before ruling or granting its approval.”

The lawsuit alleges that Austal “knowingly presented and falsified data reflecting employee rank and work hours to the U.S. Navy in order to win and maintain lucrative contracts for the construction of marine vessels at its facility in the Port of Mobile. Austal currently builds two types of aluminum ships for the U.S. Navy’s billion dollar joint high

speed vessel and the littoral combat ship programs. The shipyard employs as many as 4,000 workers, according to company officials. The company first started building marine vessels for commercial clients, and did so until 2006 when it contracted, along with General Dynamics, to construct the USS Independence, the first littoral combat ship.

Funded by the Navy as a research vessel, the littoral combat ship program was red-flagged for cost overruns and construction issues. Austal later became the prime contractor, together with Lockheed Martin, with each company building two different versions of the littoral combat ship. The 10-ship inventory of littoral combat ships is worth \$3.6 billion. The contract for the joint high speed program is worth \$1.6 billion.

Source: AL.com

X. PRODUCT LIABILITY UPDATE

EMPIRE TRUCK SALES AND IMMI FOUND TO BE RESPONSIBLE FOR THE INCIDENT THAT LEFT A MAN PARALYZED

A Mobile, Ala., jury returned an \$18.79 million verdict in favor of our client, Colin Lacy, in a lawsuit against Empire Truck Sales, LLC of Mobile, Ala., and IMMI of Westfield, Ind. The verdict included \$13.79 million in compensatory damages and an additional \$5 million in punitive damages. Our client was paralyzed on July 14, 2011, when the Freightliner truck he was driving went out of control on Interstate 10 near Niceville, Fla. Mr. Lacy was represented by Principal & Lead Products Liability Attorney Greg Allen, along with Kendall Dunson, Mike Andrews, and Stephanie Monplaisir, all from our firm, and co-counsel Charlie Potts of the Mobile firm Briskman & Binion.

The incident involving Mr. Lacy was directly caused by Empire's grossly negligent maintenance of his Freightliner truck during the months of June and July 2011. Mr. Lacy first took his truck to Empire on June 7, 2011, for a Preventative Maintenance Inspection. During this inspection, Empire found that two seals needed to be replaced and

assigned the job to a lower level mechanic who had been written up numerous times for leaving parts off of trucks and not following the Freightliner manual.

While replacing the seals, this mechanic disconnected the lateral control rod, which holds the truck axles together, and did not properly reconnect it. On July 11, Mr. Lacy noticed that his truck was vibrating and making a grinding noise, so he brought his truck back to Empire to check the suspension. Instead of performing a proper suspension inspection, the same lower level mechanic who had disconnected the lateral control rod failed to test drive the vehicle or check the lateral control rod. During this service, Empire also discovered that the ABS was inoperable, but failed to diagnose and correct the problem.

When Mr. Lacy picked his truck up from Empire three days later, Empire did not tell him that his ABS was inoperable. Within nine minutes of leaving Empire, Mr. Lacy noticed that the ABS light was on and called Empire to determine if he should bring the truck back. Empire told him to disregard the light and that it would go off on its own. At 2:30 p.m., Empire's grossly negligent conduct changed our client's life forever. While driving down the interstate, the truck began to vibrate. Mr. Lacy applied his brakes to control the vibration, and because the ABS was inoperable, the brakes locked up, causing his truck to leave the road and roll over. Mr. Lacy was ejected during the rollover, resulting in his spine being severed at the T-10 level. Mr. Lacy spent more than two months in the hospital following the accident and will spend the rest of his life in a wheelchair. Greg Allen had this to say about the verdict:

This verdict will help Colin with his future medical care and other expenses. Colin was injured in 2011 and his home has yet to be modified for a wheelchair. He is a fine young man whose life was drastically altered by Empire Truck Sales' conduct. No one would want to trade places with Colin.

Charlie Potts, the very good lawyer from Mobile who helped try the case, added these comments concerning the verdict:

The jury in this case got it right; they determined that 80 percent of the fault lies with Empire Truck Sales, LLC and 20 percent with IMMI. There has to be a certain level of accountability for companies. Fortunately for Colin he will now be properly taken care of.

The trial lasted one week before Judge Mike Youngpeter in the Mobile County Circuit Court. Greg and the entire trial team did an outstanding job in this case. A high-low agreement was reached while the jury was deliberating and as a result \$14 million will be paid to Mr. Lacy within 30 days with no threat of appeal. There will be no post-verdict motions and no appearance. The case is Colin Lacy v. Empire Truck Sales, LLC, 02-CV-2012-902600.

ANOTHER GOODYEAR RV TIRE IS EXPERIENCING PROBLEMS

We have written on numerous occasions about the Goodyear G159 RV tire and the wrecks, injuries and deaths it has caused. Goodyear originally designed the G159 RV tire for metro pickup and delivery trucks, such as those used by UPS—vehicles that are used in urban settings and not for extended trips at highway speeds for several hours. The design features that made the G159 RV tire appropriate for delivery trucks made it dangerous and prone to fail when used on large RVs driven at highway speeds. The tire's thick tread and wide belt package caused the tire to run too hot and fail.

We learned that Goodyear sold the G159 as an RV tire until it could replace it with a tire that it designed for RVs, the G670. Unfortunately, the G670 is starting to experience failures and cause injuries and deaths like its predecessor.

The G670 is sold in two sizes. The larger tire, the 295/80, is made by Goodyear at its Dunlop plant in Buffalo, N.Y. The other size, the 275/70 is made at a traditional Goodyear plant. Unfortunately, the 670 RV made at the Dunlop plant is beginning to gain notoriety for failing and causing injuries and deaths. In the last few years, more than 15 lawsuits have been filed against Goodyear involving the Dunlop-made 670.

Remarkably, the Dunlop-made 670 is designed more like the G159 than the

670, which Goodyear boasts as its RV tire. The Dunlop tire tread depth is thicker, its top belt is wider and its inner liner is thinner, less than half of the 670 made at the Goodyear plant. Further, as we have learned in other tire cases, the Dunlop plant is notorious for bad manufacturing processes.

Based on what we are seeing, it is becoming apparent that Goodyear did not learn anything from its experiences with the G159. RV owners need to take caution when causing the Dunlop made 670. If you need more information, contact Rick Morrison, a lawyer in our firm's Personal Injury/Products Liability Section, at 800-898-2034 or by email at Rick.Morrison@beasleyallen.com.

PRESSURE COOKERS AND BURN INJURIES

Pressure cookers use steam to cook foods at a much faster rate than traditional means of cooking. Several manufacturers provide different versions of modern day pressure cookers offering easier means of preparing foods like casseroles and stews. As indicated by its name, a pressure cooker lid is designed to create a very tight seal to trap steam inside to allow pressure to build to the desired setting. The pressurized condition is created with the use of small amounts of water. The water boils, creating steam, the cooking mechanism of a pressure cooker. As the steam builds, pressure increases.

While they may provide an easier and arguably better way of preparing certain foods, pressure cookers, because of the heat and pressure created during the cooking process, pose a serious risk of injury to the cook and anyone in the immediate vicinity of the lid. While some burn injuries occur because of the transfer of heat from the inside to the outside of the units, more serious injuries are caused when the device explodes or allows its contents to escape under pressure.

To combat this risk, many pressure cookers are equipped with a safety or interlocked lid. This safety device is designed to prevent the lid from opening when the pressure inside the unit would cause the contents to explode out due to the built up pressure. In addition to the interlocked lid, modern pressure cookers commonly

have pressure release valves, which are supposed to depressurize the unit safely.

Experts analyzing the design of these devices report that most brands have multiple pressure release valves to serve the same safety function just in case one or more fails to do so. Given the multiple safety features designed to prevent these devices from exploding or forcibly expelling their hot contents, one might ask why there are so many incidents of burn injuries caused by pressure cookers.

Lawyers in our firm are currently investigating a claim for a client who sustained severe burns to her arms, chest area and her stomach when the heated contents of her cooker were expelled after she waited the recommended amount of time after turning the unit off before opening the cooker. Despite following the manufacturer's recommendations, and despite the inclusion of multiple safety devices, the woman still sustained serious burn injuries requiring multiple surgeries when the pressure cooker forcibly expelled its hot contents onto her body.

Research indicates that many pressure cookers, despite safety devices and recommended procedures, still explode leading to serious burn injuries. Manufacturers usually defend their product by accusing the victim of incorrectly assembling or misusing the devices. In the case our lawyers are investigating, the unit was assembled by the retailer and the client is adamant that she waited well beyond the recommended cool down time before opening the lid.

Many manufacturers have recalled pressure cookers due to product defects malfunctioning parts. As far back as 1983, more than 300,000 pressure cookers were recalled. In 2007, more than 50,000 pressure cookers were recalled due to defects dealing with the lids or pressure-induced expulsion of food from the cooker. We intend to file suit on our client's behalf. Beware of these potentially dangerous devices. If you need more information, contact Kendall Dunson, a lawyer in our firm's Personal Injury/Products Liability Section, at 800-898-2034 or by email at Kendall.Dunson@beasleyallen.com.

IS JEEP'S FIRE HAZARD EQUIVALENT TO GM'S IGNITION SWITCH DEFECT?

In 2010, the National Highway Traffic Safety Administration (NHTSA) began investigating post-collision fuel-fed fire claims related to the Jeep Grand Cherokee and the Jeep Liberty. NHTSA had discovered that the plastic fuel tank for certain Jeep Grand Cherokees (1993-2004) and the Jeep Liberty (2002-2007) had been placed between the rear axle and the rear bumper. The design of the vehicles placed the plastic fuel tank approximately 11 inches from the rear bumper. This placed the plastic fuel tanks within the recognized two-foot crush zone for the rear of the vehicle.

Most manufacturers place fuel tanks in front of the rear axle instead of behind it to ensure that fuel tanks are in an area not likely to receive crush during a collision. The fuel tanks for the Jeep vehicles also extend below the rear bumper, also increasing the likelihood that the tanks could be punctured in a rear collision.

Preliminarily, NHTSA sought a mandatory recall of 2.7 million of these Jeep vehicles. However, Chrysler, the company that owns the Jeep brand and was acquired by Fiat after the 2009 bankruptcy of Chrysler, fought NHTSA's efforts for nearly three years.

In 2013, after a private meeting between Fiat Chrysler CEO Sergio Marchionne and Ray LaHood, Secretary of the U.S. Department of Transportation, the manufacturer agreed to voluntarily recall 1.5 million of the vehicle population. The agreement required Jeep to add a tow package to the rear of the vehicle to "add safety" to the vehicle. Jeep claims that this fix will provide added safety in low-to-moderate speed rear impacts. Unfortunately, approximately 75 deaths associated with the vehicle have been reported to have occurred prior to this agreement.

Notwithstanding this agreement, NHTSA in November 2014 ordered Jeep to provide the agreed-upon fix at a faster rate. Although the initial recall occurred in June 2013, only three percent of the vehicles had been repaired by November 2014. Additionally, it had been reported to NHTSA that Chrysler / Jeep dealers had been sending customers away without the repair and telling them that their vehicles were safe without the repair.

It should be noted that Chrysler / Jeep has known about this vehicle defect for years. In fact, Chrysler fought NHTSA over recalling these vehicles while consumers continued to die as a result of the unreasonably dangerous placement of the plastic fuel tank between the rear axle and the rear bumper. The “agreed” fix between NHTSA and Fiat Chrysler is not sufficient to provide adequate protection to consumers.

Interestingly, prior to the recall, a Chrysler engineer testified in deposition that “the tow package does not protect the tank.” This fact begs the question why NHTSA would agree to such a fix after a private meeting between the Secretary for the Department of Transportation and the CEO for Fiat Chrysler. What makes the situation even worse is that the NHTSA attorney in charge of this investigation joined a prominent law firm that defends Chrysler in products liability cases after the deal was struck with NHTSA in June of 2003. If you need more information on this subject, contact Ben Baker, a lawyer in our firm’s Personal Injury/Products Liability Section, at 800-898-2034 or by email at Ben.Baker@beasleyallen.com.

Sources: Automotive News and CBS News

XI. MASS TORTS UPDATE

PLAINTIFFS PREVAILING IN TRANSVAGINAL MESH LITIGATION

A California jury returned a \$5.7 million verdict against Ethicon Inc., a Johnson & Johnson subsidiary, after finding the company’s transvaginal mesh device caused a woman to suffer injuries that will leave her in chronic pain. Plaintiff Coleen Perry sued the companies and her doctor in California state court over injuries she alleged were caused by the companies’ TVT Abbrevio mesh. The jury awarded \$700,000 in compensatory damages and \$5 million in punitive damages in the case. Ethicon and Johnson & Johnson say they plan to appeal the verdict.

Transvaginal mesh, also known as vaginal mesh or a bladder sling, has been associated with serious complica-

tions including erosion or perforation causing damages to internal organs and tissue, resulting in symptoms such as chronic pain, infections, hemorrhaging, and incontinence. The mesh is used to support pelvic organs that have dropped causing discomfort, and/or incontinence—common conditions known as pelvic organ prolapse and stress urinary incontinence. Many women have required multiple surgeries to try to remove the mesh, and some are left with lifelong pain and disability.

There are thousands of lawsuits pending against a number of manufacturers of transvaginal mesh. More than 70,000 cases are consolidated in multi-district litigation (MDL) before U.S. District Judge Joseph R. Goodwin.

The litigation seems to be shifting in the direction of the Plaintiffs, as manufacturers are hit with verdicts or opt to settle in early bellwether cases. Recent settlements and verdicts in this litigation include:

- March 6, Ethicon settled a bellwether case with Plaintiff Dianne M. Bellew on the fifth day of the trial. The case involved Ethicon’s Prolift product, which has been removed from the market. The details of the settlement are confidential.
- C.R. Bard agreed in February to settle a lawsuit filed by Plaintiff Debra Wise. The lawsuit was originally filed in West Virginia State Court before being included in the federal multidistrict litigation. The case was settled days before going to before Judge Goodwin.
- Last September a West Virginia federal jury awarded Plaintiff Jo Huskey \$3.3 million after she sued Ethicon claiming injuries from its TVT-O transvaginal mesh.
- Also in September, a Texas state jury hit Boston Scientific Corp. with a verdict in the amount of \$73 million, after finding its Obtryx-brand transvaginal mesh had caused serious injuries. The judgment included \$23 million in compensatory damages and \$50 million in punitive damages.

If you need more information on this litigation, contact Leigh O’Dell or Chad Cook, lawyers in our firm’s Mass Torts Section, at 800-898-2034 or by email at

Leigh.Odell@beasleyallen.com or Chad.Cook@beasleyallen.com.

Sources: Law 360, RightingInjustice.com, Drugwatch.com

TYLENOL MAKER TO PAY \$25 MILLION FOR SELLING METAL-CONTAMINATED DRUGS

A Johnson & Johnson subsidiary has pleaded guilty to selling liquid medicine contaminated with metal and will pay \$25 million to resolve the case. The U.S. Department of Justice announced the plea and fine last month. The subsidiary, McNeil Consumer Healthcare, pleaded guilty to one federal criminal charge in the case. In 2010, the company launched mass recalls of certain children’s over-the-counter-medicines, including Infants’ Tylenol and Children’s Motrin, made at its Fort Washington, Penn., plant.

It was the latest in a series of recalls at the time. There were far-reaching multiple recalls from 2008 to 2010 involving hundreds of millions of bottles and packages of consumer brands such as Tylenol, Motrin, Rolaids, Benadryl and other products due to faulty manufacturing. The recalls kept widely used products such as Children’s Tylenol off pharmacy shelves and seriously tarnished J&J’s reputation, which in past years was thought to be very good.

In addition to metal particles getting into liquid medicines, there were moldy odors and labeling problems. For example, the label for Sudafed allergy tablets incorrectly repeated the word “not” to say “do not not divide, crush, chew or dissolve the tablet.” In the case involving metal particles, the troubles began in May 2009 when a consumer complained after noticing “black specks” in the bottom of a bottle of Infants’ Tylenol. The specks were found to be nickel and chromium particles. As part of the agreement, McNeil also agreed to further safety measures before reopening its Fort Washington facility.

Source: Reuters

NEW WARNINGS FOR TESTOSTERONE DRUGS

The Food and Drug Administration (FDA) is warning doctors against over-prescribing testosterone-boosting drugs for men, saying the popular treatments have not been established as safe or

effective for common age-related issues like low libido and fatigue.

The agency says drugmakers must clearly state in their labeling and promotions that the drugs, currently taken by millions of U.S. men, are only approved to treat low testosterone levels caused by disease or injury, not normal aging. Additionally, the FDA cautioned that the drugs may increase the risk of heart attack, stroke and other cardiovascular problems. Drugmakers must add information about that potential risk to their prescribing labels and conduct a long-term study to further examine the issue, the FDA said. Health officials in Canada issued a similar warning about testosterone risks last July.

The FDA action follows years of industry marketing for new gels, patches and injections that promise relief from low testosterone or “Low-T.” Promotions from AbbVie, Eli Lilly & Co. and others link the condition to a variety of common ailments in aging men, including sexual problems and low mood.

Dr. Sidney Wolfe of Public Citizen says “there’s been a very successful advertising campaign to make men feel that whatever their problem is, the answer is to buy more testosterone.” The consumer advocacy group petitioned the FDA last February to add a boxed warning—the most serious type—to testosterone drugs about heart risks. But the FDA rejected the petition in July, saying there was “insufficient evidence” for such a warning.

Current labeling on the drugs is vague enough that companies have promoted them to millions of otherwise healthy men who simply have lower-than-normal levels of testosterone. “The benefits and safety of this use have not been established,” the FDA said in a statement.

The FDA began reviewing the safety of testosterone drugs in January 2014 after two federal studies associated them with increased rates of heart attack, stroke and other serious problems. Companies sell prescription testosterone in a variety of forms. The market leader, Androgel, is a gel applied to the shoulders and arms. Lilly’s Axiron is a solution that rolls on like deodorant. Endo Pharmaceuticals sells a long-acting injectable testosterone as Aveed. Our firm is handling injury claims related to these medications. If you have questions contact Matt Teague, a lawyer in our

firm’s Mass Torts Section, at Matt.Teague@beasleyallen.com.

Source: Matthew Perrone, AP Health Writer

A LOOK AT THE STATIN LITIGATION

Lawyers in our firm are handling cases involving Lipitor causing diabetes in women. The litigation has been centralized in an MDL in Charleston, SC. Frank Woodson, a lawyer in our firm’s Mass Torts Section, is handling the litigation for the firm. Previously, we have not been accepting cases for men. Now, new medical research indicates this risk also applies to males.

In a study published in *Diabetologia*, scientists from Finland found that men prescribed statins to lower their cholesterol had a 46 percent greater chance of developing diabetes after six years compared to those who weren’t taking the drug. What’s more, the statins seemed to make people more resistant to the effects of insulin—which breaks down sugar—and to secrete less insulin. The higher the dose of the statin, and the longer the patients took it, the greater their risk of diabetes.

Previous studies have suggested that statins can raise blood sugar levels, and increase the risk of diabetes by anywhere from 10 to 20 percent. But none have documented an effect this large. Doctors often consider statins for patients who are at higher risk of heart disease. It’s well-documented that one of the risk factors for future heart trouble is diabetes. So how do these results affect the decision of whether to prescribe the use of statins?

The study referred to above involved only white men. Those who developed diabetes while taking statins were similar on many metabolic measures to those who developed diabetes but weren’t taking statins. This suggests that the “statin treatment increased the risk of diabetes independently of the risk profile of the background population,” the authors wrote.

In 2012, the statin manufacturers (except for Pravachol) placed the following language in their labels: “Increases in HbA1C and fasting serum glucose levels have been reported....” In light of all the evidence this is simply not enough. The clear evidence supports a warning for new onset diabetes to be included in the warning section of

the labels. As long as there remains no warning for diabetes, we will continue to accept and review new cases for women who have been diagnosed with diabetes after using Lipitor. For questions about that litigation please contact Frank Woodson, a lawyer in our firm’s Mass Torts Section, at 800-898-2034 or by email at Frank.Woodson@beasleyallen.com.

Source: *Time* magazine

UPDATE ON RISPERDAL LITIGATION

Lawyers in our firm’s Mass Torts Section continue to pursue claims on behalf of individuals who have been injured and damaged as a result of taking Risperdal. As we have previously reported, Risperdal is the brand name drug manufactured by Janssen Pharmaceuticals, Inc., a division of Johnson & Johnson. The drug went on the market in 1993 after receiving approval from the FDA for the treatment of schizophrenia. In 2003, the drug was approved for short-term treatment of acute manic/mixed episodes associated with Bipolar I Disorder in adults.

Until 2006, the drug was not approved for any indication to treat minors. In 1997, the FDA denied a request by Janssen for a pediatric indication for the drug. Despite this denial, Janssen marketed the drug for the treatment of depression, anxiety, Attention Deficit Disorder (ADD), Attention Deficit and Hyperactivity Disorder (ADHD), conduct disorder, sleep disorders, anger management and mood enhancement/stabilization.

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

Use of Risperdal can cause gynecomastia (enlarged breasts in males), galactorrhea (milky nipple discharge), weight gain, hyperglycemia, diabetes and inhibited reproductive function. In a January 2015 Risperdal trial in Philadelphia, a former FDA commissioner testified that Janssen was aware of a link

between breast enlargement in adolescent males long before it updated the label to adequately warn about the risk. The former commissioner also testified that Janssen attempted to downplay the risks of gynecomastia in the scientific literature. The jury returned a \$2.5 million verdict against Janssen at the end of that trial.

In March 2015, a second Risperdal trial in Philadelphia resulted in a verdict in favor of Janssen. In the March case, the Plaintiff stopped taking Risperdal in 2006 and gynecomastia was not diagnosed until 2014. The jury concluded that Janssen was negligent in failing to warn about the risks of Risperdal, but that the drug did not cause the Plaintiff's injuries.

If you need more information on this subject or have a potential claims as a result of taking Risperdal, contact James Lampkin, a lawyer in our firm's Mass Torts Section, at 800-898-2034 or by email at James.Lampkin@beasleyallen.com.

PENNSYLVANIA SUPERIOR COURT AFFIRMS \$11 MILLION TOPAMAX RULING

The Pennsylvania Superior Court last month upheld an \$11 million verdict returned against a Johnson & Johnson unit on behalf of a boy who was born with a cleft palate and other defects after his mother took epilepsy drug Topamax during her pregnancy. A three-judge panel rejected Janssen Pharmaceuticals Inc.'s arguments that claims the company failed to warn the public of the drug's risks could not stand because it would have needed permission from the U.S. Food and Drug Administration (FDA) to change the label.

The court relied on the U.S. Supreme Court's 2009 decision in *Wyeth vs. Levine* to conclude that Janssen could have made changes to the warning on Topamax, even without the FDA approving the move. Senior Judge William Platt drew a direct line between the two cases in his opinion, saying:

Specifically, the FDA's Changes Being Effected (CBE) regulation permitted a brand-name drug manufacturer like Wyeth 'to unilaterally strengthen its warning' without prior FDA approval.

Therefore, federal regulations allowed Wyeth to strengthen its label to comply with its state law duty to provide an adequate warning.

A Philadelphia jury ruled in favor of Plaintiff Brayden Gurley and his parents in November 2013, concluding that mother Hayley Powell was not properly informed about the risk of birth defects connected to use of the drug. The company challenged the ruling, asserting that the family's failure to warn claim—the sole issue at the trial—was preempted by federal law. Janssen, in its appeal, contended that the Plaintiffs said at trial that the company should have unilaterally changed the categorization of the drug. It added that since this was a designation solely within the FDA's control, the change was preempted.

The company's lawyers argued that Janssen could not have charged the drug to a [Category] D drug. They claimed Janssen would have needed prior FDA approval to make that change with respect to a pregnancy category. Apparently, the Superior Court was not swayed by this argument, with Judge Platt calling it a "red herring" in the opinion. Judge Platt wrote:

Prior to trial, the court entered an order specifically prohibiting appellees from presenting any argument or evidence that Appellant could have unilaterally changed the Topamax pregnancy category without FDA-approval. Appellees maintain that they fully adhered to the court's order during trial.

At the same time the court heard the Powell case, the court also reviewed a second Topamax jury verdict, in which a \$4 million verdict was returned against Janssen over another birth defect. That appeal remains pending. Only 17 Topamax cases remain pending in the Philadelphia Court of Common Pleas mass tort program, down from approximately 30 in October.

Source: Law360.com

XII. BUSINESS LITIGATION

JUDGE APPROVES \$415 MILLION APPLE AND GOOGLE ANTI-POACH SETTLEMENT

U.S. District Judge Lucy H. Koh has given preliminary approval to a \$415 million settlement in the antitrust class action accusing Apple Inc., Google Inc. and others of illegally agreeing not to poach each others' engineers. The revised settlement proposal was called a "substantial" payout. In rejecting an earlier \$325 million settlement, Judge Koh ruled in August that the companies should have offered at least \$380 million because the class members would have recovered proportionally less from the rejected settlement than from settlements reached last year with Intuit, Lucasfilm and Pixar. Judge Koh's order granting preliminary approval to the settlement follows a hearing last month in which she indicated she would give it her approval. A final approval hearing is scheduled for July 9, with an opt-out deadline of May 21.

In rejecting the earlier settlement, Judge Koh said there was "ample evidence" of a conspiracy between the companies, including conversations involving Apple founder Steve Jobs and Google Chairman Eric Schmidt. Judge Koh wrote that Jobs allegedly told Google that hiring any of his employees would start a "war," and other companies honored the deals because they feared Jobs. Jobs once allegedly wrote to Schmidt after a Google recruiter contacted an Apple engineer, prompting Schmidt to fire the recruiter in less than an hour.

The software engineers sued Apple, Google and other Silicon Valley companies in May 2011 for damages, claiming that the companies had agreed to provide each other notice whenever one made an offer to another's employee. The Plaintiffs contended the companies also agreed to cap pay packages for prospective hires to prevent bidding wars, and to abstain from recruiting one another's personnel. The agreements depressed the workers' pay 10 to 15 percent below what it would have been with natural market conditions, the Plaintiffs claimed.

The approved settlement ends nearly four years of litigation. The allegations came to light following a U.S. Department of Justice investigation into the hiring practices of several Silicon Valley technology companies.

The new settlement is “substantial, particularly in light of the risk that the jury could find no liability or award no damages,” Judge Koh wrote, adding that the Plaintiffs had already received \$20 million from previous Defendants Intuit Inc., Lucasfilm Ltd. LLC and Pixar Animation Studios Inc. The case has spawned several related suits involving anti-poaching allegations against Dreamworks Animation SKG, Pixar, The Walt Disney Co., Sony Pictures Animation Inc., Oracle Corp. and others.

Source: Law360.com

CONTACT LENS MANUFACTURERS ACCUSED OF ANTITRUST VIOLATIONS BASED ON MINIMUM PRICE POLICIES

Several lawsuits have been filed against contact lens manufacturers, including Johnson & Johnson and Alcon Laboratories, Inc., based on the companies’ unilateral pricing policies (UPPs). Unilateral pricing policies are a form of retail price maintenance whereby a manufacturer announces a minimum resale price and refuses to sell to a reseller that sells below that minimum price. The complaints allege that these UPPs are forcing customers to pay artificially high prices for contact lenses in violation of antitrust laws.

In a lawsuit brought by Costco Wholesale Corp., Costco indicated that it first refused to increase prices for contact lenses, but eventually complied when Johnson and Johnson threatened to stop selling contacts to Costco. According to the same suit, one online retailer was forced to double its prices in order to comply with the policy. Further, Joe Zeidner, General Counsel for 1-800 CONTACTS gave the following example before the Senate regarding the choices available to a consumer wearing Acuvue Moist daily disposable lenses:

Prices for a box of 30 lenses ranged from \$18.50 at an online seller to an average price charged by eye care providers of just over \$31 per box. The next slide shows what these same choices will be for

that consumer after RPM. The minimum price will be—\$33 per box—whether she buys online, from a big box retailer, or from her eye care provider.

In October of 2014, the American Antitrust Institute (AAI) also brought these policies to light by requesting that the United States Department of Justice (DOJ) and the Federal Trade Commission (FTC) conduct an investigation into the use of UPPs in the contact lens industry. AAI President Albert Foer and Senior Counsel Sandeep Vaheesan said UPPs threaten to constrain market competition and keep retail prices artificially high. Alcon, Bausch & Lomb, CooperVision and Johnson & Johnson—which combined account for 97 percent of contact lens sales revenue in the U.S.—have each adopted UPP policies within the past year.

Historically, resale price maintenance constituted a per se violation of federal antitrust law. However, in 2007, a decision issued by the United States Supreme Court, *Leegin Creative Leather Products Inc. v. PSKS, Inc.*, moved retail price maintenance to a rule-of-reason analysis as opposed to a per se violation. Under the rule-of-reason analysis, the court will evaluate the policies to determine if they increase competition in the contact lens industry, or restrict it.

Since the shift to the rule-of-reason analysis, retail price maintenance cases have been scarce. These cases will test the Leegin decision and help determine whether retail price maintenance claims remain viable under that decision. If you need more information on this litigation, contact Leslie Pescia, a lawyer in our firm’s Consumer Fraud Section, at 800-898-2034 or by email at Leslie.Pescia@beasleyallen.com.

Sources: Law360; Testimony of Joe Zeidner available at: www.judiciary.senate.gov/imo/media/doc/07-30-14ZeidnerTestimony.pdf

XIII. AN UPDATE ON SECURITIES LITIGATION

DUKE PAYS \$146 MILLION TO SETTLE SUIT INVOLVING \$32 BILLION MERGER

Duke Energy Corp. has agreed to pay \$146 million to settle a suit claiming the company misled investors about ousting the former CEO of Progress Energy Inc. following the companies’ \$32 billion merger in 2012. The suit was pending in a North Carolina federal court. The settlement, which is still subject to court approval, covers Duke shareholders who bought stock between June 11, 2012, and July 9, 2012—a week after the merger with Progress closed—including former Progress shareholders who acquired shares of Duke stock directly in the merger of Duke and Progress.

The consolidated suit, filed shortly after Duke and Progress merged in a deal that created the largest utility in the U.S., accused Duke, its top executives and board of directors of keeping investors in the dark about a plan to remove Progress CEO Bill Johnson once the merger was completed. This was a move that also got the attention of North Carolina utility regulators. The merger agreement called for Johnson to serve as CEO of the merged company and Duke CEO Jim Rogers to serve as executive chairman and was approved by shareholders, according to the complaint. Duke’s board conducted the first post-merger board meeting on July 2, 2012, electing Johnson as CEO and then dismissing him in the same session, replacing him with Rogers.

At the time, Rogers said the board was concerned about Johnson’s ability to lead the company, but was under a contractual obligation to get the merger completed. However, the North Carolina Utilities Commission (NCUC) launched an investigation, claiming the merger that was eventually executed was the not the plan the commission had originally signed off on. The panel had questioned Rogers and several other key players over concerns that Duke misled it, as well as potentially the financial markets and other regulators across the country, in order to gain approval

for the merger. Duke struck a deal with the NCUC in November in which Rogers agreed to retire at the end of 2013.

Amalgamated Bank, the lead Plaintiff in the investor suit, said that it was pleased to reach a deal in what it claims is the largest securities fraud settlement in North Carolina history. It had this to say in a statement:

This was a brazen case of board malfeasance that shook investors' confidence and resulted in significant loss of value for the company. As long-term shareholders, we expect better and will continue to take actions to promote stable financial markets and positive returns for our clients and all shareholders.

The case is in the U.S. District Court for the Western District of North Carolina.

Source: Law360.com

BANK OF NEW YORK MELLON CORP. TO PAY \$714 MILLION IN FOREX SETTLEMENT

Bank of New York Mellon Corp. (hereafter Bank of New York) has agreed to pay \$714 million to resolve claims that it defrauded foreign exchange customers. This came in a settlement with New York Attorney General Eric Schneiderman and Manhattan U.S. Attorney Preet Bharara and it also ends the class action claims. Bank of New York also admitted to the facts alleged against it and agreed to fire two executives implicated in the scheme as part of the settlement, which also resolves claims from the U.S. Securities and Exchange Commission (SEC), the U.S. Department of Labor and some private litigants. The settlement includes a \$335 million payout to customers involved in class action litigation against the bank. Attorney General Schneiderman said in a statement:

Investors count on financial institutions to tell them the truth about how their investments are being managed. But Bank of New York Mellon misled customers and traded at their expense.

The two attorneys general sued Bank of New York in October 2011, alleging that its traders charged its clients the worst rate of the trading day and pocketed

the difference between the rate it charged and the actual market price at the time of the trades. The complaint alleged that several New York state agencies, including the New York State Deferred Compensation Plan, which manages the pensions for state employees, lost tens of millions of dollars because of Bank of New York Mellon's actions.

The bank told customers that through its Standing Instructions program they would receive the "best rate of the day" or the "most competitive/attractive [foreign exchange] rates available to us." But Bank of New York employees admitted to investigators that the bank neither sought the best rates for Standing Instructions customers nor provided the best execution.

The complaint alleged that although the Standing Instructions program accounted for only 20 percent of the bank's foreign currency exchange transactions, it equaled 65 to 75 percent of its foreign exchange sales revenue. Bharara said in a statement:

The bank, after three years of litigation, has finally admitted what was always clear from the evidence—contrary to its various representations, including a claim of 'best rates,' the bank in fact gave clients prices at or near the worst interbank rates reported during the trading day. The bank repeatedly deceived its customers and is paying a heavy penalty for it.

Under the settlement, the offices of Schneiderman and Bharara will each receive \$167.5 million. Attorney General Schneiderman said he will send the bulk of those funds to customers defrauded by Bank of New York, including the New York state pension fund and the State University of New York system. The Labor Department will receive \$14 million and the SEC \$30 million, in addition to the \$335 million private settlement.

The settlement with Bank of New York is the latest in a string of settlements from major banks with law enforcement, regulators and private litigants over alleged violations in their foreign currency operations. UBS was the latest to settle private claims in a \$135 million deal on March 13.

Source: Law360.com

\$69 MILLION MORTGAGE-BACKED SECURITIES SETTLEMENT IS APPROVED BY COURT

A New York federal judge has granted final approval to a \$69 million settlement by Bank of America NA and U.S. Bank in a mortgage-backed securities class action. This came one week after ruling that Plaintiffs in a similar case couldn't intervene to oppose the deal. U.S. District Judge Katherine Forrest approved the settlement during a hearing last month. The settlement resolves allegations from investors that the banks failed in their role as trustees for mortgage-backed securities trusts containing shoddy loans that were issued by Washington Mutual Inc. before the 2008 financial crisis.

Judge Forrest previously ruled on March 5 that a separate group of investors pursuing similar claims against U.S. Bank could not intervene for the purpose of objecting to the settlement. The judge said the terms of the agreement didn't bar those investors' claims. Judge Forrest noted that no member of the settlement class had lodged an objection. She said in her order: "That is, in the court's view, entirely appropriate given the positive result that occurred."

This suit had been one of the first to claim that trustees of residential mortgage-backed securities trusts had failed to adequately safeguard trust assets. The suit was initially filed in April 2012. In an amended complaint in November 2013, the Plaintiffs claimed that loans underlying the securities were plagued by delinquencies in borrower payments, credit losses and downgrades by rating agencies. The amended complaint said that the bank trustees were tasked with carefully monitoring the performance of the loans. Instead, they "stood by and did nothing" as the loans soured and reports emerged of widespread underwriting abuses at Washington Mutual.

As we reported in a prior issue, Washington Mutual collapsed in September 2008 due to massive losses in its subprime mortgage loans. JPMorgan Chase & Co. took over the bank in a merger brokered by the Federal Deposit Insurance Corp. The parties announced the \$69 million settlement in November 2014. Interestingly, six weeks later, the Second Circuit issued a precedential decision in another Residential Backed Mortgage Security (RBMS) case that,

had it been issued earlier, apparently would have undermined the Plaintiffs' claims under the Trust Indenture Act.

Source: Law360.com

XIV. INSURANCE AND FINANCE UPDATE

FIREMAN'S FUND TO PAY \$44 MILLION TO SETTLE CROP INSURANCE FRAUD CHARGES

Fireman's Fund Insurance Co. has agreed to pay \$44 million to settle allegations under the False Claims Act that it knowingly issued insurance policies that were ineligible under the U.S. Department of Agriculture's (USDA) federal crop insurance program and falsified documents. Between 1999 and 2002, Fireman's Fund operated a crop insurance business and participated in the federal crop insurance program. Under the program, Fireman's Fund sold and serviced crop insurance policies that were reinsured by the USDA for a portion of the risks.

The Justice Department alleged that between Jan. 1, 1999, and Dec. 31, 2002, Fireman's Fund knowingly issued federally reinsured crop insurance policies that were ineligible for federal reinsurance. Specifically, Fireman's Fund allegedly backdated policies, forged farmers' signatures, accepted late and altered documents, whited-out dates and signatures, and signed documents after relevant deadlines. The Justice Department said the policies were issued by Fireman's Fund offices in Modesto, Calif.; Lambert, Miss.; Fargo, N.D.; Lubbock, Texas; Prosser, Wash.; and Overland Park, Kan.

Fireman's Fund, an Allianz SE subsidiary headquartered in Novato, Calif., is now concentrating on commercial insurance after agreeing in December to sell its personal lines business to ACE. Officials said the settlement resulted from an investigation by the Justice Department's Civil Division, the U.S. Attorney's Office in the Western District of North Carolina and the USDA's Office of Inspector General, Office of Investigations, Office of General Counsel, and

Risk Management Agency, including its Special Investigations Branch.

Source: *Insurance Journal*

A LOOK AT CGL COVERAGE FOR DATA BREACHES

Given the recent significant data breaches at numerous retailers in the United States, multiple cases have addressed whether commercial general liability (CGL) insurance policies provide coverage for data breaches. Companies such as Target have already incurred significant expenses at the hands of a massive data breach. Any company subject to a similar situation faces the risk of incurring millions of dollars in fees and expenses. Generally, CGL policies provide coverage for damages for which the insured is liable due to bodily injury and/or property damage.

However, the foundation for data breach coverage under the CGL policy is often the coverage for personal and advertising injury, which includes injury from a "publication" that violates a person's right of privacy. Questions for courts to determine are whether there was a publication, and whether the insured is required to have made the publication or whether a third party may do so. Overall, courts have been inconsistent on deciding whether these policies cover data breach losses.

In February 2014, a New York state court ruled that Zurich American Insurance Company did not have a duty to defend Sony under a CGL policy for liability arising out of the hacking of Sony's PlayStation online services. The court analyzed the portion of the CGL policy providing coverage for "oral or written publication in any manner of material that violates a person's right of privacy." The court found that the hackers' act of taking personal information constituted a publication, but coverage did not apply because the hackers, not Sony, were the actual publishers. Contrast that decision with decisions from courts in Maryland and California that have found that GCL coverage applied to insured's liability for data breaches under the same publication provision.

With the growing frequency of data breaches and the increasing costs associated therewith, many insurance com-

panies are revisiting their CGL policy forms and specifically excluding coverage for cyber-attacks and data breaches. As insurance companies move toward express exclusion of data breach coverage, GCL coverage will likely no longer be sufficient. If you need more information on this subject, contact Leslie Pescia, a lawyer in our Consumer Fraud Section, at 800-898-2034 or by email at Leslie.Pescia@beasleyallen.com.

Sources: *Inside Counsel*, *National Law Review*, and *Law360*

BLUE SHIELD OF CALIFORNIA LOSES ITS TAX- EXEMPT STATUS

The California Franchise Tax Board recently revoked the tax-exempt status of Blue Shield of California, the state's third-largest health insurer. The company has held this status since its founding in 1939. Already facing criticism over its rate hikes, executive pay, and \$4.2 billion in financial reserves, the loss of its tax-exempt status could now leave Blue Shield of California on the hook for tens of millions of dollars in state taxes each year. It should be noted that the insurer has paid federal taxes for years. While the State requires the insurer to keep a rainy-day fund, Dena Mendelsohn, a health policy analyst for the Consumers Union in San Francisco, estimated that Blue Shield's reserve is around 1500 percent, three to four times what is required.

It is most unusual for the Tax Board to revoke a tax-exempt status, but the decision was made after a lengthy state audit looking into the justification for Blue Shield's taxpayer subsidy. A spokeswoman for the tax agency has declined to comment on the reason behind the status change. Blue Shield is protesting the decision, but has been ordered to file tax returns back to 2013 in the meantime.

Blue Shield of California has about 3.4 million customers and 5,000 employees and posted \$13.6 billion in revenue last year. Kaiser Permanente and Anthem Inc. are the only two insurers in California with higher enrollment. Michael Johnson, who resigned as public policy director last month after 12 years with the company, agreed with critics saying the insurer has been "shortchanging the public" for years by shirking its respon-

sibility to Californians and operating too much like its for-profit competitors.

In 1996, Blue Cross of California, which is now part of Anthem, switched to a for-profit status and generated \$3 billion to establish the California Endowment and the California Health-Care Foundation. Johnson, who estimates the company could be worth as much as \$10 billion, says he plans to launch a public campaign calling on executives to convert Blue Shield of California to a for-profit company. If that happens, Blue Shield would return billions to the public that could be used to bolster the state's health care safety net. It will be most interesting to see what develops. We will monitor the situation closely.

Sources: <http://www.npr.org/2015/03/19/393982147/blue-shield-of-california-loses-its-tax-exempt-status>; <http://www.latimes.com/business/la-fi-blue-shield-california-20150318-story.html#page=1>

STATE FARM WAS GIVEN APPROVAL TO USE DRONES FOR DAMAGE ASSESSMENTS

State Farm has become the first insurer in the United States to receive Federal Aviation Administration (FAA) permission to test Unmanned Aircraft Systems (UAS) for commercial use. The decision provides the Illinois-based insurer the opportunity to research drone technology and potentially deploy it in ways that the company says could benefit customers. State Farm plans to explore the use of unmanned aircraft to assess potential roof damage during the claims process and respond to natural disasters. The company filed an application with the FAA to test drones late last year. At the time, it asked for two exemptions:

- One to allow the company to test drones at a private State Farm test site in central Illinois, and
- the other would allow State Farm to use drones during catastrophes.

It appears that State Farm plans on using drones extensively. Wensley Herbert, Operations Vice President for Claims at State Farm, had this to say:

The potential use of UAS provides us one more innovative tool to help State Farm customers recover from the unexpected as quickly and efficiently as possible. We will

continue to provide the same personal, good neighbor service State Farm is recognized for, with assistance from these high-tech devices.

State Farm plans to move forward with test and development flights. The flights will be conducted at private test sites in the Bloomington, Ill., area. Eventually, these test flights will evolve to testing in real-world scenarios. State Farm said it will strictly adhere to parameters set forth by the FAA. But this use of drones is sort of scary.

Source: *Claims Journal*

XV. EMPLOYMENT AND FLSA LITIGATION

\$14 MILLION VERDICT IN TRAFFICKING LAWSUIT

A historic \$14 million verdict in a labor trafficking suit was returned last month against shipbuilder Signal International LLC. This may be the largest trafficking verdict in U.S. history. The verdict, handed down by a jury in a Louisiana federal jury, came after a seven-year battle in Louisiana district court, and involved a collaborative effort between the Southern Poverty Law Center (SPLC) and some of the nation's top law firms. Since Signal faces 12 more similar lawsuits, this verdict will likely impact the other cases. It definitely increases awareness about human trafficking.

The suit alleged that in the aftermath of Hurricane Katrina, roughly 590 Indian men were trafficked into the U.S. on H-2B visas to work as welders and pipefitters at Signal sites in Pascagoula, Miss., and Orange, Texas. The workers were brought in to fix oil rigs and other facilities, according to SPLC. Not only were the workers falsely promised green cards, but they had to pay mandatory recruitment and travel fees that could reach \$25,000, leaving them heavily in debt. Once they had arrived in the U.S., the workers were allegedly forced to live in guarded labor camps, and were subjected to threats of deportation designed to make them too afraid to quit.

After a month-long trial a jury found that Signal, the New Orleans law firm of

attorney Malvern C. Burnett, and an India-based recruiting company were liable for trafficking, racketeering and other abuses. Signal was ordered to pay about \$12.25 million, while Burnett's firm and the recruiter were each liable for \$915,000.

Martina Vandenberg, the founder of the Human Trafficking Pro Bono Legal Center, told Law 360 that it's hard to imagine that the \$14 million verdict wouldn't impact the other suits. She added"

If you think about it, this was five Plaintiffs, and those five Plaintiffs ended up with a \$14 million verdict. There are hundreds of Plaintiffs waiting in the wings for their litigation to roll on through the courts. I cannot fathom how this case would not have an impact on the others.

The case failed to win class certification in 2012, prompting SPLC to put into action a pro bono effort to bring individual cases for Plaintiffs who still wanted to go forward. This resulted in a number of lawsuits being filed throughout Louisiana and Texas. Daniel Werner, who is with the SPLC, coordinated the pro bono project. There are now 13 total cases against Signal, with the next trial set to start this month in Beaumont, Texas.

Currently, 200 additional Plaintiffs have claims pending against Signal. Although the details of each worker's situation may vary slightly, their claims all share a similar foundation. Signal's false promises of green cards and financially motivated disregard for the workers will be at the core of each case.

The Signal litigation, and the resulting \$14 million verdict, illustrate the fact that even though Plaintiffs may not have the ability to find lawyers or bring individual claims, plenty of organizations and law firms are willing to help them. Of the 147 trafficking cases that have been filed—94 percent of which were for labor trafficking—many of them have been brought by the Southern Poverty Law Center, which, under Werner's direction, is blazing the path for litigation battling human trafficking.

The legal battle against Signal is unfolding against a renewed interest in Congress and government agencies in fighting human trafficking. Recently, a new government report found that

workers on H-2A and H-2B need better safeguards to protect them from prohibited recruiting fees or not being aware of a job's true working conditions. The report followed the publication of a long-awaited rule aimed at cracking down on trafficking abuses in government contracting. Signal recently asked the court to stay the litigation so the shipbuilder can appeal the award without posting security.

Source: Law 360

VIACOM PAYS \$7.2 MILLION TO SETTLE INTERN WAGES LAWSUIT

Viacom Inc. has agreed to pay about \$7.2 million to resolve a putative class action brought by two former interns who claimed they were unlawfully denied minimum wage. The named Plaintiffs, Casey Ojeda and Karina Reynaga, last month filed a motion for preliminary approval of a class action deal that would resolve both federal and state wage claims following nine months of settlement negotiations, according to court documents. The interns said in a memorandum:

Further litigation here would cause additional expense and delay. If the court denied the motions, a fact-intensive trial would necessarily follow. A trial would be lengthy and complex and would consume tremendous time and resources for the parties and the court. ... The settlement, on the other hand, makes monetary relief available to class members in a prompt and efficient manner.

Under terms of the settlement, each intern in the 12,500-strong class would be paid \$577 while ex-Viacom interns Ojeda and Reynaga would receive \$5,000 each for services rendered on behalf of the class. Opt-ins Nicole Rosinsky, a former MTV human resources intern, and Nikhil Kasbekar, a former Viacom marketing intern, would receive \$2,500 and \$1,500 respectively. Ojeda filed the lawsuit in 2013, targeting Viacom and MTV Networks Enterprises Inc. under the Fair Labor Standards Act as well as New York law.

Ojeda and others were misclassified as exempt from minimum wage requirements, the complaint alleged. The plain-

tiffs sought collective action certification in January 2014, saying Viacom "engaged in an unlawful scheme to require Plaintiffs to provide free labor that undeniably benefited defendants." The court granted certification in April 2014.

The proposed settlement is similar to other settlements agreed to by other big companies including NBCUniversal Media Inc. and Conde Nast Publications. In 2014, Conde Nast settled for \$5.8 million with an estimated 7,500 former interns, and disbanded its internship program altogether. The same year, NBCUniversal settled with a class of nearly 8,000 former unpaid interns at "Saturday Night Live" and MSNBC for \$6.4 million. The proper standard for determining whether an individual is an intern or an employee covered by wage law is currently before the Second Circuit in appeals involving the Hearst Corp. and Fox Entertainment Group Inc. The case is in the U.S. District Court for the Southern District of New York.

Source: Law360.com

UNION PACIFIC ORDERED TO PAY \$350,000 TO INJURED WORKER

Federal regulators have ordered Union Pacific to pay \$350,000 to a long-time employee who was disciplined after reporting an injury. The railroad says it plans to appeal. According to the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA), this is the third time since 2011 that Union Pacific had violated federal rules by disciplining workers who reported injuries and sought treatment. OSHA says a locomotive engineer based in North Platte, Neb., who was injured in a December 2013 collision, was disciplined afterward. According to OSHA, this worker had never been disciplined before in 35 years of working for the railroad. A Union Pacific spokesman, Aaron Hunt, says the railroad strongly disagrees with the regulator's findings and will definitely appeal.

Source: Insurance Journal

XVI. PREMISES LIABILITY UPDATE

A \$24 MILLION VERDICT IN AN ALABAMA BALCONY COLLAPSE CASE

Our firm tried a most interesting case recently that involved an apartment complex consisting of 35 separate units. Six persons were injured in the collapse of a second story landing at the apartment complex, which was located in an Alabama city, and our firm represented all six of them. We filed suit on behalf of the six victims against the corporate owner of the complex and the management company that operated the complex. Two of the individuals who were injured in the collapse had settled their claims prior to the trial for confidential amounts. We proceeded to trial on behalf of the other four. After a month-long trial, the jury returned a \$24,750,000 verdict in the case.

We were able to prove a very strong case of extreme neglect on the part of both Defendants over an extended period of time. I believe liability in this case was as strong as I have ever seen in any other case. For example, the corporation safety officer, who was totally unaware of the safety standards involved in the case, actually was our best witness. He made out a case of wanton conduct for us. Hopefully, the Defendants, who own and operate a number of apartment complexes located in several southern states, learned a valuable lesson from this trial and will change the way they operate.

Kendall Dunson, who was the lead attorney, and I tried the case. The jury, after four weeks of testimony, found the Defendants guilty of wanton conduct. I talked to several jurors after the trial, and based on what they told me, the Defendants were most fortunate that the verdicts for at least three of the Plaintiffs weren't much higher.

XVII. WORKPLACE HAZARDS

FAMILIES SETTLE CLAIMS INVOLVING THE DEATHS OF TWO TEENAGERS ON MICHIGAN DAIRY FARM

A settlement has been reached in a wrongful death lawsuit filed in federal court by families of two teenagers who died in 2010 after falling into a tank at a Barry County dairy farm. The families filed suit, saying 17-year-old Francisco Martinez and 18-year-old Victor Perez were overcome by fumes emitted by decaying molasses in the tank located at the farm. They died of asphyxiation after being trapped in the oxygen-depleted environment.

The two boys had been cleaning the tanks at the time of the incidents. It was alleged in the lawsuit that the boys had complained to their supervisor about conditions inside the tank. The victims were overcome by being exposed to hydrogen sulfate and the decaying materials in the tank. Allegedly they were told by the supervisor to take turns in the tank. The farm is located about 20 miles southeast of Grand Rapids.

Source: *Claims Journal*

MISSISSIPPI SHIPYARD PAYS \$144,000 FINE FOR DUST AND PAINT

A shipyard in Pascagoula, Miss., that has been a focus of complaints by nearby residents is paying a \$144,545 civil fine for environmental violations including allowing sandblasting particles and paint to become airborne. The shipyard, VT Halter Marine, agreed to pay the fine to the Mississippi Department of Environmental Quality. Residents in a subdivision just west of Bayou Casotte claim they are suffering health and property damage from the highly industrialized corridor, which includes the now-shuttered Mississippi Phosphates plant, the Chevron Corp. refinery and the Signal International shipyard.

The state's environmental regulator found that the shipyard, owned by Singapore Technologies Engineering, committed a total of 44 violations documented in a May 2014 inspection. Other problems found included:

- Improperly storing and labeling paint, solvent and oil;
- Sending hazardous waste to regular landfills;
- Allowing oil, pollutants and dirt to run off into Bayou Casotte; and
- Failing to contain blowing dust and dirt from dredging and construction areas.

Chris Wells, a lawyer for the department, said the inspection was prompted in part by residents' complaints. He said sandblasting curtains meant to contain emissions had gaps and holes. It was not certain how long VT Halter had been in violation, according to Wells. The company agreed that it would conduct an engineering study about how to contain sandblasting and painting within 150 days. The company also agreed to complete a building to house blasting and paint activities by June 30.

Halter was already erecting that building as part of a \$35 million project using \$22 million in Halter money and \$13 million in federal Hurricane Katrina recovery money. In the meantime, Halter pledged to use a sweeper, water truck and vacuum truck to hold down dust and to fully curtain any sandblasting and painting. However, residents say those measures have thus far proved ineffective.

Source: Associated Press

XVIII. TRANSPORTATION

ASIANA SETTLES PERSONAL INJURY SUITS OVER SAN FRANCISCO CRASH

Asiana Airlines Inc. has settled 72 personal injury claims in lawsuits filed over a July 2013 crash landing at San Francisco International Airport. Reportedly, the company is continuing to negotiate with other passengers. The airline announced the settlement in a federal court filing in Oakland, Calif., without describing terms of the agreements. Three people died after an Asiana flight carrying 291 passengers struck a seawall as pilots attempted to land. The impact tore off part of the tail and sent the jet

skidding down the runway before it came to rest and caught fire.

Asiana is not asking for caps on damages by claiming no negligence in the crash. While 255 passengers and crew members suffered either no injuries or minor ones, 49 suffered major injuries. It appears that was the finding by the National Transportation Safety Board (NTSB). The case is in the U.S. District Court, Northern District of California (Oakland).

Source: *Insurance Journal*

AIRLINES REPORT MORE DEATHS, FEWER ACCIDENTS IN 2014

The number of deaths in jetliner disasters increased last year. But there were fewer accidents. The International Air Transport Association (IATA), in its annual safety report, said that 641 people died in airline accidents in 2014. Those figures don't include the 298 people killed when Malaysia Airlines Flight 17 was downed over Ukraine. There were 210 deaths in 2013 and the five-year average is 517 deaths. IATA said last year was marked by two "extraordinary and tragic events" both involving Malaysia Airlines: Flight 17 and earlier in the year the disappearance of Flight 370, which was carrying 239 people.

The IATA numbers don't count Flight 17 because the plane was shot down by anti-aircraft weapons. Therefore, it wasn't classified as an accident. The number of fatal airplane crashes fell to 12 last year from 16 the previous year and the five year average of 19. The group said that translated into one serious accident in which an aircraft is destroyed or severely damaged for every 4.4 million flights, a record low. In 2013, the so-called hull loss rate was one plane written off for every 2.4 million flights.

According to IATA Director-General Tony Tyler, flying overall is getting safer despite a string of recent disasters involving Asian carriers. That has raised concerns about flight safety and left the region's serious accident rate higher than the global average. Tyler said:

It would be a mistake to think that flying in Asia is unsafe, but it would also be naive to think there were no issues at all.

Airlines have expanded rapidly in the past decade in Asia, particularly in Southeast Asian countries such as Indonesia and Malaysia, straining the region's aviation infrastructure and runway capacity and forcing carriers to scramble for pilots. Three of last year's 12 plane crashes involved jet aircraft and accounted for the bulk of the deaths. In December, an AirAsia jet carrying 162 people crashed into the Java Sea. In July, an Air Algerie jet went down in Mali during bad weather, killing all 116 aboard.

The nine other crashes involved turboprop aircraft, including a TransAsia ATR-72 that crashed in July on the Penghu island chain in the Taiwan Strait, killing 58 people. Another TransAsia turboprop crashed in February this year, killing more than 40 people.

Source: *Claims Journal*

BIG TRUCKS CAN CREATE HIGHWAY HAZARDS

Drivers of large trucks are 10 times more likely to be the cause of a car crash than any other factor, including weather, road conditions, or vehicle performance, according to the U.S. Department of Transportation (DOT). Tractor-trailers and other large commercial trucks account for approximately 500,000 vehicle accidents in the US each year. Ten percent of those end with at least one fatality, and in 80 percent of those incidents it is the driver of the car who suffers the life-ending injury. These massive trucks can weigh up to 40 times more than a typical car. At 80,000 pounds, a fully loaded truck traveling at 60 miles per hour can demolish anything else on the road.

There are an estimated two million tractor-trailer trucks on the road nationwide and every year some 123,918 large trucks are involved in crashes. Driver error combined with the following factors is the primary cause of these crashes, according to federal statistics:

- Prescription or illegal drug use affects the truck driver's reaction time and causes 26 percent of truck-car crashes.
- Speeding or traveling too fast for the road conditions was also a common cause, found in 23 percent of accidents.

- Being lost or unfamiliar with the areas they travel causes 22 percent of wrecks. This is to be expected by the nature of a trucker's work.
- Over-the-counter drug use by the driver contributes to 18 percent of smash-ups.
- Failure to check blind spots and carefully observe all sides of the truck before making a turn causes 14 percent of car-truck accidents.
- Fatigue is not the top factor causing truck crashes, surprisingly. A driver's lack of sleep or rest causes 13 percent of accidents.
- Failing to use a turn signal or making some other illegal maneuver causes 9 percent of collisions.
- Distracted driving and driver inattention is a problem for truck drivers. Eight percent of crashes involved drivers whose attention was taken away from the road—including by road work or other accidents.
- Poor evasive action contributed to 7 percent of accidents. Big rigs are difficult to maneuver, and drivers can underestimate the level of evasive action needed.
- Aggressive driving, such as tailgating or weaving, contributes to another 7 percent of deadly crashes.

It's important for folks, when driving near a big truck, to remember that their rigs have large blind spots. Drivers of vehicles should avoid these "no-go zones" at the rear of the truck, the side, and the connecting point between the truck and the trailer. If a person can't see the driver in the truck's side mirrors, the driver can't see that person either. If you need more information on this subject, contact Chris Glover or Julie Beasley at 800-898-2034 or by email at Chris.Glover@beasleyallen.com or Julie.Beasley@beasleyallen.com.

Source: *Personalinjury.com*

TRACTOR-TRAILER HIT BY TRAIN IN NORTH CAROLINA WAS TOO BIG FOR HIGHWAY

It has been reported that the 127-ton tractor-trailer that derailed an Amtrak train at a railroad crossing in North Carolina last month was about three times

the size and weight of a standard 18-wheeler. The reports indicate it was so big that it required a Highway Patrol escort. The height required it to take back roads around some Interstate overpasses. Authorities say the truck driver involved in the crash on March 9 that injured 55 people was struggling to negotiate a tight left-hand turn across the tracks from one two-lane highway to another with this enormous load when the passenger train came roaring around a curve in the tiny community of Halifax, N.C.

A special state permit enabled the transport company to exceed length and weight limits as it hauled the electrical distribution facility made by PCX Corp. to New Jersey. The tractor and trailer was 164 feet long and had 13 axles to support the combined weight of 255,000 pounds. A standard 18-wheeler has five axles and the top weight is 80,000 pounds.

According to an eyewitness, the driver of the truck was moving back and forth over the tracks trying to make the turn for about eight minutes before impact. Reportedly, between 30 and 35 passenger and freight trains use this stretch of CSX railroad daily. It doesn't appear that CSX or Amtrak was warned of the driver's difficulties at the crossing prior to the incident.

Steve Ditmeyer, a former Federal Railroad Administration official who teaches railway management at Michigan State University, says that well-established protocols require truck drivers and their trooper escorts to "clear their routes and inform the railroad dispatchers what they're doing." And he added that even if they lose contact, a toll-free emergency number is prominently displayed at each crossing. A dispatcher would have immediately put up a red signal for Amtrak and radioed Amtrak to stop, according to Ditmeyer. In this case, based on all reports, the train engineer didn't know about the truck until he was coming around a curve. Ditmeyer says that the engineer "had no long vision."

It was reported that the trooper on the scene didn't have adequate time in which to alert the railroad. The trooper was said to have had only 25 seconds or so to react after the approaching New York-bound train set off warning lights and the crossing arms came down. Unfortunately, he simply didn't have a

chance to give any warnings to the railroad.

Fortunately, most of the 212 passengers on the train weren't seriously injured. Most of them were treated at hospitals and released by the next day. This incident could have been a disaster. The Federal Railroad Administration's database shows at least five previous collisions at the same crossing, all involving vehicles on the tracks. The most recent was in 2005, when a freight train hit a truck's "utility trailer." In 1977, an Amtrak train hit a car at 70 mph. The driver got out in time, but a railroad employee was injured, that accident report said.

This collision was the third serious train crash in less than two months. Crashes in New York and California in February killed a total of seven people and injured 30. The Federal Railroad Administration is interviewing witnesses and reviewing onboard recorders as part of its investigation.

Source: *Insurance Journal*

XIX. ENVIRONMENTAL CONCERNS

OHIO SUES BP FOR \$33 MILLION OVER FALSE CLAIMS TO GET CLEANUP MONEY

BP continually harps that the settlement process in the Gulf of Mexico is overrun with "illegitimate" or "fraudulent" claims, which, by the way, is totally false. Those claims come from a company that has tried its dead-level best to change the settlement it helped design and fully supported in the multi-district litigation (MDL) in New Orleans. BP regularly places advertisements in major publications and asks the public to call a fraud hotline to catch any alleged fraudsters. It is ironic that BP is now being accused of wrongfully collecting more than \$33 million in state reimbursements from the State of Ohio to clean up storage tank leaks in that state. While this is an unrelated matter from the disaster in the Gulf, it's certainly a touch of irony.

The State of Ohio has filed suit against BP. It's alleged in the suit that the oil giant wrongfully collected more than

\$33 million in state reimbursements to clean up storage tank leaks. Attorney General Mike DeWine announced the filing of the suit in a news release. BP claims it acted in good faith and says it will defend the lawsuit. The suit, filed in Franklin County Common Pleas Court, alleges that BP got the money after falsely telling the state that it had no insurance for the leaks. That appears to have been a false statement.

Ohio set up the Petroleum Financial Assurance Fund to help pay for cleanup costs in the event that storage tank owners did not carry any insurance or accept money from other sources. It's alleged in the lawsuit that BP submitted 2,651 reimbursement claims to the state despite having "layers of insurance and often accept[ing] both state and insurance money for the same leaks." An additional \$22,281,926.28 is being sought from pending claims. The lawsuit demands that BP return the money and pay unspecified damages.

Source: *Cleveland.com*

NORTH CAROLINA SUPREME COURT TO DECIDE DUKE COAL ASH CASE

A case before North Carolina's highest court will decide whether state environmental rules require Duke Energy to clean up its leaky coal ash dumps immediately, or years down the road. The North Carolina Supreme Court heard arguments last month after Duke Energy and state regulators appealed last year's ruling by Superior Court Judge Paul Ridgeway that the company is required to take "immediate action" to eliminate sources of groundwater pollution at its unlined ash pits. Cape Fear River Watch and other groups sued after the state Environmental Management Commission determined Duke could satisfy the legal requirement for immediate action by taking steps to develop a plan for stopping its pollution in the future.

Lawyers for Duke and the state commission claimed the issue is now moot since legislators passed a new law in the wake of last year's massive Dan River spill that requires Duke to cap or remove all of its dumps by 2029. Four "high priority" sites are set to close by 2019. Further, they argued, the term "immediate action" can rightly be construed as having multiple meanings other than requiring an immediate

cleanup. Special Deputy Attorney General Jennie Hauser, representing the state, said:

The court erred in failing to give deference to the commission's interpretation of its own rules. "Immediate," in many contexts means immediate in terms of the timing. ... To 'take immediate action' means to initiate the action that's required. That can be a prompt notification, or an assessment.

D.J. Gerken, a senior attorney for the Southern Environmental Law Center, told the justices that the term should be applied literally, as the lower court had ruled. "Immediate action is required to eliminate the source of the contamination," Gerken said, summarizing the requirement. Environmental groups have been pressing for years for state regulators to require Duke to stop its pollution, but gained little traction until last year's big spill, which coated 70 miles of the Dan River in gray sludge.

The ash, which is the waste left behind when coal is burned to generate electricity, contains such toxic heavy metals as arsenic, selenium, chromium and mercury. Duke, the nation's largest electricity company, adamantly denied any wrongdoing for years. But in December, the company conceded in regulatory filings that it had identified about 200 leaks and seeps at its 32 coal ash dumps statewide that together ooze out more than 3 million gallons of contaminated wastewater each day.

Last month, the U.S. Justice Department charged Duke with nine misdemeanor counts involving violations of the Clean Water Act for unlawful dumping at coal-fired power plants in Eden, Moncure, Asheville, Goldsboro and Mt. Holly. Duke says it has already negotiated a plea agreement under which it will admit guilt and pay \$102 million in fines, restitution and community service. The state Department of Environment and Natural Resources had fined Duke \$25 million over pollution that has been seeping into groundwater for years from a Duke plant near Wilmington.

Source: *Insurance Journal*

XX. AN UPDATE ON CLASS ACTION LITIGATION

AIG's \$970 MILLION SETTLEMENT OVER SUBPRIME MORTGAGES IS APPROVED

American International Group Inc. (AIG) shareholders have received approval of a \$970.5 million settlement resolving claims they were misled about its subprime mortgage exposure, leading to a liquidity crisis and \$182.3 billion in federal bailouts. U.S. District Judge Laura Taylor Swain in Manhattan granted final approval at a hearing last month. This appears to be one of the largest class action settlements to come out of the 2008 financial crisis.

The U.S. Justice Department and U.S. Securities and Exchange Commission (SEC) had closed related investigations involving AIG in 2010. Judge Swain noted that no potential class member had objected to the terms of the settlement, which she said was strong evidence that it was "fair, reasonable and adequate" and should be approved. The settlement covers investors who bought AIG securities between March 16, 2006, and Sept. 16, 2008, when the company received its first bailout.

Investors led by the State of Michigan Retirement Systems, which oversees several state pension plans, accused AIG of failing to disclose the risks it took on through its portfolio of credit default swaps and a securities lending program. They said the failures led investors to buy stock and debt they otherwise would not have bought, resulting in billions of dollars in losses. A government rescue bail out in 2008 led taxpayers to take a nearly 80 percent stake in the New York-based insurer. The government has since sold off its stake in AIG, resulting in a positive return of \$22.7 billion to the U.S. Treasury Department and Federal Reserve.

Source: *Insurance Journal*

Pfizer's \$400 MILLION CLASS ACTION SETTLEMENT GETS EARLY APPROVAL

A New York federal judge has granted early approval to a \$400 million settle-

ment ending a class action lawsuit accusing Pfizer Inc. of misleading investors about illegal off-label drug marketing. This came after lawyers revised notices to class members clarifying details about the litigation. U.S. District Judge Alvin K. Hellerstein signaled his preliminary approval at a hearing in February, but ordered both sides to come up with a new opt-out notice that explains clearly how the case came to its current stage. A revised settlement notice filed in March included a new section on how to request exclusion from the settlement.

Judge Hellerstein had also cautioned that while the \$400 million overall payout was quite large, that small investors might not recoup much given a recovery of 15 cents per share, less than the \$1.26 per share estimated by the Plaintiffs. While Pfizer countered it calculated no damages, it noted that if fewer people claim, the recovery for claimants will grow. The revised settlement notice said:

At the court's request, we note that attorneys experienced in the field estimate that as few as 20 percent of class members may claim and as many as 85 percent may claim.

Judge Hellerstein's order granting preliminary approval set a final hearing for July 30. The case arose from a wide-ranging government investigation into Pfizer's off-label marketing practices and alleged payment of kickbacks to physicians. The company pled guilty in September 2009 to illegally marketing the anti-inflammatory drug Bextra as part of a \$2.3 billion settlement with U.S. authorities. Investors say that Pfizer made misleading disclosures in marketing four drugs: Bextra, which Pfizer voluntarily pulled off the market in 2005 amid safety concerns; anti-psychotic treatment Geodon; anti-epileptic treatment Lyrica; and antibiotic Zyvox. The investors claim that Pfizer also concealed kickbacks to physicians to promote sales.

Source: Law360.com

\$17 MILLION SETTLEMENT BY PANASONIC IN AUTO PARTS PRICE-FIXING LAWSUIT

Panasonic Corp. has agreed to pay \$17.1 million to settle a putative class action brought by car buyers who

claimed the company conspired with others to fix prices of switches, steering angle sensors and automotive high intensity discharge ballasts. The Plaintiffs informed a Michigan federal court of the settlement last month. The indirect buyers, or end-payors, said they bought vehicles in the U.S. that contained parts made or sold by Japan-based Panasonic and claim it conspired with other parts makers, including Tokai Rika, Co. Ltd., DENSO Corp. and Ichikoh Industries Ltd., to set prices and sell the parts to auto manufacturers at noncompetitive rates.

The terms of the settlement, agreed to in late February, call for the switches class to receive approximately \$5.3 million, the steering angle sensors class to receive about \$6.3 million and the HID ballasts class to receive approximately \$5.5 million. As part of the proposed settlement, Panasonic agreed to provide Plaintiffs with witness interviews and depositions, documents and other information relating to the cases against the remaining Defendants.

The switches, steering angle sensors and HID ballasts cases are part of a sprawling multidistrict litigation (MDL) that followed the U.S. Department of Justice's own expensive, ongoing investigation into the auto parts industry that has already yielded more than \$2 billion in fines. The MDL—known as *In Re: Automotive Parts Antitrust Litigation*—has been split into separate proceedings for different automotive parts, which also include occupant safety restraints and automotive wire harnesses. In 2013, Panasonic agreed to pay \$45.8 million to the Department of Justice (DOJ) to settle criminal charges of alleged bid rigging of the aforementioned auto parts. It was said that the settlement will help protect American consumers in the future.

Source: Law360.com

FOUR CLASSES SEEK CERTIFICATE IN GM SAFETY-RATING STICKER SUIT

Cadillac drivers suing General Motors LLC (GM) over allegedly misleading safety-rating stickers on their cars have asked a Florida federal court to certify four separate classes of Plaintiffs comprising more than 11,000 customers nationwide. The motion requested certification of a Florida class, Tennessee

class, nationwide unjust enrichment class and a breach of express warranty class encompassing those who purchased or leased model year 2014 Cadillac CTS Sedans in 30 states and Washington, D.C., in the suit accusing GM of affixing stickers to Plaintiffs' cars indicating higher-than-accurate safety ratings from the National Highway Traffic Safety Administration (NHTSA).

According to the Plaintiffs' motion, all of the requirements for certification have been satisfied, including that the defined classes will allow the court to apply common questions of law and fact to all involved. The certification motion said:

This case arises from representations and warranties that were made to all members of the classes, and the legal issues that will predominate in this case are common to the members within each of the classes. The exact same misrepresentation was made to each class member for the same reason.

In their amended complaint filed last August, the lead Plaintiffs allege they each purchased the Cadillac sedans that came with Monroney stickers representing that the cars achieved five-star rankings, the highest available NHTSA rating, for risk of injury in the event of frontal impact for the driver or passenger and for the risk of a rollover in a single-vehicle crash.

But months after they purchased their vehicles, GM informed the Plaintiffs in a May letter that the information provided on the Monroney sticker affixed to their cars was false and that the Cadillac model received no such NHTSA safety rankings, the complaint says. The letter also enclosed a replacement Monroney sticker without the previously stated NHTSA rankings, according to the complaint. The Plaintiffs contend that the alleged misrepresentation violates Florida unfair trade law, Tennessee consumer protection law and federal laws pertaining to unjust enrichment. GM says the lawsuit is without merit.

Source: Law360.com

MADOFF INVESTORS WIN CLASS CERTIFICATION

A New York federal judge has again certified a class of investors accusing PriceWaterhouseCoopers LLP and Citco Group Ltd. of misleading them about the quality of feeder funds involved in Bernie Madoff's Ponzi scheme. The Second Circuit Court of Appeals had vacated his previous decision in 2014. The court said that classwide evidence established that the investors had allegedly relied on erroneous valuations and audit reports from Citco and PwC in choosing to invest in funds managed by Fairfield Greenwich Ltd., which included the single largest feeder fund involved in Madoff's scheme.

The class of about 1,000 individuals and businesses lost at least \$7.5 billion to the Ponzi scheme as a result of their investments with Fairfield Greenwich. U.S. District Judge Victor Marrero agreed with the investors' argument that their relationship with PwC and Citco was close enough to establish a "duty of care" under New York law. Judge Marrero pointed to emails from Fairfield Greenwich to PwC stating that "investors have been requesting the audits for the past couple months" to show that PwC knew the Plaintiffs were relying on its reports.

Judge Marrero said, as for Citco, that its internal-procedures manual explicitly stated that shareholders and partners will make investment decisions based on its net asset value reports, and stressed the importance of producing correct, reliable and timely information. The investors can also use common evidence to support their claims that Citco misled them by concealing its "grave doubts" about the funds' assets, the judge said.

The Second Circuit said the district court certified the class based on claims against the Fairfield Greenwich funds without considering the investors' claims against PwC and Citco, which acted as auditor and administrator to the funds, respectively. The case was sent back to the District Court, which led to the current ruling.

After Madoff's massive scheme unraveled in 2008, the funds created and managed by Fairfield Greenwich Group lost all of its investors' money. The investors sued the funds shortly thereafter and also brought claims against PwC and Citco, which weren't directly

involved with the investments, but had serviced the funds. In 2013, Judge Marrero approved the investors' \$80 million settlement with Fairfield Greenwich Group.

The following year, the Second Circuit rejected a challenge to that settlement by PwC and Citco after finding they lacked standing. The investors relied heavily on the reports from Citco and PwC, and they never would have put money into Fairfield Greenwich had they known that information they contained was incorrect.

Source: Law360.com

A LOOK AT THE LUMBER LIQUIDATORS PROBLEMS

After a devastating report accused Lumber Liquidators of selling laminate flooring from China that contained high levels of formaldehyde, the company is now under a federal investigation. The U.S. Consumer Product Safety Commission (CPSC) announced the probe last month. There are five stores in Alabama selling the flooring, including one in Montgomery. There are stores located in many other states.

The company was the subject of a recent report on the CBS News program "60 Minutes," which said the discount flooring retailer sold wood that violated safety limits set by the California Air Resources Board. Lumber Liquidators disputed the accusations and testing methods used by the news program, and maintains that its products are safe. Many items like furniture and disinfectants can leak formaldehyde, and consumers might not be able to determine how much of it was coming from Lumber Liquidators' flooring or from other sources.

For those who may not know, laminate flooring is an artificial product that is a cheaper alternative to hardwood and other higher-end wood products. The core of a board is made up of various materials, including wood, glued together with an adhesive that typically includes formaldehyde. A top layer placed on the core produces the final panel.

Formaldehyde seeps into the air over time, and California tests the emission level of the core of the boards. Formaldehyde is a known carcinogen and its long-term health effects are not well

understood. Exposure to a lot of formaldehyde in a short period can produce immediate symptoms like burning of the eyes and throat, and can aggravate asthma. But scientists do not know definitively how much formaldehyde, over how long a period, can cause certain types of cancers. But there is enough information for consumers to be concerned.

There has been a number of class action lawsuits filed against Lumber Liquidators Inc. over the company's sale of the formaldehyde-laden Chinese flooring. Unhappy customers have filed a pair of proposed class actions accusing the retailer of duping consumers by falsely claiming that its inventory complies with state emissions standards for the toxic chemical. The two false advertising complaints—filed last month in California and South Carolina federal courts, respectively—alleged that the company routinely sells Chinese-made flooring that greatly exceeds California Air Resource Board standards for safe formaldehyde emissions.

Interestingly, Lumber Liquidators still advertises on its website and elsewhere that it ensures all of its suppliers comply with California's "advanced environmental requirements," even for products sold in other states. The California lawsuit relies heavily on the 60 Minutes story.

In Sept. 2013, the U.S. Fish and Wildlife Service and the U.S. Department of Homeland Security's Immigration and Customs Enforcement service executed a search warrant at the company's corporate offices in Toano and Richmond, Va. The nature of the warrant wasn't revealed by federal authorities, but multiple media reports linked the raid to wood suspected of having originated from the Siberian tiger's habitat.

Our firm's Toxic Torts Section is currently looking into the lumber liquidators issues. We have been contacted by a number of individuals who have had problems. If you need additional information on this subject, contact Rhon Jones or Parker Miller, lawyers in the firm's Toxic Torts Section, at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com or Parker.Miller@beasleyallen.com.

Sources: *New York Times* and Law360.com

XXI. NURSING HOME LITIGATION

USE OF HOYER® LIFTS IN NURSING HOMES

Many residents in nursing homes lack the ability to ambulate. Many nursing homes have changed their names to indicate that they are "rehabilitative facilities," and one of the primary forms of rehabilitative medicine is physical therapy. Lots of individuals are admitted for short-term stays in order to receive therapy.

Those persons are not considered the long-term care patients that we traditionally see in a nursing home setting, though many transition into a long-term stay patient. Many methods are used by nursing home staff to assist patients with ambulation or to transfer patients who cannot ambulate into and out of their beds, showers, and the like. A very common method of transfer is a Hoyer® lift. Hoyer® is a brand name, but it is the common name used for these types of lifts.

The Hoyer® lifts come in a variety of forms—some have slings to completely lift patients; some are designed to lift patients to a standing position; and some are used to help patients who are completely bedbound be moved from point to point. The manufacturer and federal standards require that nursing home personnel who use these lifts be properly trained in the method of using them. State and federal standards also require periodic inspection of the equipment to ensure that it is properly functioning and is safe to use. The Centers for Disease Control and Prevention (CDC) has reported that the use of mechanical lifts reduced the number of back injuries among health care workers by as much as 35 percent. The CDC has also been involved in a number of studies regarding the benefits of the use of mechanical lifts in the health care settings, especially in rehab and nursing home settings.

Despite these requirements, far too many incidents arise where patients are injured by the improper use of these types of equipment, either because of the application of the equipment or because of a failure in the equipment. Lawyers in our firm have investigated

incidents where bolts were not properly tightened and the sling came loose or broke loose, resulting in the fall of a patient. Our firm has also investigated incidents where the personnel using the mechanical lifts have pinned a patient's legs between the edge of a structure, such as a bed, and the lift itself, resulting in breaks to the legs and to the skin.

Because of the benefits of mechanical lifts, both to caregivers and to patients, continued utilization of the lifts can be expected in nursing home settings. However, it is imperative that nursing homes ensure that their staff is adequately trained on the use of lifts, not only in the application of the lifts but in being patient and gentle with often frail and aged patients. If you need more information, contact Ben Locklar, a lawyer in our firm how handles Nursing Home Litigation, at 800-898-2034 or by email at Ben.Locklar@beasleyallen.com.

Sources: http://www.cdss.ca.gov/agedblinddisabled/res/VPTC2/4%20Care%20for%20the%20Caregiver/How_to_Use_a_Hoyer_Lift.pdf

http://www.dhs.state.or.us/spd/tools/dd/socp/docs/8c_lift.positioning.pdf

http://www.dhs.state.or.us/spd/tools/dd/socp/docs/8c_lift.positioning.pdf

<http://www.cdc.gov/niosh/nioshtic-2/20024188.html>

XXII. THE CONSUMER CORNER

TARGET'S DATA BREACH SETTLEMENT SHOWS STRENGTH OF FINANCIAL INSTITUTIONS' CASES

The \$10 million settlement by Target Corp. with consumers over the retailer's massive data breach is a pretty good indication that banks, credit unions, and other financial institutions remaining in the litigation with the company are in very good shape. They are in a much stronger position to prove that the substantial costs incurred replacing payment cards are directly linked to the intrusion. U.S. District Judge Paul A. Magnuson has already given preliminary approval to the settlement with consumers. If given final approval, the accord would resolve legal claims brought on behalf of the 110 million consumers impacted by the 2013 breach.

It should be noted that this settlement does not affect the second prong of the

litigation. That is the part of the litigation brought on behalf of financial institutions that contend Target is liable for the costs incurred as a result of replacing millions of customer payment cards. Lawyers in our firm's Consumer Fraud Section are heavily involved in that part of the litigation.

The settlement clearly indicates that Target may very well need to negotiate a settlement that would end all of the litigation. Target has the capacity and the ability, and should now have the desire, to resolve the financial institutions' claims. However, thus far, there have been no indications that Target is ready to talk on that front. So trial preparation will continue.

Kevin Cambronne of the Chestnut Cambronne law firm serves as lead Plaintiffs counsel for the financial institutions. Our firm is serving in a leadership position on the Financial Institution side of the case. Dee Miles, who is the head of our firm's Consumer Fraud Section, was appointed last spring by Judge Magnuson to serve on the Plaintiffs Leadership Committee. Dee, and the other lawyers in leadership roles, have successfully defeated Target's Motion to Dismiss the complaint and now are in the midst of heavy discovery and are on track for a trial next January.

The settlement on the consumer side of the case will certainly be helpful to the entire case. But it should be noted that the Financial Institution side of the case is very different, especially as it relates to damages. Clearly, the banks have incurred substantial damages. Those include the reissuing of credit/debit cards; fraudulent charges that resulted from data stolen from Target; the labor costs associated with re-issuance and fraud charges; and other damages. The class of Financial Institutions consist of hundreds of banks, credit unions, and other entities. We believe the result in this part of the litigation will involve huge class damages. The case is moving in a most positive direction and we will keep our readers posted on developments in this most significant case.

Source: Law360.com

STATE ATTORNEYS GENERAL CRACKING DOWN ON HERBAL SUPPLEMENT INDUSTRY

The New York Attorney General announced last month that a coalition of state attorneys general is investigating the herbal supplement industry's business practices, taking a close look at how it markets and labels supplements. The investigation follows a revelation by New York Attorney General Eric T. Schneiderman that a study of a number of store-brand supplements from four major retailers showed that a majority of the supplements didn't contain the listed active ingredient, and in some cases contained unlisted contaminants.

The attorneys general—from Connecticut, Indiana and Puerto Rico—say they're launching the investigation to make sure that the supplement industry verifies its marketing claims, particularly in regard to the authenticity and purity of supplements. Schneiderman said in a statement:

New Yorkers and consumers nationwide deserve confidence that when an herbal supplement is represented as authentic, pure and natural, it really is. Clearly, the questions we raised about the herbal supplements sold in New York resonate outside of our borders.

Mislabeled supplements can be a danger to people with food allergies or who are taking medication, the state attorneys general said. If all the ingredients in a supplement aren't identified on the label, consumers with food allergies take a "potentially serious health risk" every time they take a supplement, according to the state attorneys general.

In February, Attorney General Schneiderman ordered Wal-Mart Stores Inc., Target Corp., Walgreen Co. and GNC Holdings Inc. to stop selling some store-brand herbal supplements, such as St. John's wort, ginseng and echinacea, and asked them for detailed information about the production, processing and testing of the supplements. The announcement unleashed a number of consumer class actions against the retailers over the labeling of their supplements, which include Target's Up and Up line, Wal-Mart's Spring Valley supplements and Walgreens' Finest Nutrition supplements. Although the

U.S. Food and Drug Administration (FDA) requires companies to make sure their supplement products are safe and properly labeled, the state attorneys general said that the agency doesn't demand that supplements go through its rigorous evaluation process.

In February, the New York Attorney General said that DNA testing showed that only 21 percent of the tested supplements contained DNA from the plants listed on the products' labels. GNC criticized the study, saying that the methodology used to test the supplements may not have been appropriate, though it and Walgreen have said they are pulling supplements from New York shelves. According to the New York Attorney General's office, some of the herbal supplements contained rice, beans, wheat, citrus and other materials meant to act like "filler" in place of the actual supposed active ingredient.

The state attorneys general said that more than half of the FDA's Class 1 recalls—reserved for products with a high risk of serious health effects or death—from 2004 to 2012 were for supplements. Ephedra, an ingredient in a number of herbal weight loss products, caused hundreds of deaths before it was banned in 2004, the state attorneys general said. Indiana Attorney General Greg Zoeller said in a statement:

The significant issues recently raised about herbal supplements are a concern that must be taken seriously so as not to further jeopardize the health and safety of people ingesting these products. As state consumer protection advocates, my fellow attorneys general and I are focused on efforts to eliminate misleading and deceptive labeling for the benefit of consumers.

According to GNC, it has commissioned independent, third party tests to verify its products' quality. The company says "These tests, coupled with the company's own testing efforts, confirm in no uncertain terms that our products are safe, pure, properly labeled and in full compliance with all regulatory requirements." It will be interesting to see what develops from the investigations by the Attorney General. We will watch them closely.

Source: Law360.com

SOME COMPANIES RECLASSIFY THEIR EMPLOYEES AS INDEPENDENT CONTRACTORS

In the last decade, many corporations have been trying to figure out creative ways to control cost and to increase production. One popular way has been to “outsource” certain tasks to workers who are not employees of the company. This trend includes getting workers of other companies to perform specified tasks, bringing in temporary workers (“temps”) who don’t receive full benefits and/or reclassifying existing employees as independent contractors. It is debatable whether any of these moves actually increases production, but in most instances, corporations have definitely saved money. By reclassifying its workforce, some corporations have been able to avoid paying certain payroll and income tax withholdings, workers compensation premiums and other costs associated with full-time employees. While the transition of these workforces is often legal, quite often it is not.

If a corporation doesn’t follow the law when transitioning its workforce, it can create costly mistakes for both the employer and employee. Whether you are a business owner or an employee, if you have recently seen a reclassification of employees in your company, you may want to check the IRS regulations. The IRS generally looks at three things when determining if an individual is an employee for tax purposes:

Behavioral Control

In short, the IRS asks, can the person do what they want, when they want? If the corporation trains and/or directs the individual on the work to be performed, including when it can be performed, the person may be an employee. Similarly, if individuals use tools, equipment or software provided by the corporation the worker is likely an employee. If the worker can set his or her own hours and works with little or no direction or training, he or she is probably an independent contractor.

Financial Control

The IRS looks to see if the person is financially beholden to the employer for income. This consideration also looks at how the worker

is paid and whether the worker may work for other companies at the same time. The IRS will also look to see if the individual can incur a profit or loss. A person that is paid a salary or is restricted from working for others is probably an employee.

Types of Relationship

One of the relevant questions here is whether the work is continuous in nature or temporary. The more continuous the relationship, the more likely the individual is a worker, not an independent contractor. If the individual worker has a specific contract that may indicate independent contractor status, but not by itself. A similar issue is whether the work being performed is directly related to the company’s core mission. Lastly, if the worker is allowed to participate in any benefits offered by the corporation they are most likely an employee.

If you have any questions as to whether you have classified an employee correctly under the IRS regulations, you can file a form SS-8 to request a determination. Importantly, the IRS assumes that a worker is an employee and it is up to the corporation to prove otherwise. If you need more information on any of the above, contact Roman Shaul, a lawyer in our firm’s Consumer Fraud Section, at 800-898-2034 or by email at Roman.Shaul@beasleyallen.com.

Source: Workforce classifications: IRS guidelines critical for review

MAJOR RETAILER SUED OVER A TEENAGER’S DRUG OVERDOSE DEATH

Logan Stiner, a teenager from Ohio, died on May 27, 2014, from what the coroner determined to be a drug overdose. Although tragic, countless young adults die annually from drug overdoses. Like so many of the tragic overdose deaths we hear and read about, this teenager ingested too much of a powerful stimulant, sending his heart into an uncontrolled arrhythmia. What sets Logan’s death apart is not his youth, or the manner in which the drugs reacted in his body, but rather the drug itself and its source. Logan did not overdose

on a common street drug. This is not the tired old story about how a young man got mixed up with the wrong crowd and experimented with drugs. That’s what we would commonly associate with teenage drug abuse. Instead, this story takes a turn that may hit closer to home. It involves caffeine. In Logan’s case, it was caffeine, a deadly stimulant, which caused his death. The popular online retailer Amazon was the supplier.

It should be noted that caffeine is far from lethal in controlled amounts. Caffeine exists naturally in certain plants, and has been added to food and drinks for decades. Coffee is a source for millions of folks everyday. In these trace amounts, caffeine is far from lethal. Overdoses can occur, but the symptoms are typically minor and include dizziness, headache, insomnia and irritability. Logan Stiner did not overdose on coffee, energy drinks, or even caffeine pills. Instead, he ingested pure synthetic caffeine powder sold as a dietary supplement, marketed and labeled much like a vitamin.

To fully comprehend how strong pure caffeine powder is, for comparison, a single teaspoon of the powder is equivalent to 25 cups of coffee. In fact, a single teaspoon of the powder can be lethal. Alarmingly, much of the pure caffeine powder sold is not accompanied with adequate warnings to alert users of the potential risks of cardiac arrhythmia or arrest. In fact, little guidance is given as to what is a safe dose.

One would think that something this potent would be illegal, or at least highly regulated. Unfortunately, just the opposite is true. Synthetic powder caffeine is unregulated. In fact, it sits on the shelves at popular vitamin and supplement shops, or can be delivered to your door from online stores. Interestingly, The U.S. Food and Drug Administration (FDA) regulates all forms of caffeine except pure powder caffeine. Because powder caffeine is marketed as a dietary supplement, the FDA does not have the legal authority to regulate the dangerous chemical. While the FDA has released warnings about the dangers of pure synthetic caffeine, more must be done.

Following Logan’s death, the Stiner family has decided to voice their concern and fight the industry. The Stiners visited Washington in December of last year to plead with lawmakers to

increase regulatory oversight. Additionally, the Stiners filed a wrongful death lawsuit claiming that Amazon and six other companies were responsible for the manufacturing, marketing and supply of the powder caffeine that killed their son. The Stiners allege that the pure synthetic caffeine presents a substantive danger to ordinary consumers. Additionally, the family claims the seven companies failed to warn or even disclose to consumers the significant risks associated with the powerful stimulant.

It is troubling to refer to this drug as a product, but until this product is outlawed or properly regulated, it will likely remain on the shelves of major retailers. It will be interesting to follow the Stiners' lawsuit and their pleas to lawmakers. All too often tragedy has to happen in order to spark a call to action. As we have seen time and again in our line of work, it takes families like the Stiner family standing up to large corporations to fight for what they know is right in order to change an industry. We will watch this case closely.

Sources: CBSnews.com and Law360.com

ANTHEM ADMITS DATA BREACH LIKELY AFFECTED BLUE CROSS BLUE SHIELD CUSTOMERS

Anthem Health Insurance Inc. experienced a monumental data breach in February originally affecting approximately 80 million Anthem customers. An update from Anthem reveals that at least 8.8 to 18.8 million non-customers with Blue Cross Blue Shield may have also been affected. The total number of current and past Anthem customers included in the data breach has been reduced to 78.8 million. Anthem's hacked database included not only sensitive records of its current and past customers' personal information, such as names, social security numbers, birth dates, etc., but also "non-Anthem members who used their insurance in those states where Anthem has operated" in the past 10 years. Known as the second-largest health insurer in the U.S., Anthem is still deep in the investigation learning which records in the database were targeted by hackers.

Anthem says it has yet to discover the exact ratio of Anthem customers to non-customers with Blue Cross Blue Shield compromised by the data breach, con-

sidering there were 14 million incomplete records unable to be linked to an Anthem plan. While financial records were confirmed not to be stolen during the cybertheft, other personal data like income data and employment data were included.

Madiant, the computer forensics unit of FireEye, along with the Federal Bureau of Investigation have been enlisted by Anthem to perform its analysis of the cyberattack. The cybertheft tides recently turned against health care companies like Anthem considering how large their customer databases tend to be, placing a target on the back of any and all unprepared health insurance companies.

Anthem is making customers aware of the data breach by mailing out physical letters to its customers and Blue Cross Blue Shield members believed to have had personal information stolen during the cyberattack. Anthem will not be sending out any e-mails related to the data breach due to the presence of e-mail scams preying on Anthem customers to send more private information to criminals. Any Anthem customers that are aware their personal information was compromised in the massive data breach are offered a free two-year identity theft protection plan, including credit monitoring and fraud detection services.

For more information on the Anthem data breach, Anthem has launched a website at www.AnthemFacts.com for the purpose of answering any questions or concerns affected parties may have at this time. If you were affected by the Anthem data breach, you may be eligible to join litigation against the company for financial losses. For more information, you can contact Andrew Brashier, Archie Grubb or Larry Golston, lawyers in our Consumer Fraud section, at 800-898-2034 or by email at Andrew.Brashier@beasleyallen.com, Archie.Grubb@beasleyallen.com or Larry.Golston@beasleyallen.com.

Source: Beasleyallen.com

XXIII. RECALLS UPDATE

We are again reporting a large number of safety-related recalls this

month. We have included some of the more significant recalls that were commenced in March. If more information is needed on any of the recalls, readers are encouraged to contact Shanna Malone, the Executive Editor of the Report. We would also like to know if we have missed any safety recalls that should have been included in this issue. If so, let us know.

NISSAN RECALLS 640,000 ALTIMA SEDANS

Nissan North America Inc. has recalled 640,000 Altima sedans after discovering the cars' hoods can fly open while in motion. This brings the total number of Nissan and Infiniti vehicles recalled for the defect in the past year to nearly 1.1 million. On March 3, Nissan notified dealerships of the recall after the manufacturer discovered certain model year 2013 through 2015 Altimas contain secondary hood latches that may not fully engage when the hood is closed. The defect increases the risk that it will fly open unexpectedly while the vehicle is in motion and cause a crash. According to Nissan, there have been no reports of collisions or injuries caused by the defect.

KIA RECALLS 209,000 SOUL VEHICLES OVER ACCELERATOR DEFECT

Kia Motors America Inc. has recalled approximately 209,000 Soul and Soul electric vehicles because a portion of the cars' accelerator pedal has the potential to bend and fracture if the driver applies excessive force. The agency acknowledged the recall in a letter to the automaker, in which it said the defect in certain model year 2014-2015 Soul and Soul electric vehicles causes the accelerator pedal to bend or break. The letter says further that this can cause drivers to have difficulty in accelerating the vehicle and increases the risk of an automobile accident. Kia said in a statement that it was "not aware of any injuries or accidents as a result of this issue," and that it would notify vehicle owners, starting last month.

HONDA ADDS 105,000 VEHICLES TO ITS U.S. RECALL

Honda is adding nearly 105,000 vehicles to its growing U.S. recall of driver's side air bag inflators that can explode with too much force. The added vehicles include nearly 89,000 Pilot SUVs from the 2008 model year, as well as about 11,000 Civics from 2004 and another 5,000 Accords from the 2001 model year. According to Honda, this is the first recall of 2008 Pilots for potential problems with driver's air bags made by Takata Corp. of Japan.

GM RECALLS 92,000 MALIBUS TO FIX SUNROOF ISSUE

General Motors has recalled nearly 92,000 Chevrolet Malibu midsize sedans to fix a problem with the power sunroof controls. The recall covers cars from the 2013 through 2015 model years. The automaker says the sunroofs can close inadvertently even if the roof-mounted switches are barely touched. The switches can be activated with less force than allowed under federal safety standards. GM says it doesn't know of any injuries caused by the problem, and it hasn't received any customer complaints. It's the same problem that caused the recall of about 67,000 Cadillac ATS small sports sedans in February. Dealers will recalibrate the sunroof to remove the one-touch open-and-close feature in certain switch positions, and will reprogram the control module. Most of the recalled cars are in the U.S. and Canada.

RESIDENTIAL ELEVATORS SOLD EXCLUSIVELY BY COASTAL CAROLINA ELEVATORS ARE RECALLED

Coastal Carolina Elevators LLC, formerly Seaside Elevator LLC, of Little River, S.C., has recalled about 240 residential hydraulic elevators. The elevator can operate while the gate door is open, posing a crushing hazard. This recall involves Elmira Hydraulic residential hydraulic elevators. The elevators were installed in homes with multiple floors. They have a manual accordion-style car gate door with vinyl laminate

inserts and a control panel with up and down buttons, light switch, telephone, emergency stop button and power failure light. "Cambridge Elevating" is printed on the elevator's push button panel.

Coastal Carolina Elevators has received three reports of incidents with the elevators, including one incident that resulted in a catastrophic brain injury to a 10-year-old boy from Baltimore, Md. This prompted the company's recalling of the elevators.

The elevators were sold at Coastal Carolina Elevators through residential contractors and home builders, including DRHorton, in South Carolina from January 2006 through December 2009 for between \$16,000 and \$25,000. Consumers should immediately stop using the recalled elevators and contact Coastal Carolina Elevator for a free repair. Contact Coastal Carolina Elevators collect at 843-399-6545 from 9 a.m. to 5 p.m. ET Monday through Friday, or at www.coastalcarolinalevators.com and click on the Recall tab at the top of the page (effective April 6, 2015).

FLOW SPORTS INC. RECALLS SNOWBOARD BINDINGS DUE TO FALL HAZARD

About 10,400 Flow 2014 Flite-series snowboard bindings have been recalled by Flow Sports Inc., of San Clemente, Calif. A pin can disengage and cause the binding to open, posing a fall hazard. This recall involves Flow 2014 Flite-series snowboard bindings with model names Flite, Haylo, Micron Youth, Flite LTD and Flite MTN. The bindings have a snaplock lever on the rear, a cable adjustment dial on the side of the baseplate, a matte texture finish on the baseplate and a glossy "Flow" and Flow's logo on the hiback. They are black; black and white; black, white and blue; or black, white, blue and yellow. "Flow" is printed on the side of the bindings. Flow Sports has received 30 reports of the pins disengaging from the bindings. No injuries have been reported.

The bindings were sold at Dick's Sporting Goods, EVO, SNSboards, Sport Chalet, The House, Wired Sport, Zumiez and other stores nationwide and online from July 2014 through February 2015 for between \$110 and \$150 for the bindings. Consumers should immediately stop using the recalled snowboard bindings and contact Flow Sports for a free repair or to return the bindings for free replacement bindings or a full refund. Contact Flow Sports toll-free at 855-920-9955 from 9 a.m. to 9 p.m. PT Monday through Friday, or online at www.flow.com and click on "Safety Notice" for more information.

DREAM ON ME RECALLS 2-IN-1 BASSINET TO CRADLE DUE TO FALL AND SUFFOCATION HAZARDS

Dream on Me Inc., of South Plainfield, N.J. has recalled about 13,000 2-in-1 Bassinet to Cradles. The wire supports on the sides of the bassinet can disconnect causing the fabric sides to lower; posing a risk that infants can fall out or become entrapped and suffocate. This recall involves the 2-in-1 Bassinet to Cradle, sold in pink, blue, green, and white. The bassinet has metal frame supports and fabric sides with a removable half-canopy on the top. The frame can also be adjusted with two rocking legs on each end of the bassinet. It is designed with fabric handles and the option to remove the bassinet from the frame to use the bassinet portion as a "by the bed" sleeper product. The recalled model numbers are 439-A, 439-B, 439-G, 439-P and 439-W and can be found on a tag that is located under the mattress pad of the bassinet. This tag is a removable tag you see in the store but is removed prior to use. Dream on Me has received one incident of the wire frame support bracket failing and the fabric portion of the bassinet collapsing while an infant was asleep in the cradle. No injuries have been reported, according to the company.

The bassinets were sold online at Amazon.com, Walmart.com, Wayfair.com, ToysRUs.com and

Kohls.com from May 2012 to October 2014 for about \$60. Consumers should immediately stop using the product and contact Dream On Me to obtain a free repair. In the meantime, parents are urged to find an alternate, safe sleeping environment for the child, such as a crib that meets current safety standards or play yard depending on the child's age. Contact Dream on Me toll-free at 877-201-4317, from 9 a.m. to 4:30 p.m. ET Monday through Friday, or online at www.dreamonme.com and click on the "Recalls" icon on the home page for more information.

LINON HOME DÉCOR PRODUCTS RECALLS FOLDABLE WOOD PATIO CHAIRS DUE TO FALL HAZARD

Linon Home Décor Products Inc., of Mineola, N.Y., has recalled about 3,300 Outdoor Wood Bistro Sets. The chair can unexpectedly tip over when a consumer sits on the edge of the seat, posing a fall hazard. This recall involves foldable outdoor patio chairs sold individually and as a table-and-two-chair bistro set. The teak-stained wood chairs measure 22 inches wide by 36 inches tall and have spaced wood slats on the back and seat. The foldable table measures 28 inches round by 28 inches tall. The company has received reports of four consumers who have fallen from tipped-over chairs, including two reports of minor injuries.

The outdoor sets were sold at Bed Bath & Beyond, Daily Fair, Home Goods, Marshalls, Old Time Pottery and T.J. Maxx stores nationwide from February 2014 to February 2015 for about \$30 for the chair and \$150 for the set. Consumers should immediately stop using the recalled folding chairs and return the product to the store where purchased for a full refund. Contact Linon Home Décor Products Inc. at 800-262-1852 from 9 a.m. to 5 p.m. ET Monday through Friday, or visit the company's website at www.linon.com and click on the Recall icon for more information.

RAPALA RECALLS STRIKEMASTER ICE AUGERS DUE TO INJURY HAZARD

Normark Corporation dba Rapala USA of Minnetonka, Minn., has recalled its StrikeMaster® Lithium Lazer™ Ice Augers. The trigger switch on the auger could fail and the unit not turn off, posing an injury hazard. This includes about 3,000 in the United States and 60 in Canada. The Lithium Lazer™ ice auger is used by ice fishermen to cut circular holes in ice to access the water and fish below. The Lithium Lazer™ ice auger is a 24-pound black and red unit powered by an electric motor and a rechargeable 50-volt lithium ion battery. The auger has two handles, a power switch, a trigger switch and a drill, and is identified with the logo for StrikeMaster Ice Augers on the front of the powerhead. It also is identified as a Lithium Lazer™ on the top of the powerhead.

The augers were sold at Cabela's, Gander Mountain, Joe's Sporting Goods, Kirkwood Scheels Sports, Reed's Sporting Goods and other sporting goods stores from September 2014 through January 2015 for about \$600. Return to the place where purchased for a full refund, or return to Rapala for a full refund or \$700 credit toward a new product on www.rapala.com. Contact StrikeMaster toll-free at 877-572-7278 from 8 a.m. to 4 p.m. CT Monday through Friday or online at www.StrikeMaster.com and click on the recall link for more information.

CREAMISER REFRIGERATED CREAMER DISPENSERS RECALLED BY WHITEWAVE

CreaMiser Products Corp., of Phoenix, Ariz., now owned by WhiteWave Foods, of Broomfield, Colo., has recalled about 5,000 CreaMiser refrigerated creamer dispensers. A relay inside the creamer dispensers can overheat, posing a fire hazard. This recall involves CreaMiser refrigerated coffee creamer dispensers for commercial use with model numbers 200, 210 and 400, digital thermometers and certain serial numbers. The plastic

dispensers were sold in the following colors: black granite, gray granite and sand. Models 200 and 210 have two creamer dispenser stations and model 400 has four creamer dispenser stations. Model, serial number and "CreaMiser Products Corporation" are printed on a white sticker or metal name plate on the back of the dispensers. To view a list of these model and serial numbers, visit <http://www.cpsc.gov/en/Recalls/2015/CreaMiser-Refrigerated-Creamer-Dispensers-Recalled-by-WhiteWave/>. There have been seven incidents with the recalled creamer dispensers, including two fires at repair facilities and five units that had melted digital thermometers. No injuries have been reported.

The dispensers were sold at distributors nationwide to convenience stores, quick-serve restaurants, hospital and workplace cafeterias, college food service facilities and hotels and motels from January 2001 through November 2003 for about \$990 for the two-dispenser models and about \$1,235 for the four-dispenser models. Owners should immediately unplug the recalled creamer dispensers, remove them from service and contact CreaMiser for a free repair at 800-905-3366 from 7:30 a.m. to 4:30 p.m. MT Monday through Friday or online at www.creamiser.com and click on "CreaMiser Refrigerated Creamer Dispensers Recalled by WhiteWave" below the menu on the left side of the home page for more information.

SPINRITE RECALLS BERNAT TIZZY YARN DUE TO ENTANGLEMENT HAZARD

Spinrite Yarns LP, of Washington, N.C., has recalled is Bernat Tizzy Yarn. In finished knit or crochet items, the yarn can unravel or snag and form a loop, posing an entanglement hazard to young children. This includes About 620,000 in the U.S and about 220,000 in Canada. The recall includes all 11 colors of Bernat brand Tizzy Yarn. The yarn was sold as a ball or skein in a 3.5 ounce package with a paper sleeve. The green sleeve has a striped

border with a photo of a baby in a knitted sweater and “Bernat” printed in all white capital letters and “Tizzy” printed in yellow and orange letters. UPC codes included in the recall are printed under the barcode on the paper sleeve. To view a full listing of the color numbers, color names and UPC codes included in the recall, visit <http://www.cpsc.gov/en/Recalls/2015/Spinrite-Recalls-Bernat-Tizzy-Yarn/>. Bernat has received two reports of children becoming entangled from unraveling or snagging yarn blankets. No injuries have been reported.

The Yarns were sold at Jo-Ann Stores, Michaels and other craft retail stores nationwide and online at www.yarnspirations.com from April 2012 through February 2015 for between \$4.50 and \$5. Consumers should immediately stop using the yarn or finished yarn projects, keep them out of the reach of young children, and contact Bernat for a full refund toll-free 844-418-7973 from 8 a.m. to 5 p.m. ET Monday through Friday or online at www.bernat.com and click on the “Voluntary Recall” button at the top of the page for more information.

RECALL FOR TEXAS-BASED BLUE BELL ICE CREAM PRODUCTS EXPANDED

Brenham, Texas-based Blue Bell has expanded the recall of some ice cream products because of possible exposure to the listeria bacteria. Blue Bell is recalling 3-ounce cups of chocolate, strawberry and vanilla ice cream that have tab lids. The U.S. Food and Drug Administration (FDA) says the cups could be contaminated with the bacteria, which can cause fatal infections in young children, the elderly and others with weakened immune systems. The Blue Bell creamery had previously this month recalled several other products made on the same production line after listeria was detected. Five people developed listeriosis in Kansas after eating Blue Bell products and the FDA says three of them died. That is indeed very sad. Ironically, the five ate the ice cream while hospitalized in Wichita for unrelated causes.

Once again there has been a fairly large number of recalls since the last issue. While we didn’t include all of them in this issue, we included those we considered to be 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 of the recall section, you can contact Shanna Malone at Shanna.Malone@beasleyallen.com for more recall information or to supply us with information on recalls.

XXIV. FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

KENDALL DUNSON

Kendall grew up in LaGrange, Ga., and graduated with honors from LaGrange High School in 1989, after serving his senior class as president. He was awarded a full scholarship throughout his matriculation at the University of Georgia. Kendall earned a degree in Corporate Finance from UGA. Among a host of UGA honors, Kendall says one of his most treasured honors was being elected President of the Zeta Iota chapter of Kappa Alpha Psi Fraternity, Incorporated.

Kendall says he was inspired to law from two sources. One was a legal television series popular in the 1980s called “L.A. Law,” which initially piqued his interest in the legal field. As he began to explore the field, Kendall says he realized the importance of the court system to the Civil Rights movement. Landmark court cases decided by the Courts in that fight were a major inspiration to his pursuing a legal career.

A recipient of the Calloway Scholarship, Kendall is a graduate of the University of Alabama School Of Law and is licensed to practice in both Alabama and Georgia. He has participated in numerous legal and community organizations, including a task force charged with reconfiguring Alabama’s method of rendering legal services to the State’s

underprivileged population. Kendall is a charter member of the 100 Black Men of Birmingham.

Before coming to work at Beasley Allen, Kendall worked in the litigation section of a prominent defense firm for two and a half years. At Beasley Allen, Kendall practices in the areas of Product Liability, General Personal Injury, and Workers’ Compensation cases involving defective industrial machinery. Kendall has worked on numerous cases with goals of compensating clients for their losses and influencing corporations to design and manufacture safer products. Kendall was a member of the trial team that handled a wrongful death case against a corporate defendant resulting in the largest jury verdict ever in Selma, Ala. That suit also influenced the corporate defendant to outfit its entire fleet of trucks with audible backup alarms. Kendall handled the bus collision case in Huntsville, Ala., that resulted in the death of four students and numerous injuries. The suit resulted in the cancellation of the contract between the County and the Defendant, which had the duty to safely transport students to school in Madison County.

Most recently, Kendall has been involved in several multimillion dollar lawsuits, including a \$24.75 million dollar verdict in a premises liability case; an \$18.79 million dollar verdict in a commercial truck product liability case; a \$5.75 million verdict for the children who lost their father in a maritime lawsuit; and a \$4.7 million dollar verdict in a seat belt failure case. About his practice, Kendall says:

I am most proud of my ability to help people, especially those people who have been injured through the fault of product manufacturers. A catastrophic injury can dramatically change a person and their family’s lives. It is good to know that we can help people with at least one aspect of their recovery. You can’t replace a body part of a loved one, but you can ease the burden by explaining what happened, obtaining a financial recovery to facilitate their ‘new normal’ and by influencing change for safety through litigation. I often find that clients are more satisfied when they know their litigation was instrumental

in fostering safety changes so they will know that another innocent person won't have to suffer as they are.

Kendall says he believes Beasley Allen's goals and purpose sets it apart from other law firms, in that the firm's mission statement of "Helping those who need it most" is not just a slogan, it's who we are and what we do. He says he thinks it is most interesting that Beasley Allen consists of a group of lawyers who could easily be independently successful in other places, but stay together by choice. Kendall believes Beasley Allen is a strong firm because the lawyers lean on each other, help each other, and support each other as they all strive for a greater good.

Kendall has served as the president of both the Alabama Lawyers Association and the Capital City Bar Association. He recently completed a term as a Board Member for the National Bar Association. He served on the Board of the Montgomery County Bar Association until he was elected to the Executive Committee. Kendall is Past President of the Montgomery County Bar Association having the distinct honor of being the first African-American President. He is a member of the Alabama State Bar and serves on the Diversity Committee. He serves on the Alabama Curriculum Committee for the Board of Examiners, where he is authoring the new Tort section. Additionally, he authored the Torts section and videotaped the presentation to be viewed by all taking the Alabama Bar Exam.

Kendall was selected as Beasley Allen's Litigator of the Year in 2013. In 2014, Kendall was recognized as our firm's Personal Injury Section Lawyer of the Year.

Kendall is married to Samarria Munnerlyn Dunson. Samarria, a lawyer, is Director of the Office of Compliance and Ethics for the Alabama Department of Public Health. Kendall and Samarria have three children. The Dunsons worship at both First Baptist Church and Resurrection Catholic Church. In his spare time, Kendall is an avid golfer and reader. He loves science fiction TV shows and movies. Kendall says he is also forced to watch more Nick Junior and Disney Junior than he cares to admit at the behest of his daughters. But he confesses that he and his son enjoy

watching and discussing professional wrestling.

SOO SEOK YANG

Soo Seok joined Beasley Allen in 2009 as a lawyer in the Mass Torts section. Since then has been involved in various defective drug and medical device cases including Fosamax, Yaz, ASR and Pinnacle. In recent years, Soo Seok has been primarily working on Transvaginal Mesh (TVM) cases.

Soo Seok was born and raised in Seoul, South Korea. He graduated with meritorious commendation from a pioneering Christian university called Handong Global University where he double majored in political science and English. After graduation, he joined the Korean Air Force and served as an intelligence officer in the Korean Combat Operations Intelligence Center (K-COIC) at the Osan Air Base and worked with the U.S. 7th Air Force to analyze North Korea's military activities.

Before entering law school, Soo Seok had a brief stint at an international clothing company, where he was in charge of managing the manufacture of Liz Claiborne products. He then worked for the Korean Educational Development Institute (KEDI), an educational policy research institute under the Office of the Prime Minister.

Soo Seok graduated *cum laude* from Handong International Law School (HILS), a Christian law school that teaches U.S. common law in English, also located in South Korea. He was the Lead Articles and Acquisitions Editor for the *Regent International Law Journal*, which was published in cooperation with HILS, and was selected to represent the school's moot court team in the Willem C. Vis (East) International Commercial Arbitration Moot.

Interested in human rights issues, especially those involving North Korea, Soo Seok was involved in a project commissioned by the U.S. Commission on International Religious Freedom (USCIRF). Serving as the interview team leader, he and his team successfully located and interviewed a number of North Korean defectors. They were able to collect valuable accounts about North Korea's heinous political prisoner camps. Soo Seok was involved in writing the first draft and analysis for the USCIRF report, which later came out as a publication titled *A Prison Without*

Bars in 2008. Soo Seok's interest in human rights issues was the reason he became a lawyer.

Active in serving various student organizations, Soo Seok was awarded the Judge Richard S. Arnold Christian Leadership Award and the Nehemiah Exemplary Christian Leadership Award. More importantly, he met his wife Doh Ah Kim, a fellow classmate.

Soo Seok first came to the U.S. as part of the U.S. Congress-Korea National Assembly Exchange Program. He served as a Congressional Intern in 2006. Later, he came to Montgomery and interned for Alabama Supreme Court Justice Tom Parker. Soo Seok and his wife passed the Alabama Bar Examination in 2008 and became the first Korean lawyers in Alabama. Soo Seok pursued his LL.M. degree in intellectual property law at the George Washington University Law School. His thesis, "Contributory Liability of Trademark Infringement: From Flea Market to Online Market Place," was later published in the *Intellectual Property & Information Law Review* in Korea.

Soo Seok says he enjoys working at Beasley Allen because he is surrounded by so many lawyers and staff who are not only excellent in their legal skills, but also, more importantly, who honor God and truly care for people. Soo Seok told me that he believes that life is a gift from God and that it's important to follow the purpose God has given. He added that requires faith. He and his family felt that God was leading them to Alabama, and named their first child born in Montgomery, Abraham, remembering Abraham's faith journey found in the Bible.

Soo Seok feels a strong responsibility to serve as a bridge between the American and Korean communities in Montgomery. He is a deacon and choir member at First Baptist Church of Montgomery and is also involved in the Korean American Association of Montgomery, serving his third term as Deputy Executive Director. He was given two commendation awards by the Federation of Korean Associations of Southeast USA in 2011 and 2012.

Soo Seok enjoys singing and playing the guitar. He and his wife Doh Ah have three children, Yookyum Abraham, Yoojin Johanna, and Yoocha Elijah. He is a valuable part of the firm. We are blessed to have Soo Seok with us.

LAUREN BUETTNER

Lauren Faulk Buettner, who joined the firm in 2011, currently serves as a Legal Secretary in our Toxic Torts Section. She works closely with lawyers in the Section and assists our BP Oil Spill clients who are recovering damages resulting from the spill. While she primarily works on the BP Oil Spill litigation, Lauren is also currently involved in a personal injury case, working on all phases of the litigation, including research, complaints, discovery and trial preparation. But the bulk of her work involves the BP litigation.

Lauren graduated from Auburn University in 2007 after earning her Bachelor of Industrial Design with a Minor in Business Marketing. During her time at Auburn, she participated as part of a collaborative studio abroad, studying with colleges in Ireland, Northern Ireland, Scotland, and England.

In her free time, Lauren enjoys various design projects, quality time with friends and family, appreciating her husband's amazing culinary skills, gardening, music, traveling, and Auburn football. She and her husband, Curtis, are anxiously expecting their first child due this Fall. Lauren is a very good, dedicated employee and we are fortunate to have her with us.

SANDY JACOB EILAND

Sandy Eiland has been with the firm for 11 years. She currently works as a staff assistant to two lawyers, Chad Cook and Beau Darley. In this position she is currently reviewing Transvaginal Mesh clients' files and she speaks with clients on a daily basis. Sandy also keeps client files up to date and organized. She has also worked as retention coordinator for the firm and she also helps to maintain my mailing list. Sandy has worked on both the HRT and Vioxx litigations as a clerical assistant. She has worked as a staff assistant for Roger Smith, a lawyer in the Mass Torts Section, on the Actos Litigation. Her work is now in the TVM litigation as a staff assistant.

Sandy was married in December to Anthony Eliand. They have one dog named "Paisley." She enjoys spending time with her family, horseback riding and shopping for antiques. Sandy is a very good employee. She too is dedicated to her work. We are fortunate to have Sandy with the law firm.

BEASLEY ALLEN ACCOUNTING DEPARTMENT KEEPS WATCH OVER FIRM FINANCES

We are fortunate at Beasley Allen to have an outstanding Accounting Department. The personnel in the Department handle all financial records, cash disbursements and cash receipts within the firm. The department is divided into different areas of work; Accounts Payable, Payroll, Financial Reporting & Controls, and Trust Accounting. We currently employ seven people in this section. The staff in this section work together like a well-oiled wheel. With the thousands of clients we represent at any given time, their skills in process and organization are at an exceptional level of expertise. Here is a little more information about the operations of this department, and the people who make it happen:

- **Accounts Payable**—This area encompasses all payments due for firm overhead and all advances made on behalf of our clients for expenses incurred while processing each case. Along with handling invoices from vendors, the firm maintains more than 65 bank credit cards, which are reconciled monthly.
- **Payroll**—This area controls the pay for all Beasley Allen employees. The Payroll staff makes sure all employees are paid accurately and timely. In addition, proper tax is assessed and tax payments are filed and paid with all federal and state government agencies. We currently process two cycles of payroll, Monthly and Biweekly. The Payroll area also oversees the contributions made by our employees and company to the firm Profit Sharing Plan.
- **Financial Reporting & Controls**—This area produces all reports on a monthly, quarterly, and annual basis. The General Ledger, Income Statement, Trial Balance, and Balance Sheet are just a few examples. Beasley Allen maintains a high level of Internal Controls to include, but not limited to, reconciliations, division of responsibilities, following GAAP standards of accounting principles with a view towards compliance, fraud control and theft prevention.
- **Trust Accounting**—The Trust Accounting area oversees all receipts

and disbursements of client settlement funds. Client Trust Funds are held in a separate IOLTA account and disbursed according to the guidelines set forth by the Alabama State Bar. Every client's trust funds are maintained in a separate ledger.

Julie Grimes, Accounting Manager—Julie has been with the firm since 1994. She handles all Financial Reporting and Banking duties and oversees all staff and functions of the department. Julie and her husband Keith travel whenever possible exploring new beaches in the Caribbean. They also enjoy life on their farm, where they raise Black Angus Cattle, and occasionally drop a line in the pond hoping to catch supper! Julie and Keith have six grandchildren—all boys—Chael, Will, Sean, Jake, Cade and Lucas. Julie does an outstanding job and we are fortunate to have her with us.

Kristen Piatek, Senior Accountant—Kristen has been with the firm since 2009. Her primary function is Trust Accounting Disbursements. Her other areas of work are internal department reporting and all reporting for MDL associations. Before Kristen moved to Montgomery she lived in Pittsburgh Penn., where she grew up. Kristen has two children, Lexy, age 21 and, Justin, age 16. They are members of St. Bede Catholic Church. She keeps busy with her two horses, one being a yearling colt. She also enjoys the lake, beach, camping, kayaking, white water rafting and snow skiing. Volunteering with the Montgomery County 4H equestrian group, her church and her sons' school are also a passion of hers. Kristen is a very good, hard-working employee. We are fortunate to have Kristen with us.

Shelley Reiske, Accountant 1—Shelley has been with the firm since 2005. Her primary function is handling all of the firm's Payroll Processing. Some of her responsibilities include payroll reporting, and medical/life insurance billing. Born and raised in Connecticut, Shelley moved to Prattville, Ala., in 1994. She has three children—Erica, who is 25 years old, Madison, who is 18 years old, and Hunter, who is 16 years old. Shelley is also expecting her first grandchild in September of this year. Her family attends Centerpoint Fellowship Church in Prattville. In her spare time, Shelley enjoys the beach, traveling, cooking, entertaining guests,

selling cosmetics for Lancome and spending time with her friends and family. Shelley is a very good dedicated employee who is an asset for the firm.

Loretta Williams, Accounting Clerk 2—Loretta has been with the firm since 2001. She has worked working in the Accounting Department since 2004. Her primary area of work is Accounts Payable. Loretta handles the processing of all client-related expenses for the Mass Torts and Fraud Sections. One of her other areas of work is in a fraud control environment where she monitors Positive Pay Reconciliation with our bank. Loretta was born and raised in Lumberton, Miss. She has three brothers and two sisters.

Loretta earned a BS degree in Secondary Education from Alabama State University. She attended ASU on scholarship. In her free time, Loretta likes bowling, relaxing at the area parks, reading, writing, assisting at church and hanging with her family and friends. She is married to Paul and they have one son, Bryce. They attend Fresh Anointing House of Worship in Montgomery. Loretta is a good employee who is dedicated to her work. We are blessed to have her with us.

Ashley Locklar, Accounting Clerk 1—Ashley joined the firm in 2009 and transferred to the Accounting Department in 2012. Her primary area of work is Accounts Payable. Ashley handles the processing of all client related expenses for the Toxic Torts and Personal Injury Sections. One of her other areas of work is reconciling our vendors that individually produce hundreds of invoices per month. Ashley says she enjoys what she does at the firm and, even more so, “working with the amazing accounting group.” Ashley and her husband, Chuck, have two children, Cal, who is 5 years old, and Lola, who is 5 months old. Ashley’s favorite hobby is playing pool, but she also enjoys traveling, cooking, hosting/entertaining events, spending time outside or doing anything that is adventurous. Ashley is a good, dedicated employee and we are fortune to have her with us.

Robin Parkhurst, Accounting Clerk 1—Robin joined the Accounting Department in 2014. Her primary work area is Accounts Payable. She processes all non-client payables. Robin is married to John and has two children, Austin, who is 11 years old and in the 4th grade, and Dani-

elle, who is 17 years old and in the 11th grade, as well as one step-granddaughter, Callista, who is 3 years old. They attend the Church of the Highlands located in Montgomery. Robin enjoys spending time with her family, watching movies, cooking, gardening, going to the lake and watching Alabama football. She is a good employee who is dedicated to her job. We are fortunate to have Robin with the firm.

Beverly Larkin, Accounting Administrative Assistant—Beverly came to Beasley Allen in 2003. She handles all clerical functions for the Accounting Department. Her primary area of work is Cost Accounting and Trust Balance Monitoring. After graduating from Wetumpka High School in 1981, Beverly attended Coastal Training Institute in Montgomery, Ala., and graduated as a Legal Secretary. She has been married to John Larkin for 30 years, and together they have one daughter, Sandra Larkin, as well as a pair of twin boys, Lester and Sylvester.

Beverly is the proud grandmother of six grandchildren - four girls and two boys. Beverly enjoys reading, spending time with her family, exploring new things and encouraging folks. The Larkins attend church at Northview Christian Church, Safe Harbor in Montgomery. Without any doubt, Beverly enjoys her work. She is a good employee who is dedicated to the firm. We are blessed to have her with us.

XXV. SPECIAL RECOGNITIONS

HOUSE TO HOUSE MINISTRY

Underfunded and under-resourced neighborhoods can be found in abundance all across the United States and, unfortunately, Montgomery is no exception. Rather than pretend these impoverished houses and families do not exist, the Christian mentoring ministry House to House (H2H) is taking a more direct approach to ensure that these families are granted a new home and budgeting philosophy.

House to House was founded as part of the underprivileged youth development ministry Common Ground Mont-

gomery in 2009, but evolved in 2011 as an independent non-profit ministry. By focusing its ministry on renovating abandoned homes and educating families on how to budget for a household, House to House uses God’s gospel to teach its volunteers how to “love our neighbors as ourselves,” regardless of their differences.

Mike Bunce, a native of Lansing, Mich., and the executive director of House to House, was a recently laid off construction manager when he felt called to become involved with Common Ground Montgomery and launch the House to House ministry in the impoverished neighborhood Washington Park. The name of the ministry was taken from Acts 5:42, which reads: “Day after day, in the temple courts, and from house to house, they never stopped teaching and proclaiming the good news that Jesus is the Christ.”

Since its establishment, House to House has transformed many homes in the Washington Park area into beautiful, affordable homes for residents in the neighborhood. The relationships built alongside the renovated homes demonstrate the importance of sharing the love of Jesus Christ and treating others the way you would want to be treated. They accomplish this by providing services in three areas: home renovation, mentoring and education, and involving the public through a volunteer program.

Although individual situations may vary, typically families involved with House to House are given a mentor to help teach the importance maintaining a household budget and paying bills in a timely manner. Once the family has proven to the H2H mentor that they can complete these tasks on a regular basis, an Investor-Partner obtains a loan up to \$40,000 needed for the purchase and renovation of a Washington Park home and the family pays off the home expenses in time. Volunteers are used extensively throughout the entire renovation project with the help of three subcontractors who guarantee their work as safe and up to building code requirements.

Ministries like House to House run primarily on the actions of volunteers and donors. If you are interested in becoming a volunteer for House to House, fill out the ministry’s Volunteer Contact Form at www.h2hlife.org/volunteer. If you would like to make a

donation to House to House, they can accept multiple forms of payment at www.h2hlife.org/donate.

XXVI. FAVORITE BIBLE VERSES

My friend Paul Spivey sent in these verses for this issue. Paul is with Dillard's Department store in Montgomery. He works in the men's clothing section at the store. Paul played football at the University of Alabama for Coach Paul Bryant. That experience prepared him well for life after football.

"Those who obey his commands live in him, and he in them. And this is how we KNOW that is lives in us. We know it by the Spirit he gave us." 1 John 3: 24

"For our struggle is not against flesh and blood, but against the rulers, against the authorities, against the powers of this dark world and against the spiritual forces of evil in the heavenly realms." Ephesians 6: 12

"I press on toward the goal to win the prize for which God has called me heavenward in Christ Jesus." Philippians 3:14

Stephanie Dean, a legal assistant in our Personal Injury/Product Liability Section, sent in two of her favorite verses.

"Fear not, for I am with you; be not dismayed, for I am your God; I will strengthen you, I will help you, I will uphold you with my righteous right hand" Isaiah 41:10.

"For I know the plans I have for you, " declares the Lord, "plans to prosper you and not to harm you, plans to give you hope and a future." Jeramiah 29:11.

James Lampkin, a lawyer in our Mass Torts Section, also furnished two verses this month.

Then the King will say to those on His right hand, 'Come, you blessed

of My Father, inherit the kingdom prepared for you from the foundation of the world: for I was hungry and you gave Me food; I was thirsty and you gave Me drink; I was a stranger and you took Me in; I was naked and you clothed Me; I was sick and you visited Me; I was in prison and you came to Me.' "Then the righteous will answer Him, saying, 'Lord, when did we see You hungry and feed You, or thirsty and give You drink? When did we see You a stranger and take You in, or naked and clothe You? Or when did we see You sick, or in prison, and come to You?' And the King will answer and say to them, 'Assuredly, I say to you, inasmuch as you did it to one of the least of these My brethren, you did it to Me.' "Then He will also say to those on the left hand, 'Depart from Me, you cursed, into the everlasting fire prepared for the devil and his angels: for I was hungry and you gave Me no food; I was thirsty and you gave Me no drink; I was a stranger and you did not take Me in, naked and you did not clothe Me, sick and in prison and you did not visit Me.' "Then they also will answer Him, saying, 'Lord, when did we see You hungry or thirsty or a stranger or naked or sick or in prison, and did not minister to You?' Then He will answer them, saying, 'Assuredly, I say to you, inasmuch as you did not do it to one of the least of these, you did not do it to Me.' And these will go away into everlasting punishment, but the righteous into eternal life." Matthew 25:34-46

Jesus said to him, "You shall love the Lord your God with all your heart, with all your soul, and with all your mind." This is the first and great commandment. And the second is like it: 'You shall love your neighbor as yourself.' On these two commandments hang all the Law and the Prophets." Matthew 22:37-40

Becky Lamb, a legal secretary in our Mass Torts Section, furnished these verses. Becky reminds us that we really need to remember that God is in control

and no matter what happens in our lives, God will direct us in the right way to go.

God is within her. She will not fail. Psalm 46:5

Trust in the Lord with all your heart and lean not on your own understanding; In all your ways acknowledge him and he will make your paths straight. Proverbs 3:5-6

Do not worry about anything; instead pray about everything. Tell God what you need and thank him for all he has done. Philippians 4:6

John and Winnie Howard, long-time members of St. James United Methodist Church, sent in a verse for this issue. John is a World War II veteran, having served in the U.S. Navy. His wife Winnie is one of the best gardeners in Montgomery. She tells me that she also works hard to keep John in line.

"And the Lord shall be King over all the earth. In that day it shall be - The Lord is one, And His name one." Zechariah 14:9

XXVII. CLOSING OBSERVATIONS

FORMER ALABAMA GOVERNOR ALBERT P. BREWER

Albert Brewer has been an exceptional leader in the State of Alabama. He graduated from the University of Alabama School of Law in 1952, and returned to his hometown of Decatur, Ala., and established a successful law practice. After initially being reluctant to run for public office, Albert was persuaded to run for a vacant seat as State Representative, where he eventually served three terms in the Alabama Legislature. He was elected Speaker of the House during his third term. Albert won the 1966 Democratic primary for Lieutenant Governor without a runoff. He took the state's second highest offer in January, 1967. Upon the death of Gover-

nor Lurleen Wallace on May 7, 1968, Albert became Governor.

As governor, Albert worked quietly to achieve a number of much-needed reforms and instituted some new and very good programs. During his administration, appropriations for public schools received the largest increase in state history. He created the Alabama Development Office and introduced several measures to make the operation of state government more efficient and increased productivity. The Court of Appeals was divided into the Court of Civil Appeals and the Court of Criminal Appeals, and the state Supreme Court was expanded by adding two additional justices during Albert's time as governor. Also, the first Ethics Commission to promote honesty and integrity in state government was created. Albert set extremely high standards for others in state government to follow. He was noted for being totally honest and a man of great integrity.

The Brewer Administration was marked by a progressive agenda that emphasized education, economic development, highway construction and ethics in government. As a progressive New South Governor, Albert Brewer was simply ahead of the times. Had this man served another term as Governor, we in Alabama would all be much better off today. I can think of no person who was better prepared to be governor. His dedication to really being governor and his total honesty and integrity made Albert the best governor, even for a relative short time, that Alabama has had in my lifetime.

In 1970, Albert made a run for the Governor's office, and finished far ahead of his challenger, George Wallace, the man who had said he would never run against Albert, in the Democratic primary. However, since there were other candidates in the race, including Charles Woods, that forced a runoff. Albert lost the runoff in what has been dubbed as one of the dirtiest political campaigns in the state's history, or perhaps ever. Despite all of the dirty campaign tactics used against him, Albert never said anything in a negative light about the race or about the man who won the race.

Albert joined the faculty at Cumberland in 1987, where he now holds the position of Distinguished Professor of Law and Government & Professor Emer-

itus. He and his wife, Martha, established a scholarship fund to provide need-based aid to deserving students. In 2008, Cumberland School of Law dedicated the "Brewer Plaza" on its campus in his honor. My daughter Julie says that Albert was her favorite professor at Cumberland and since her graduation they have remained good friends.

In 2011, Albert was honored by the Alabama Civil Justice Foundation (ACJF) for his career of service to the people of Alabama. The ACJF selects an honoree every other year and Albert was "roasted" in Birmingham by his many friends who turned out to pay tribute to him.

Also in 2011, Albert was selected by Gov. Robert Bentley, top-ranking legislators and other Commission members to head up the Constitutional Revision Commission as its chairman. The 16-member Commission was created by the Legislature with a goal of rewriting Alabama's constitution article-by-article over a three-year term. Its work concluded in 2014. There is no person who would be more qualified to head this worthy cause.

Albert Brewer has dedicated his life to public service and has touched the lives of thousands of folks over the years, always in a positive manner. His years of service in the Alabama Legislature as both a member and as Speaker, then as Lieutenant Governor and finally as Governor were very good years for Alabama. Albert Brewer will go down in history as one of Alabama's most admired and respected citizens. I would put him in the same group with Sen. Jim Allen and Sen. Richard Shelby. I consider Albert Brewer to be a true statesman and a good friend. We need more "politicians" like him.

Sources: AL.com, samford.edu, Jere Beasley Report

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 bear from heaven and will forgive their sin and will heal their land.

2 Chron 7:14

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

Edmund Burke

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

Isaiah 10:1-2

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

Martha Washington (1732 - 1802)

The only title in our Democracy superior to that of President is the title of Citizen.

Louis Brandeis, 1937
U.S. Supreme Court Justice

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

Vincent Lombardi

XXVIII. PARTING WORDS

I hope our readers won't mind me taking a point of personal privilege in this Section this month. I am going to write a little bit about my marriage to a very special person and how we have both been blessed over the years. We celebrated our 57th wedding anniversary on March 15. Many say Sara Baker Beasley deserves a very special medal for putting up with me over those years.

I have to agree with them—she certainly does!

Sara and I decided to celebrate our wedding anniversary this year by going back to the area where we spent our honeymoon in 1958. So on March 13, we headed up to Northwest Alabama for the weekend. It seems like yesterday, but on March 15, 1958, we were married in Sara's hometown of Adamsville. At that time, I was 22 and Sara 21. Sara had graduated from Emory University, finishing the five-year nursing course in a little more than four years.

Sara had come to Auburn to get another degree, one in education. I had dropped out of school after my freshman year, which wound up at a Mississippi junior college. For two years, I helped out on the family farm. I started back to school at Auburn in the fall of 1957 and it was in September of that year that I met Sara Baker. It didn't take me long to figure out that I was going to try my best to marry that pretty girl from Jefferson County.

Looking back, I can understand why Sara's mother (Berta Palmer Baker) reportedly "fell out" when she got the news that her daughter was planning to marry a college drop out. At least, that's what Sara's Daddy (Frank Baker) told me later. Mr. Baker said he calmed Mrs. Baker down, but that it took him a few days. Sara says her mother didn't faint and actually liked me from the very beginning. While I believe Mr. Baker was just kidding, I still believe Mrs. Baker really did take the news sort of hard.

In any event, the wedding was planned and carried out on schedule. For our wedding trip, we rented a cabin for \$2 per night at Joe Wheeler State Park, which is located in Northeast Alabama. We stayed at the park for three nights and then headed back to Auburn.

When I came back to school in September of 1957, I became a serious student. That intensified after Sara and I

got married. Sara was able to finish her degree in education by the end of the summer quarter. Sara then taught school in Phenix City, commuting with several of her friends, until I finished at Auburn. While in school, I worked at the Burton Bookstore and also sold Mason shoes out of a catalog. I was in the Alabama National Guard at the time, which helped pay our bills.

I also coached a Babe Ruth League baseball team for two summers while at Auburn. We actually were state champs in 1959 and the team went to the World Series, which was played that year at Paterson Field in Montgomery. Two of our best players, the Salter twins, George and Frank, were sick and couldn't play. South Carolina beat us 5-3.

On our anniversary trip, we did upgrade and stayed at the Marriot Shoals Hotel and Spa, which is located on the Tennessee River near Wilson Dam. We had a working juke box in our room, which had songs that were recorded at the Fame Studio in Tuscumbia. Many in Alabama don't realize how important the music industry in that area of our state has been. Artists like Elvis Presley and many other famous artists recorded at Fame.

We ate dinner both nights in the Tower restaurant at the hotel—The 360—and the food was great. The restaurant has a revolving dining room at the top and the view all around is spectacular. On Sunday the 15th, we went over to see the cabin where we spent our honeymoon in 1958. It was still there and had been totally renovated. The park is divided by the Tennessee River, which forms the 69,700-acre Wheeler Lake. The Tennessee Valley is absolutely beautiful and it's worth a trip to see and enjoy the area. We had a great trip.

My prayer this month is for young couples and especially for newlyweds. It's very important for folks to get married life off on a solid foundation.

There is no better place to find the formula for a good marriage than in the Holy Bible. I am going to include a few Bible verses that will not only help couples to get things off to a good start, but will help them keep their marriages together. When God is really in charge, a marriage will survive regardless of the trials and tribulations that will certainly come up.

"Above all, love each other deeply, because love covers over a multitude of sins." 1 Peter 4:8

"Though one may be overpowered, two can defend themselves. A cord of three strands is not quickly broken." Ecclesiastes 4:12

"Be completely humble and gentle; Be patient, bearing with one another in love. Make every effort to keep the unity of the spirit through the bond of peace." Ephesians 4:2-3

"For I know the plans I have for you," declares the Lord, "plans to prosper you and not to harm you, plans to give you hope and a future." Jeremiah 29:11

"Therefore what God has joined together, let man not separate." Mark 10:9

"Love is patient, love is kind. It does not envy, it does not boast, it is not proud. It does not dishonor others, it is not self-seeking, it is not easily angered, it keeps no record of wrongs. Love does not delight in evil but rejoices with the truth. It always protects, always trusts, always hopes, always perseveres." 1 Corinthians 13:4-7

May God bless each of our readers and their families. I hope that all of us will have a blessed Easter this year. It's a very special time!

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