



THE
JERE BEASLEY REPORT

JUNE 2015

Beasley Allen

BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, P.C.
Attorneys at law

helping those who need it most since 1979

Distributed to over 40,000 subscribers each month

BeasleyAllen.com

I. CAPITOL OBSERVATIONS

GM SHOULD BE FOUND GUILTY OF CRIMINAL WRONGDOING

We have been informed that federal authorities have found criminal wrongdoing in their investigation of General Motors Co. over the automaker's faulty ignition switches that have caused so much misery and grief. I believe the reports are correct and that GM will pay a record penalty. A settlement with the U.S. Department of Justice, which has been conducting a yearlong probe into the automaker's handling of the defect, could be announced as early as this summer. According to reports, the fine may exceed the previous record, which was the \$1.2 billion penalty assessed to Toyota.

The New York Times was the first media source to report on this development and based on what our lawyers have learned, I am confident that the Times' report is accurate. Our firm was heavily involved in the Toyota litigation and currently are working on the GM litigation switch cases. We believe that GM's conduct is certainly as bad—if not worse—than that of Toyota.

The ignition switch defect has caused over 100 deaths and crash-related injuries for an additional 184 people. We all know that the recall has ballooned to include millions of vehicles. It should be noted that there are other GM vehicles—not currently in the recalls—that should be included.

We have repeatedly said that GM intentionally covered up a known safety defect for over a decade. The automaker lied to NHTSA, Congress and the American people and that's inexcusable. The National Highway Traffic Safety Administration has said it will extend its "unprecedented" oversight of the automaker's handling of potential vehicle safety issues for an additional year. NHTSA began conducting monthly meetings with GM under the terms of a May 2014 consent order that followed a record \$35 million civil penalty to punish the automaker for its "long-delayed" recall of the Cobalt, as well as other makes and models affected by the ignition switch defect that prevented the cars' air bags from deploying.

A number of lawsuits filed against GM in connection with the defect have been consolidated into multidistrict litigation in New York federal court. The plaintiffs in the MDL plan to appeal a decision by a U.S. bankruptcy judge that currently shields post-bankruptcy "New GM" from most ignition defect claims. Our firm and Lance Cooper's Georgia firm have been heavily involved in the ignition switch litigation and have

limited our efforts to the extent possible to cases that remain outside the MDL.

II. MORE AUTOMOBILE NEWS OF NOTE

GM FUND ADMITS TO OVER 100 DEATHS RELATED TO THE IGNITION SWITCH PROBLEMS

The General Motors compensation fund has determined that 107 death claims related to the automaker's defective ignition switches are eligible for compensation. The toll far exceeds the 13 victims that GM had claimed last year were the only known fatalities linked to ignitions that could suddenly cut off engine power and disable airbags. This number of deaths comes as no surprise to the lawyers in our firm who have been working on the GM litigation. As we all know, the defective ignition switch problems were first uncovered in the Melton case in Georgia.

The ignition-switch crisis is one of the deadliest automotive safety issues in American history. There were 270 people killed in Ford Explorers equipped with Firestone tires during the late 1990s and early 2000s. But while the Ford-Firestone accidents were obvious incidents of tire failures and sport utility vehicle rollovers, the ignition switch has gained more notoriety because the defect was hidden by GM for a decade before the automaker began recalling affected cars last year. The total number of recalls is now 2.6 million vehicles.

We are convinced, based on what all our lawyers have learned, that GM deliberately covered up the defect for years. The automaker clearly misled congress as to the magnitude of switch-related deaths in congressional hearings last year. The cover-up lasted for more than a decade and GM can't be allowed to get away with a decade of deception. I believe that NHTSA has to share part of the blame for allowing GM to engage in a massive cover-up. The agency had enough information available from vehicle crashes to at least be suspicious that a problem of some kind existed.

The compensation fund is expected to complete its review of all claims by July. To his credit, Kenneth Feinberg's standard for reviewing claims has been more lenient than those used by GM to determine whether the defect caused an accident. He and his staff are not using a legal standard. Nor is the fund using an engineering review of the claims being used, according to Camille Bires, the

Deputy Manager of the Fund, a key person in the program.

As we reported previously, GM paid a \$35 million fine to federal regulators for failing to report the defect in a timely manner. As we mentioned above, the company is still under investigation by the Justice Department for possible criminal charges and civil penalties. The switch crisis led to dozens of other recalls last year by GM, the nation's largest automaker, for a wide range of vehicle defects. The company has spent about \$3 billion overall on the recalls, including setting aside \$600 million to compensate ignition-switch victims.

Ms. Bires said that many of the eligible death claims involve younger victims in their teens and early 20s. She said the fatalities involved passengers as well as drivers,

IN THIS ISSUE

I.	Capitol Observations	2
II.	More Automobile News Of Note.	2
III.	A Report On The Gulf Coast Disaster	6
IV.	Drug Manufacturers Litigation.	8
V.	Purely Political News & Views	9
VI.	Legislative Happenings.	10
VII.	Court Watch.	11
VIII.	The Corporate World.	12
IX.	Whistleblower Litigation	15
X.	Activity In The Personal Injury and Product Liability Section	16
XI.	More Product Liability Updates	16
XII.	An Update On Our Mass Torts Section.	17
XIII.	More On Mass Torts Litigation.	18
XIV.	Business Litigation.	20
XV.	An Update On Securities Litigation.	21
XVI.	Insurance and Finance Update	22
XVII.	Premises Liability Update.	22
XVIII.	Workplace Hazards	22
XIX.	Transportation.	23
XX.	Healthcare Issues	25
XXI.	Environmental Concerns	25
XXII.	An Update On Class Action Litigation	26
XXIII.	An Update On Projects in Our Consumer Fraud and Commercial Litigation Section	28
XXIV.	The Consumer Corner	28
XXV.	Recalls Update.	29
XXVI.	Firm Activities	35
XXVII.	Special Recognitions	36
XXVIII.	Favorite Bible Verses	37
XXIX.	Closing Observations	38
XXX.	Parting Words	39

including people sitting in the back seat of vehicles. Some of the claims were made for accidents that occurred after GM began recalling the small cars last February. But Ms. Biros said there was no precise number available for post-recall victims. At this juncture, I would give Mr. Feinberg and Ms. Biros high marks for their efforts in handling the compensation fund.

Source: *New York Times*

AIRBAG MAKER TAKATA ANNOUNCES LARGEST AUTO RECALL EVER

Takata is nearly doubling the size of its already massive recall for faulty airbags, making it the largest auto recall in history. The company has already recalled airbags used in about 18 million vehicles for this most serious problem. This latest move will bring the number of recalls up to about 34 million vehicles. That is nearly one out of every seven cars on U.S. roads today.

There have been deaths reported that were tied to the faulty airbags. But as we have reported, Takata previously resisted demands by regulators to get all the affected airbags off the road. The airbags have exploded, sending shrapnel into the face and body of drivers and front seat passengers. Victims appeared to have been shot or stabbed, according to police who responded to the reported accidents. Many other victims had serious injuries including vision damage from shrapnel hitting them in the eye.

Even though most of the fatalities occurred in Hondas, and most of the recalled cars were made by Honda, dozens of different models are also affected. Most of the cars were built between 2000 and 2011. Consumers can check to see if their car is included in the recall by going to a special website created by the National Highway Traffic Safety Administration at <http://www.safercar.gov/rs/takata/index.html>.

NHTSA has finally realized that immediate action has to be taken. Takata had previously insisted that the airbag problems were limited to cars in regions with very humid weather, and it sought to limit the scope of the recall to those areas. NHTSA initially agreed to that limited recall, but later pushed Takata and 11 separate automakers to expand the recall. The agency even fined Takata \$14,000 a day, the maximum, for failing to cooperate with its investigation. The total fines were \$1.2 million as of May 19. The daily fines were suspended on that date, but NHTSA says further fines are possible.

The companies affected by the recall include BMW, Chrysler, Daimler Trucks, Ford, General Motors, Honda, Mazda, Mitsubishi, Nissan, Subaru and Toyota. This is said to be the most complex consumer safety recall in U.S. history. The recall is so massive,

parts for repairs may be difficult to come by. NHTSA says that drivers should not wait. The agency's plan is to make sure people work with their dealer to get the piece replaced as soon as possible, which depends on supplies being available.

NHTSA is in the process of doing its own testing and they are looking for an "effective remedy that is long-standing." Drivers should immediately check the VIN of their vehicles. NHTSA Administrator Dr. Mark R. Rosekind said that consumers need to get the VIN and check to see if their cars are being recalled. Their inflator is covered and they should contact their dealer and get that inflator fixed. Drivers can look up their VIN at <https://vinrcl.safercar.gov/vin/>.

Before this, the biggest recall on record was from Ford, which recalled 21 million cars in 1980 for a transmission problem that could allow cars to shift out of park, according to Clarence Ditlow, executive director of the Center for Auto Safety. Karl Brauer, senior analyst at Kelley Blue Book says that recalls of this size and scope are likely to happen more often as the auto industry becomes more global, pushing different automakers to use parts from the same suppliers. You can find out more about the latest recall at safercar.gov. We have a timeline that shows clearly that Takata knew about its problems with the airbags as far back as 2008.

Sources: CNN Money and Law360.com

TIMELINE OF TAKATA AIRBAG PROBLEMS

It's quite evident that Takata had to know about its airbag problems for a very long time. The following are some key events in the cumulative global recall the automakers whose cars have been recalled since 2008. There have been more than 34 million cars fitted with the defective airbags made by the Takata Corp.

2008

Nov. 4: Honda Motor recalled 4,000 Accords and Civics (2001 models) globally as Takata airbag inflators may produce excessive internal pressure causing them to rupture and spray metal fragments in the car.

2009

May 27: Oklahoma teen Ashley Parham died when the airbag in her 2001 Honda Accord explodes, shooting metal fragments into her neck. Honda and Takata denied fault, and settled for an undisclosed sum.

Dec. 24: Gurjit Rathore was killed in Virginia when the airbag in a 2001 Accord explodes after a minor accident,

severing arteries in her neck. Her family sued Honda and Takata for more than \$75 million in April 2011, claiming they knew of the airbag problems as early as 2004. Honda and Takata settle in January 2013 for \$3 million.

2010

Feb. 9: Honda expanded the earlier recalls

2011

April 27: Honda recalled 896,000 Honda and Acura 2001-03 cars in order to find defective Takata airbag inflators installed as replacement parts.

Dec. 1: Honda again expanded the recalls.

2013

April 11: Toyota Motor, Honda, Nissan Motor and Mazda Motor recalled 3.4 million vehicles globally due to potentially defective Takata airbags.

April 18: Takata to book extraordinary loss of \$307 million for year to March 2013 for recall-related costs.

May 7: BMW joins the recalls.

May 10: Takata posted a record \$212.5 million annual net loss, and named Swiss national Stefan Stocker as president, the first foreigner in the post.

Sept. 3: Devin Xu died in a 2002 Acura TL sedan in a parking lot accident near Los Angeles from "apparent facial trauma due to foreign object inside air bag," according to a coroner's report.

2014

June 11: Toyota expanded prior recall to 2.27 million vehicles globally. NHTSA opened probe, examining whether driving in high humidity regions contributes to the risk of Takata airbag explosions; Takata claims there is nothing to indicate any inflator safety defects.

June 23: Honda, Nissan and Mazda recalled 2.95 million vehicles, expanding April 2013 recall, bringing the total recalls to about 10.5 million vehicles over five years.

June 26: Takata CEO apologized to shareholders at AGM.

July 16: BMW recalled about 1.6 million cars worldwide.

July 18: Takata to book special loss of about 45 billion yen (\$440 million) in April-June for recalls.

Oct. 2: Orlando woman Hien Thi Tran died four days after her 2001 Accord was in an accident in which the airbag exploded, shooting out shrapnel, according to a police report.

Oct. 21: Takata shares dropped 23 percent in Tokyo.

Oct. 22: NHTSA expanded the total number of U.S. vehicles recalled for Takata airbags to 7.8 million over the past 18 months.

Oct. 27: A first case seeking class-action status was filed in Florida, claiming Takata and automakers, including Honda and Toyota, concealed crucial information on airbags.

Nov. 6: Takata warned of larger full-year loss, and paid no interim dividend for first time since 2006.

Nov. 7: *The New York Times* reported Takata ordered technicians to destroy results of tests on some airbags after finding cracks in inflators. Democratic lawmakers called for criminal probe into Takata.

Nov. 10: Takata shares drop 17 percent to 5½-year low.

Nov. 13: Honda said a woman—later identified as Law Suk Leh, 43—died in Malaysia in July after being hit by shrapnel from a Takata airbag in her Honda City—the first such fatality outside the U.S.; Takata said it has modified the composition of its airbag propellant; Honda widened the recalls; taking its total alone to nearly 10 million.

Nov. 20: U.S. Senate hearing held into Takata airbag crisis.

Dec. 4: At U.S. Senate hearing, Takata said it was unable to find “root cause” of airbag ruptures.

Dec. 11: Honda, Nissan added to recalls in Japan.

Dec. 16: Honda recalled around 570,000 cars in China over Takata airbags

Dec. 17: Mark Rosekind confirmed as new head of NHTSA.

Dec. 24: Stocker stepped down as Takata president.

2015

Jan. 29: Honda said 35-year-old Carlos Solis was killed in Houston in a 2002

Accord fitted with a Takata airbag that may have ruptured.

Feb. 11: Takata to double output of replacement airbag inflators by September.

Feb. 20: U.S. regulators imposed a daily fine of \$14,000 on Takata for failing to fully cooperate with airbag probe.

March 23: Honda hired U.S. engineering consultancy “Exponent” to investigate the Takata airbag faults.

May 8: Takata said it expects to return to profit in 2015-2016.

May 13: Toyota said it will recall 5 million cars globally, including Corolla and Vitz models from 2003-07; Nissan to recall 1.56 million cars, taking overall global recalls to more than 31 million in eight years.

May 20: A massive recall was announced bringing the total airbag recalls to 34 million cars.

We have not included in the time-line all of the 2015 events that involved Takata and the air bag problem. For example, a number of automakers added cars to the recall numbers during the last few weeks. We will mention a few of the more recent events next month. This story is far from over.

Source: Automobile News

FIAT CHRYSLER LAUNCHES RECALLS COVERING AIRBAG, IGNITION SWITCH AND MANUFACTURING ISSUES

Fiat Chrysler has been very busy recently issuing recalls for airbag, ignition switch, and manufacturing issues in its Jeep Liberty, Cherokee, and Wrangler SUVs, its Dodge Viper and Challenger cars, its Dodge Ram truck, and its Ram ProMaster City vans. This is not good news for the automaker or the owners of these vehicles.

The bulk of the recalls are over airbag deployment issues. Nearly 317,000 Jeep Cherokees (2014-2015 models) have been recalled due to airbags deploying in off-road conditions. The software that controls the side curtain and seat-mounted side airbags senses a possible rollover when the Jeep’s angle of operation changes, inadvertently inflating the air bags. Fiat Chrysler dealers will recalibrate the threshold that sets off the airbags, potentially leading to more serious problems of the airbag failing to deploy when there is a crash.

Fiat Chrysler is also recalling the Ram ProMaster City cargo and passenger vans to remove a section of tape from the side-curtain airbags. Engineers found that the tape used for airbag installation during vehicle

assembly may prevent airbags from fully deploying.

The next biggest recall involves possible ignition switch problems in nearly 43,874 of the 2006 Jeep Liberty and Wrangler SUVs and the Dodge Viper car. Engineers have found that the vehicles have switches that contain a type of wire that was involved in a 67,000-truck recall in December. The wire may break, preventing the vehicle from starting. If a driver does not follow recommended procedures for starting the vehicle, the vehicle also could move unintentionally when the ignition key is turned.

The automaker will notify customers of the issue and service availability. For the time being, customers are advised to follow recommended procedures for starting their vehicles, such as activating the parking brake, placing the shift lever in neutral and pressing the clutch pedal before turning the ignition key.

In addition, Fiat Chrysler is recalling 1,771 HEMI-powered dual-wheel Ram 4500 and 5500 Chassis Cab pickup trucks to recalibrate the top speed from 106 mph to 87 mph to comply with the factory-equipped tire restrictions. Finally, Fiat Chrysler is recalling 72 Dodge Challengers (2015 model) for having loose or missing bolts. So far, Fiat Chrysler maintains that there have been no injuries related to these defects, but only time will tell if these recalls are effective.

Sources: ABCnews, autoevolution, autonews

NHTSA IS INVESTIGATING FIAT CHRYSLER OVER SUN VISOR RECALL REPAIRS

The National Highway Traffic Safety Administration has started an investigation to ascertain the effectiveness of a vehicle recall by Fiat Chrysler. Nearly 900,000 sport utility vehicles at risk for sun visor fires were repaired under the recall. This probe comes after reports of eight fires in vehicles that had been repaired. In a notice issued last month, NHTSA said it opened an investigation into the July recall of 895,000 model year 2011-2014 Jeep Grand Cherokee and Dodge Durango models that may have defective wiring in the vanity mirror lights of the vehicles’ sun visors that can lead to short-circuiting and fires.

NHTSA announced its investigation into the affected vanity mirrors in January 2014, saying it was looking into claims that a headliner fire may ignite because of electrical shorting. The ODI said at the time it had received five reports of the vehicle headliners catching fire at the front of the vehicle near the sun visors in Jeep Grand Cherokees.

Source: Law360.com

NHTSA PROBES NISSAN VERSAS OVER SUSPENSION PROBLEMS

The National Highway Traffic Safety Administration has opened an investigation into 130,000 models year 2008 through 2010 Nissan Versa vehicles after receiving complaints of fractures occurring in the front suspension coil spring, which can lead to tire or brake line damage. NHTSA has initiated a preliminary evaluation saying in a notice that its Office of Defects Investigation has received 93 complaints of front suspension coil spring fracture in the affected Nissan Versas. The agency also said it received one complaint of a crash stemming from the issue. The notice said: "Preliminary analysis of the complaints indicates that the coil spring failures occur without warning and can happen at any speed." The investigation by NHTSA will assess the scope, frequency and safety issues surrounding the alleged defect.

Source: Law360.com

RECALL-RELATED CRASHES INVOLVING VEHICLES 10 YEARS AND OLDER GOING UNREPORTED

Hundreds of crashes involving defective cars are going unreported each year because under U.S. safety rules automakers aren't required to report suspicious accidents for models more than 10 years old. That causes concern for safety advocates, because they say the average age of cars on U.S. roads is 11.4 years. Almost half of the vehicles aren't covered under existing regulations. As a result, many incidents don't make it into a government early-warning database designed to catch patterns of defects that regulators can use to determine if a recall is necessary. In effect, the rules haven't kept pace with the reality on the nation's roads.

Legislation introduced in February by Representative Jan Schakowsky, an Illinois Democrat, would eliminate the 10-year limit as part of a broader effort to make safety data more useful to the public. Hopefully, this legislation will pass and become law. My friend Joan Claybrook, a Washington-based consumer advocate and who headed up the National Highway Traffic Safety Administration (NHTSA) during the Carter Administration, observed in a recent interview with *Bloomberg News*:

The law is absolutely out of date because companies have made it out of date by ignoring defects for so long in some of these cases. It ought to be open-ended.

When Congress decided in 2000 that automakers should pay for defects going back 10 years, vehicles were nine years old on average, according to IHS Automotive. This

year, according to IHS, about 121 million cars and trucks aren't covered under existing rules. It is predicted by IHS that the average vehicle age will rise to 11.9 years by 2019. Allan Kam, an auto-safety consultant who spent 25 years at NHTSA, believes it may be time to get rid of the time limit altogether. Mr Kam stated:

Even if you make it 12 or 13 years, there will still be millions of vehicles not covered if equipment is supposed to last the life of the vehicle, it should measure the life of the vehicle.

The Alliance of Automobile Manufacturers, which represents 12 carmakers including GM, Ford and Toyota, hasn't taken a position on eliminating the time limit. Interestingly, neither has NHTSA. Gordon Trowbridge, a spokesman for NHTSA, said the agency regularly evaluates potential defects of vehicles older than 10 years. He also said existing regulations require automakers to notify NHTSA and consumers if a safety defect exists. Hopefully, members of Congress will not be "swayed" by the lobbyists for the automobile industry and pass the legislation mentioned above. I would recommend that you read the article in Bloomberg News on May 4, 2015, on the subject of recalls and repairs.

Source: *Bloomberg News*, May 4, 2015 written by Jeff Green and Margaret Crowin Fisk

SOME MIDSIZE SUVs DO POORLY ON FRONT OVERLAP CRASH TEST

The Insurance Institute for Highway Safety (IIHS) has issued a report that includes new ratings based on recently completed crash test results. Three more midsize SUVs achieved good or acceptable ratings from the Institute in the latest round of small overlap front crash testing. However many models, including three newly rated SUVs from Fiat Chrysler Automobiles and one from Hyundai, continue to struggle with the test.

The Nissan Murano earned a good rating and, with a superior-rated optional front crash prevention system, qualified for the Institute's highest award, Top Safety Pick+. Among the seven 2015 models in this round of testing, the Jeep Wrangler 4-door model also picked up a good small overlap rating. But the Wrangler offers only marginal protection in side and rear crashes, so IIHS has not made it a recommended choice. It also lacks a fixed roof, so it can't provide good protection in rollover crashes. The Ford Flex earned an acceptable rating and qualifies for Top Safety Pick.

Seven midsize SUVs now qualify for awards from IIHS. The earlier winners were the Toyota Highlander with Top Safety Pick+ and the Chevrolet Equinox, GMC Terrain, Kia Sorento and Nissan Pathfinder, which all

earn Top Safety Pick. Aside from the Wrangler, three other Fiat Chrysler SUVs were tested for small overlap protection and those didn't fare well. The Dodge Journey earned a poor rating, with the Dodge Durango and Jeep Cherokee getting marginal ratings. The Hyundai Santa Fe also earned a marginal rating.

It might be well to explain how the small overlap test works. It replicates what happens when the front corner of a vehicle collides with another vehicle or an object such as a tree or utility pole. In the test, 25 percent of a vehicle's front end on the driver's side strikes a rigid barrier at 40 mph. The test is more difficult than either the head-on crashes conducted by the government or the IIHS moderate overlap test. That's because in a small overlap test, the main structures of the vehicle's front-end crush zone are bypassed, making it difficult for the vehicle to manage crash energy. The occupant compartment can collapse as a result.

Since IIHS began small overlap testing in 2012, the automobile manufacturers have responded by taking the test into account when models are redesigned. They are modifying front structures and improving airbags even before a model gets a full overhaul. IIHS Chief Research Officer David Zuby had this to say:

This test presented a major challenge for manufacturers when it was introduced three years ago, and many have adapted quickly. Chrysler, Dodge and Jeep have had some successes with redesigned models, but they haven't done much in the way of interim improvements. As a result, they still have many models that rate poor or marginal.

The best performer in the current group of seven, according to IIHS, is the redesigned 2015 Murano. It hit all the marks for ideal small overlap protection. In addition to earning a good small overlap rating, the Murano improved its roof strength rating to good from the previous generation's marginal rating. The optional front crash prevention also is new for 2015. The Murano's autobrake, according to IIHS, nearly avoided a collision in the 12 mph IIHS track test and reduced the vehicle's speed by 11 mph in the 25 mph test. The Murano also earned a point for meeting federal criteria for forward collision warning systems.

The Journey was the worst performer in the group, and IIHS says it's a "classic example of poor small overlap protection." The occupant compartment failed to hold up, with intrusion measuring as much as 9 inches at the instrument panel and the parking brake pedal, which tore through the dummy's left lower leg. Injuries to the left hip, left knee and right lower leg also would be possible. The dummy's head barely con-

tacted the front airbag before sliding off the left side, as the steering column moved to the right. The side curtain airbag failed to deploy, leaving the dummy's head vulnerable to contact with side structure and outside objects. The Journey was introduced in 2009, and its poor rating applies to the previous models.

Source: *Insurance Journal*

III.

A REPORT ON THE GULF COAST DISASTER

AN UPDATE ON THE STATE OF ALABAMA'S CASE AGAINST BP

The State of Alabama's case against BP is moving at a very good pace. Depositions have now commenced in the state's civil case against BP for damages associated with the *Deepwater Horizon* oil spill. Most of the witnesses being deposed in the case are Alabama employees and BP employees and contractors involved in the oil spill response. In total, we expect there to be over 40 depositions taken by the end of July 2015, when deposition discovery ends.

Once depositions conclude, the case will quickly shift into expert discovery, where Alabama's expert reports will come due. Because this case centers on economic and property damages associated with the disaster, the expert phase will be critically important to the ultimate outcome. Expert depositions will begin in early October of this year and are slated to conclude in December. BP will assemble, and likely has already assembled, an army of experts dedicated to derailing Alabama's case. Trial of this case will likely take place in the late Spring or early Summer of 2016.

This case will be one of the most important cases in Alabama's history. Never before has the State experienced the economic wrath and anguish from a disaster as it did from BP's oil spill and it continues to this day. The spill occurred at the worst possible time and at the worst possible place. Citizens endured, not only the economic devastation created by the spill, but BP's constant advertising campaigns, accusations of fraud and delay tactics in paying claims. Visions of oil on Alabama's white, sandy shorelines dismissed with the passage of time. But even today, one can walk the beaches of Alabama and find tar at a rate that they never could have found before the oil spill.

Predictably, BP moved to strike Alabama's request for a jury trial last year, hoping to keep a jury from hearing and deciding its

fate. Judge Carl Barbier correctly found that Alabama was entitled to a jury trial, but BP tried a second time to block the jury trial. Judge Barbier again denied its request. In short order, the parties will begin briefing whether Alabama's case should come home for its citizens to decide the case's outcome. We feel confident that the case will be sent back to Alabama for trial. It doesn't take a lawyer experienced in this type of litigation to understand how significant such a determination would be.

In the wake of a disaster like this, Alabamians always respond and work hard to recover. Our state's citizens who live along the coast are especially resilient. They have worked together and have done their best to get through this disaster. Fortunately, our firm was allowed to file Alabama's lawsuit in 2011 and that was extremely important for our state. Since taking office, Attorney General Luther Strange made this case a top priority. He has shown tremendous leadership in pressing the case forward—leading the Court to designate him coordinating counsel for all States. Alabama was the only state to have a case filed which was very good for us. This case is also extremely important to Governor Robert Bentley, and the great working relationship between Governor Bentley and Attorney General Strange is a key reason why the State will have its case heard first.

Lawyers Rhon Jones, Parker Miller, Jenna Day and Rick Stratton from our firm are working very closely with Attorney General Strange, Corey Maze and Win Sinclair of the Attorney General's office on behalf of Alabama. Together, they have done an outstanding job getting this case in the position it's in, considering that BP has thrown an enormous amount of legal resources and money into this case.

BP'S CHALLENGE TO ALABAMA'S DEEPWATER JURY DEMAND IS REJECTED

U.S. District Judge Carl Barbier rejected BP's arguments, including that there are considerable grounds for a difference of opinion on whether the Oil Pollution Act (OPA) provides the right to a jury trial. The decision involves a controlling question of law Judge Barbier said in a brief order. He denied BP's motion "for essentially the reasons" argued by Alabama.

In its opposition to BP's bid, Alabama argued that BP did not meet the criteria for interlocutory appeal and that the court should not send an appeal to the Fifth Circuit before ruling on its motion to remand the compensatory trial. There may be future issues requiring interlocutory appeal, the state noted, but those should be decided in the 11th Circuit Court of Appeals, where the trial will be, the circuit held.

This decision follows Judge Barbier's ruling in late March rejecting BP's arguments that Alabama's claims should be tried by the bench, finding that although the state's claims under the OPA do not include a jury trial right, that the Seventh Amendment provides for a trial on its claims for removal costs and damages such as lost tax and state department revenues, physical property damage and public service costs. Judge Barbier said in his order:

As a general rule, though subject to several exceptions, civil cases before a federal court sitting in admiralty are tried without a jury. BP's primary argument is tied to this premise. [But] three courts have held that a jury is available for at least some claims or issues under OPA. This court reaches the same conclusion.

BP had argued in a February 2014 brief that there is no right under the OPA to a jury trial because it is based on an admiralty statute, and courts have repeatedly found that other statutes based in admiralty lack such a right. To allow a jury trial under the OPA, the oil and gas giant said, "would contradict hundreds of years of jurisprudence."

This is a tremendous victory for the citizens along the Gulf Coast that have been harmed by BP's actions. With this ruling, residents and businesses along the Gulf Coast will hear the truth about the extent of the damage BP caused the State to suffer and how truly bad BP's conduct was.

Sources: Law360.com

JUDGE BARBIER REJECTS REQUEST TO STAY THE FEDERAL GOVERNMENT'S LAWSUIT

Judge Carl Barbier has refused to put on hold the \$13.7 billion lawsuit between BP PLC and the United States government. The request by a group was to stay the lawsuit until the energy giant pays all economic and medical damages claims stemming from the blowout. The request was made by a class of individuals who say they were harmed by the disaster but haven't yet been paid. Judge Barbier denied the motion to stay filed by a firm representing thousands of individuals who say they suffered financial and medical losses following the 2010 well explosion. The class asked that the penalty phase of the government's trial be suspended until all those harmed by the spill are compensated.

BP and the U.S. Department of Justice are currently battling over how much the energy giant will have to pay for the environmental cost of the spill. Judge Barbier has already ruled that BP could be held liable for the disaster and in January capped any potential fine at \$13.7 billion. The government is appealing that cap, arguing that its original

request for an \$18 billion maximum should be honored because Judge Barbier was wrong that only 3.19 million barrels of oil were released into the Gulf of Mexico. The government estimates that 4.19 million barrels were released.

Source: Law360.com

BP CLAIMS NOW BEING PAID BY CLAIMS ADMINISTRATOR

Now that the U.S. Supreme Court has rejected BP's appeal, the class settlement is final. The Claims Center has now started processing business claims again under the new matching rules set out by the Center. Claims can still be filed up to June 8, 2015, under the terms of the settlement. Any business, not excluded in the settlement, in any part of Alabama, Mississippi and Louisiana, or the west coast of Florida, may qualify for compensation. More than \$5 billion has been paid out to date under the settlement. It's critically important for any business that has a potential claim, and hasn't yet filed, to do so before the deadline.

INDIVIDUAL BP CLAIMS CAN BE APPEALED TO THE FIFTH CIRCUIT

The Fifth Circuit Court of Appeals ruled it is able to review individual claim determinations appealed by BP and claimants in the Deepwater Horizon Economic Claims Center. Previously, the last line of discretionary review resided with Judge Carl Barbier, who has done a great job in handling the MDL. He has received high marks from all independent observers.

BP appealed the Final Rules Governing Discretionary Court Review of Appeal Determinations approved by Judge Barbier which provided the appellate guidelines for individual claim determinations issued by an Appeal Panel. The Settlement Agreement delegates authority to Appeal Panelists to review appeal requests of final determinations issued by the Deepwater Horizon Economic Claims Center. BP challenged "the Final Rules for not providing for the docketing of requests, which it argues comprises a right to appeal from the district court to [the Fifth Circuit] and violates Federal Rule of Civil Procedure 79's provisions regarding the clerk's maintenance of the civil docket."

The Fifth Circuit held the Final Rules violated FRCP 79 by failing to contain proper docketing provisions for a potential appeal to the Court. It also reasoned that "where a settlement agreement does not resolve claims itself but instead establishes a mechanism pursuant to which the district court will resolve claims, parties must expressly waive what is otherwise a right to appeal from

claim determination decisions by a district court." The Court determined that no such waiver existed in the Deepwater Horizon Economic & Property Damages Settlement, so the parties preserved their right to appeal from the district court.

While the Settlement Agreement does allow each side to appeal a determination, BP has continually raised certain arguments on appeal that have been precluded by Judge Barbier. One such argument is alternative causation, wherein BP claims there is an additional causation requirement despite the Settlement Agreement and previous BP correspondences confirming no such requirement exists. Even though the Fifth Circuit order upheld Judge Barbier's preclusion of this argument, BP continues to assert it throughout the appeals process. Our hope is that BP won't continue to abuse the appeals process by continuing in this manner. But what can you expect from a company that has constantly sought to backtrack on its obligations.

Source: Law360.com

JUDGE PAVES WAY FOR DEEPWATER PERSONAL INJURY JURY TRIALS

Judge Barbier has ruled that a Plaintiff in the ongoing medical benefits class action over the BP PLC Deepwater Horizon disaster is entitled to a jury trial. There could be potentially thousands of jury trials involving personal injury claims. Judge Barbier found that a 2012 medical benefits settlement did not preclude claimants filing so-called back-end litigation option (BELO)—which enables class members with physical conditions that manifested after April 2012 to file their own separate suit in certain circumstances—from requesting a jury. The ruling addressed whether an individual class member's BELO complaint was bound by class counsel's decision to opt against requesting a jury in the original class action complaint and to designate the claims in the suit as admiralty or maritime claims. Judge Barbier said in his order:

While the medical settlement does contain a general provision requiring that it be interpreted in accordance with general maritime law, the court does not read this provision as mandating admiralty's traditional bench trial procedure for a BELO lawsuit. The court holds that a BELO plaintiff who properly invokes diversity jurisdiction and timely demands a jury is entitled to a jury trial in his or her BELO lawsuit.

The settlement had been reached in the medical benefits litigation, which was incorporated in multi-district litigation (MDL) over

the 2010 disaster in the Gulf. Separate settlements addressed claims for economic and property damage.

The medical benefits settlement applies to people who were part of the cleanup crew following the Deepwater Horizon oil spill or were residents of certain defined beachfront areas and wetlands during certain time periods in 2010. Even though class members released many claims against BP for exposure-related physical injuries through the medical settlement, Judge Barbier said claims for later-manifested physical injuries were generally excepted from the release.

Source: Law360.com

5TH CIRCUIT COURT OF APPEALS REJECTS MEXICAN STATES' CLAIMS OVER DEEPWATER SPILL

The Fifth Circuit Court of Appeals ruled last month that three Mexican states can't seek recovery from BP PLC for alleged property and economic damages arising from the April 2010 Deepwater Horizon oil spill. The Appeals Court said that only the country's federal government has the right to do so.

Proving ownership of the resources at issue is an essential element to proving that BP and the other Defendants named in the suit, including Transocean Offshore Deepwater Drilling Inc. and Halliburton Energy Services Inc., were liable for their alleged economic damages, according to the opinion.

Source: Law360.com

25,000 MEXICAN FISHERMEN SUE BP OVER ENVIRONMENTAL DISASTER

Five years after BP caused the most devastating environmental catastrophe ever in the Gulf of Mexico, Mexican fishermen have still not received any form of compensation for their losses. Recently, Mexican fishermen filed a class action lawsuit in a U.S. court against BP, seeking compensatory and punitive damages for BP's negligence and missteps that led to the massive leak. Interestingly, this is the first time BP has been sued by a person or business, outside of the United States. No compensation has been paid so far to Mexican fisherman.

The ecological impact on the Mexican coastline has been huge and can still be felt today. Thousands of species have been affected. The waters are still contaminated, and in some places there is irreparable damage, the fishermen allege in their complaint.

This is just another reminder of the irreparable harm the Deepwater Horizon oil spill caused to millions of lives. BP should be held accountable to all individuals and entities

that were affected. There has not been a great deal of media attention given to the negative ecological impact the disaster in the Gulf has had on the Mexican coastline and the country's fishing industry.

Sources: TeleSUR and EL PAIS

COURT SAYS THE \$750 MILLION DIVIDEND SUIT AGAINST BP BELONGS IN ENGLAND

The Fifth Circuit Court of Appeals has ruled that a putative class action over BP PLC's decision not to pay a promised \$750 million in dividends to shareholders after the 2010 Deepwater Horizon spill should be tried in England. The court upheld a lower court's dismissal of the suit. U.S. District Judge Keith P. Ellison ruled in June 2014 that England would provide a more convenient forum for the Plaintiffs' claims that the company's action had no legal basis since they concern primarily questions of English law. Judge Ellison had earlier dismissed a similar suit filed by the same Plaintiff, Robert R. Glenn, also on jurisdictional grounds.

Source: Law360.com

IV. DRUG MANUFACTURERS LITIGATION

ACCREDO TO PAY \$60 MILLION IN NOVARTIS AXJADE KICKBACK SUIT

Specialty pharmacy Accredo Health Group Inc. will pay \$14.9 million to settle state regulators' claims it participated in a patient referral kickback scheme with Novartis Pharmaceutical Corp. This is in addition to a \$45 million settlement with federal authorities revealed in late April. Accredo also agreed to cooperate with federal attorneys' prosecution of claims against Novartis.

The whistleblower suit alleged Novartis had offered performance rebates or discounts to pharmacies that encouraged the use of its iron reduction drug Exjade and organ transplant medication Myfortic. The U.S. government intervened last month in relator David Kester's claims against Accredo for the purpose of the settlement.

The government says Accredo violated the False Claims Act and the Anti-Kickback Statute from March 2008 to March 2012 through an Exjade patient referral allocation scheme. U.S. Attorney Preet Bharara said in a statement that Accredo's \$60 million settlement was substantial. He stated in the release:

Novartis used Accredo to promote refills under the guise of purported 'counseling' and 'education,' and in doing so, Novartis caused patients to receive one-sided advice that did not discuss Exjade's serious, potentially life-threatening, side effects. This settlement with Accredo restores to the public tens of millions of dollars paid out for kickback-tainted drugs.

Scott J. Lampert, special agent in charge of the U.S. Department of Health and Human Services, Office of Inspector General's New York Regional Office, added:

The conduct displayed by Accredo compromised patient care and undermined the integrity of our nation's health care programs. This settlement should serve as a warning to all providers that choose to let financial inducements cloud their medical judgment.

Kester, a former Novartis employee, filed the suit under seal in 2011. Accredo would receive additional patient referrals and related benefits from Novartis in exchange for increasing refill percentages of Exjade patients at more than two other specialty pharmacies participating in a Novartis program known as EPASS.

It was said that Novartis could direct which of the specialty pharmacies would receive patient prescription referrals not designated by insurance requirements or physician preference, the settlement said. The government previously intervened in Kester's claims against Novartis concerning an alleged kickback scheme involving Novartis and co-defendant BioScrip Inc., prompting the court to unseal the case in 2013.

Prosecutors have said the scheme cost Medicare and Medicaid tens of millions of dollars in improper reimbursements. BioScrip agreed to pay \$15 million to exit the suit in January 2014, including paying \$11.7 million to the federal government settle claims that its distribution of Exjade through its legacy specialty pharmacy operations violated the FCA and the Anti-Kickback Statute.

The court rejected Novartis' attempt to get the suit dismissed early on, but the company did get FCA allegations concerning several other drugs thrown out. Several pharmacies settled or were dropped from the suit.

Source: Law360.com

CEPHALON TO PAY \$1.2 BILLION TO END GOVERNMENT'S PAY-FOR-DELAY SUIT

Cephalon Inc. has agreed to pay \$1.2 billion to settle a long-running antitrust suit. The company had been accused by the Federal Trade Commission of paying generic-drug makers to hold off on launching their

own version of narcolepsy treatment Provigil. This is a major victory for the FTC in its campaign against so-called pay-for-delay patent settlements. Teva Pharmaceutical Industries Ltd., which now owns Cephalon, is being allowed by the FTC to count its settlement with private plaintiffs in related litigation toward that total disgorgement amount. Cephalon agreed in April to pay direct purchasers \$512 million to exit that suit. Whatever is left over after Teva pays the private plaintiffs will go to the federal treasury.

Teva, which has become the world's largest generic-drug maker after a series of acquisitions, has also agreed not to use the kind of patent settlements at issue in the suit in the future in its U.S. operations as part of the FTC deal. It was stated in a FTC news release:

Today's landmark settlement is an important step in the FTC's ongoing effort to protect consumers from anti-competitive pay-for-delay settlements, which burden patients, American businesses and taxpayers with billions of dollars in higher prescription drug costs. Requiring wrongdoers to give up their ill-gotten gains is an important deterrent.

The settlement came just before the seven-year-old case was due to go to trial in Philadelphia federal court and almost exactly two years after the FTC won a landmark decision from the U.S. Supreme Court holding that Hatch-Waxman Act settlements could face antitrust challenges.

The antitrust litigation stems from a series of reverse payment settlements worth about \$300 million that Cephalon reached with four generic-drug makers in 2005 and 2006 to resolve patent infringement litigation over the blockbuster narcolepsy treatment. The generics companies all sought approval to market their own versions of the drug on the same day, meaning that all four were eligible for the initial 180-day exclusivity window granted to first filers under the Hatch-Waxman Act.

In addition to requiring \$1.2 billion in disgorgement, Teva agreed to an injunction that keeps it from using some kinds of reverse payment settlements in the future. The injunction mainly covers business deals that compensate the generic-drug maker entered at the same time as the patent settlement. Teva will not be permitted to sign a business deal with a rival either within 30 days of a patent settlement that limits generic entry or that is conditioned on that kind of settlement.

Source: Law360.com

RITE AID JOINS PAY-FOR-DELAY MDL OVER GENERIC NIASPAN

U.S. District Judge Jan E. DuBois, a Pennsylvania federal judge, has folded Rite Aid Corp.'s pay-for-delay lawsuit against AbbVie Inc. and Teva Pharmaceuticals Industries Ltd. over Niaspan generics into the related multi-district litigation (MDL) that is pending in the judge's court. This is the 19th antitrust action now pending in the MDL. Rite Aid's lawsuit joins actions by four other direct purchasers of the cholesterol drug. Rite Aid, along with 14 end-payors, contends that AbbVie and Teva made millions for illegally delaying the entry of Niaspan generics into the market as part of a collusion with the drug's maker, Kos Pharmaceuticals.

Rite Aid's suit, filed on April 14, says that while the first of multiple would-be generic competitors started applying to market generic versions of the cholesterol drug in October 2001, no such competitor entered the market until almost 12 years later. In addition to Rite Aid, the direct purchasers in the MDL are Professional Drug Company Inc., Rochester Drug Co-Operative Inc., Value Drug Co. and Walgreen Co., according to the order signed by Judge DuBois. The 14 end-payors comprise mostly unions. Rite Aid claims Niaspan purchasers were harmed by the alleged unreasonable restraint of trade by Kos and its successors Abbott Laboratories and AbbVie, along with Barr Pharmaceuticals Inc. successor Teva.

It's alleged that Kos paid Barr to stay off the market for eight years in exchange for "hundred of millions of dollars," delaying competition of generic extended release niacin until about September 2013. Rite Aid is the latest direct purchaser, following Walgreen Co., to join the MDL. In late March, Walgreen Co.'s nearly identical antitrust suit against AbbVie, Abbott, Teva, Barr and others was consolidated by court order with the other direct purchaser actions.

The MDL stems from a 2005 settlement between Kos, purchased by AbbVie's previous incarnation in 2006, and Barr, which was bought by Teva in 2008. The pay-for-delay deal is said to have resulted from litigation brought by Kos against Barr over purported infringement of its Niaspan patents. It came just before the U.S. Food and Drug Association gave Barr approval to market Niaspan generics. The settlement included a co-promotion deal that required marketing the drug to doctors specializing in women's health in exchange for royalties and allowed Barr to serve as a backup manufacturer for Niaspan in exchange for quarterly standby payments. Class actions against Teva and AbbVie over the purported "sham" patent settlement began in April 2013.

In September, Judge DuBois dismissed a number of state law claims from the MDL, but kept the Plaintiffs' federal antitrust

claims intact. Ruling on the Defendants' bid to dismiss two consolidated complaints brought by direct purchaser and end-payor Plaintiffs, the judge found that the end-payors lacked standing to bring claims under laws from 13 states and D.C., because they had not alleged that any Plaintiff lived in those states or D.C. However, Judge DuBois refused to dismiss two federal antitrust claims brought by direct purchasers under the Sherman Act, finding that the claims were not time-barred. That was because ongoing sales of Niaspan at a "supracompetitive price" constitute a continuing violation.

Source: Law360.com

CALIFORNIA HIGH COURT APPROVES PAY-FOR- DELAY CHALLENGES

The California Supreme Court has ruled that the pay-for-delay pharmaceutical patent settlements can be challenged under state antitrust law. The appeals court revived claims by drug buyers that Bayer Corp. illegally paid generic manufacturers \$400 million to delay launching their own version of blockbuster antibiotic Cipro. The state's highest court concluded that the U.S. Supreme Court's landmark decision allowing Hatch-Waxman Act payments to be challenged under federal antitrust law also supported permitting similar lawsuits under California's competition laws.

Source: Law360.com

V. PURELY POLITICAL NEWS & VIEWS

KOCH BROTHERS HAVE A STRATEGY FOR 2016 ELECTIONS

A secret memo obtained by journalists at Politico reveals a record level of 2015 funding for American for Prosperity (AFP), the so-called citizen action group created and run by the infamous Koch brothers, Charles and David Koch, with an eye on influencing elections. The \$125 million budget is the most the group has spent in a non-election year. This is a clear indicator how serious the Koch brother are about setting the groundwork to have a loud voice in the 2016 race for the White House.

The number was included in a confidential donor briefing document, called a "Partner Prospectus," obtained by Politico, which also outlines a strategy that emphasizes supporting friends of "economic liberty" over party affiliations, at least for now. Instead of stumping for a GOP candidate, the Koch brothers

seem to be avoiding weighing in on the primary elections in favor of expanding the reach of AFP. There are plans to create new chapters in Alabama, Idaho, North Dakota and Utah.

Although early rumors had David Koch firmly in the camp of GOP nominee Wisconsin Gov. Scott Walker, he and the AFP backed off of endorsing any one candidate. Instead, Charles Koch told *USA Today* that he and his brother, along with their action team, plan to donate to at least five GOP candidates. Spokespeople for the various political groups associated with the Koch brothers insist that the focus is not the presidential race, but what they call a "long-term shift at every level of government toward a culture of freedom."

Financial freedom, in particular, it would seem. James Davis, a spokesman for Freedom Partners Chamber of Commerce, which oversees AFP and the Koch political machine, says the organization plans to support candidates—from either side of the aisle—with a vision for creating free market solutions. A key issue for the network is reauthorizing the Export-Import Bank, the official export credit agency of the United States.

But the Koch brothers are not entirely abandoning partisan politics. The Partner Prospectus also outlined an \$889-million spending plan by the entire Koch network leading up to the 2016 election. This is part of its long-term plan to shift American politics to the right on fiscal issues. The Prospectus revealed that AFP employed 539 field staffers in key states in 2014, spent \$60 million on TV, radio and online ads in 2014, knocked on 2.4 million doors and made 7.5 million calls.

Many believe as I do that the Koch brothers are the biggest threat to our form of government that exists today. We should all remember what a Republican President of the United States had to say on Nov. 19, 1863: "That this nation, under God, shall have a new birth of freedom—and that government of the people, by the people, for the people, shall not perish from the earth." I suspect that President Abraham Lincoln—if he were around today—would be shocked at what people like the Koch brothers are doing.

The Koch brothers' plan is to control government at both the national and state levels. While that would seem to be a totally impossible task, it may just be a distinct possibility. Ordinary folks have little voice in government today and what little they do have may well be lost. That's because of the huge amounts of money being spent in politics by powerful individuals and groups, and heading the list is the Koch brothers.

Source: Politico

VI. LEGISLATIVE HAPPENINGS

THE BUDGET BATTLES IN ALABAMA

The general fund battles were being waged in the Alabama Legislature when this part of the report was being written. I am not sure how the battle will end, but I do know that if the Alabama Senate adopts the House-passed general fund budget without significant changes, it will be a disaster for the people of our state. If this budget—without new revenues—is passed, Gov. Robert Bentley should veto the bill. I really don't believe the majority of our legislators understand fully what will happen if they don't join the governor in his efforts to keep the ship of state from sinking.

Members of the House and Senate should put politics aside, take a courageous stand, admit that state government in Alabama badly needs additional revenues, and then get to work and do the job. At this juncture, the people back home in the House and Senate districts haven't felt the adverse effects that will come if the house-passed budget passes and is signed by Governor Bentley. But they certainly will if this budget passes.

ALABAMA PRISON REFORM LEGISLATION BECOMES LAW

The Alabama Legislature overwhelmingly approved a bill intended to reduce overcrowding in Alabama prisons. The House of Representatives passed the a bill from the Senate 100-5 with a few amendments. The Senate, which had passed the bill in April, concurred with the changes made by the House in a 27-0 vote. Sen. Cam Ward, who has worked tirelessly on prison reform, stated:

This is not the final step. This is the first step in a long path forward. I'm just very proud our state has finally taken a meaningful step forward in prison reform.

The legislation was signed into law by Gov. Robert Bentley, who supported the prison reform effort. The Governor said in a statement:

Today's passage of SB67 is a historic day for Alabama as we take a significant step forward to address reform of Alabama's criminal justice system.

The Senate in April approved the bill, sponsored by Sen. Ward, and sent it to the

House. Rep. Mike Jones, who handled the bill in the House, said the plan would reduce the prison population by 4,500 inmates over five years. As of February, the Alabama Department of Corrections had 24,678 inmates in facilities designed for 13,318.

The new law would reduce penalties for some nonviolent property and drug crimes. It would create a new Class D felony designation for some nonviolent offenses. It would place new emphasis on parole and supervision of offenders to divert some from prison and to keep others from going back. It should be noted, however, that the creation of the Class D felony will result in an increase in the country jails statewide.

A related bill calls for use of \$60 million in bond money to expand prison capacity by about 1,500 to 2,000 beds. The House has passed that bill and it is now in the Senate. Sen. Ward said the bond money could be used to add space at existing facilities, rather than building a new prison. He said the Department of Corrections should decide where the capacity is added. Rep. Jones said the state might consider adding facilities near the counties that produce the most inmates. He noted that 10 counties account for 59 percent of prisoners.

The combination of the reforms and added space would drop the prison population to just under 140 percent of designed capacity over five years, according to Sen. Ward. He says the number is a good target because federal courts forced California to reduce its population to 137 percent. Alabama is at risk of federal intervention, without any doubt, if it does not reduce overcrowding.

The reforms, not including the construction, are estimated to cost about \$23 million to \$26 million a year. Some of that money would be used to hire about 100 parole officers and about 25 parole staff. Funding for the reforms would come through the General Fund. Sen. Ward says fixing Alabama's prison system will take time, but that this bill is a major step. He added:

No one is getting released early. However, how we deal with inmates going forward as well as how we deal with inmates who are already on parole and their supervision will be dealt with and handled differently.

Alabama prisons have been overcrowded for many years. The problem has drawn more attention in the last year. The Department of Justice issued a report last year finding that inmates at Julia Tutwiler Prison were subject to sexual abuse and misconduct by male officers.

While this legislation is a step in the right direction, funding is still a major problem. More will have to be done to reduce the prison population to an acceptable number. If the legislature doesn't adequately fund the prison reform legislation, the result will be in

a federal take-over of Alabama's prison system. I hope the leadership in the House and Senate recognize the seriousness of this situation and will make sure the funds are made available to carry out the reform effort.

Source: AL.com

ALABAMA LEGISLATURE UNRAVELS PROTECTIONS FOR PLAINTIFFS INJURED BY GENERIC PRESCRIPTION MEDICATIONS

Senate Bill 80 (SB80) was passed and is now law. The purpose of this legislation was to "provide that a manufacturer is not liable . . . for damages resulting from a product it did not design, manufacture, sell, or lease; and to provide that a manufacturer is not liable for damages if its design is copied without its express authorization." That sounds reasonable enough at first blush, that is, until you consider the realities of the pharmaceutical industry and federal labeling rules for prescription drugs.

Most folks are very familiar with generic pharmaceutical drugs. When a branded drug's patent expires, generic manufacturers may seek FDA approval for the generic versions of brand-name drugs by way of an abbreviated new drug application process. Instead of having to duplicate the extensive animal and human testing already conducted by the brand-name manufacturer, the generic manufacturer may instead rely on the brand-name manufacturer's data and submit only bioequivalence data.

Because they do not incur the costs of clinical trials, generic medications are significantly cheaper than their brand-name counterparts. The use of generic drugs is so ubiquitous that all 50 states have some form of generic substitution law—allowing a pharmacist to provide a generic drug in place of a brand-name drug, unless the prescribing physician indicates otherwise on the prescription.

Both brand-name and generic manufacturers must monitor adverse reactions suffered by users of a drug and provide post-marketing reports to the FDA. However, only the brand-name manufacturer remains responsible for the accuracy and adequacy of its drug's label, while the generic manufacturer is to simply make sure that its label matches the branded drug's. These rules are very strictly enforced. Even if a generic manufacturer believes that a warning should be added or strengthened, actually doing so would violate federal laws and regulations requiring the label of the generic drug to match the brand-name manufacturer's label. Brand-name manufacturers are well-aware that after their patents expire, generic versions of the drug will be made, with those manufacturers distributing the brand-name manufacturer's label.

Because generic manufacturers do not have the authority to add or strengthen warnings in the label, they are generally immune from liability for failure to warn, leaving victims injured by generic medications without a remedy. Last year, the Alabama Supreme Court recognized that these nuances make prescription drugs “unlike any other product on the market,” and upheld its 2013 ruling that brand-name drug manufacturers can be held liable for inadequate warnings in its label, even where the victim actually took a generic version of the drug, produced by another manufacturer. This ruling provided much-needed relief for Alabamians harmed by generic drugs with outdated labels.

Reaction to the *Wyeth v. Weeks* decision was extreme and largely ignored the text of the ruling itself. The Court specified in its opinion that it was “not...creating a new tort of ‘innovator liability.’” The pharmaceutical industry acted quickly and, as a result, Alabama legislators and business organizations called for a quick end to “innovator liability.” SB80 was introduced, a great deal of misleading information put out, and, the bill passed in record time. The Alabama Supreme Court emphasized repeatedly that the *Weeks* decision was based on the unique regulatory environment of prescription medications and detailed:

Nothing in this opinion suggests that a plaintiff can sue Black & Decker for injuries caused by a power tool manufactured by Skil based on labeling or otherwise.

The report by AL.com that said Alabama’s Supreme Court had “put the state back on the highway to tort hell,” was totally untrue. If companies are to be held responsible for only their own products, shouldn’t that mean that brand-name drug manufacturers are responsible for the content of the warnings found in the labels they design and put out for public consumption? The Alabama Supreme Court had ruled correctly in its opinion on the liability of a drug company. This new law is a classic example of “over-reacting” by a legislative body.

Sources: Alabama Senate Bill 180 (2015), *Wyeth v. Weeks* (Ala. Aug. 15, 2014), Law360.com, AL.com

VII. COURT WATCH

SUPREME COURT UPHOLDS CAMPAIGN FINANCE RESTRICTIONS ON JUDICIAL FUNDRAISING

The U.S. Supreme Court has upheld the right of states to ban elected judges from soliciting campaign contributions for their

own campaigns. The majority decision was written by Chief Justice John Roberts in the 5-4 decision. The ruling comes after a series of court rulings that overturned campaign finance regulations, among them the well-known 2010 *Citizens United* and the 2014 *McCutcheon* cases. This ruling, by contrast, upholds a campaign finance regulation, and does so by making a strong distinction between the role of the judiciary and the role of elected legislative and executive officials. Explaining this distinction, Chief Justice Roberts, writing for the majority, said:

A State’s interest in preserving public confidence in the integrity of its judiciary extends beyond its interest in preventing the appearance of corruption in legislative and executive elections. As we explained in [Republican Party of Minnesota v. White], States may regulate judicial elections differently than they regulate political elections, because the role of judges differs from the role of politicians.

In the case before the court, Lanell Williams-Yulee, a Florida judicial candidate, had signed her name to a fundraising solicitation letter while running for office in 2009. She did so despite Florida’s ban on fundraising solicitation by judicial candidates. Candidates like Williams-Yulee are allowed to raise money through campaign committees, but they may not solicit the funds themselves. Williams-Yulee challenged the law as a restriction of her First Amendment right to free speech. The court, however, did not agree. Instead, it upheld the Florida ban on direct judicial candidate solicitation because of what Chief Justice Roberts described as the unique way the judiciary maintains its authority. While politicians are expected to balance a variety of interests and receive support from various quarters, judges must be seen by the public as being fair and above influence. Chief Justice Roberts wrote further:

In deciding cases, a judge is not to follow the preferences of his supporters, or provide any special consideration to his campaign donors. This is therefore one of the rare cases in which a speech restriction withstands strict scrutiny.

Chief Justice Roberts had previously been a strong opponent of campaign finance restrictions, having sided with the majority in *Citizens United*, *McCutcheon* and a number of other cases related to the issue. His decision to back a new standard—one maintaining that judges, and therefore the campaign finance laws covering them, are different from politicians—marks a major

shift for the court. This is seen as a huge change in Supreme Court doctrine.

Source: *Huffington Post*

HSBC UNIT WINS NEW TRIAL IN \$2.5 BILLION SECURITIES FRAUD SUIT

The Seventh Circuit Court of Appeals granted a HSBC Holdings PLC unit a new trial in the securities lawsuit that had resulted in a record \$2.5 billion verdict against its mortgage unit. The appeals court found that the jury hadn’t considered how some true statements made by the company brass had affected its stock price. HSBC Finance Corp., formerly known as Household International Inc., had argued that the Plaintiff’s expert who quantified for the jury how much fraudulent statements by Household executives had boosted the company’s stock price hadn’t also shown the jury how much non-fraud information had moved the price up or down.

The appeals court agreed with that argument and sent the case back for consideration of the issue. The panel wrote in the ruling:

We conclude that the evidence at trial did not adequately account for the possibility that firm-specific, nonfraud related information may have affected the decline in Household’s stock price during the relevant time period. As things stand, the record reflects only the expert’s general statement that any such information was insignificant. That’s not enough.

The appeals court agreed a new trial was warranted on the loss-causation issue and on an issue about the way the jury was instructed as to the three executives, but on no other grounds.

Source: Law360.com

INDIAN CASINOS SHOULD NOT BE IMMUNE FROM LAWSUITS

Josh Harvey, his pregnant wife, and their three children were on their way home from a Halloween party at a family member’s home. Michael Thomas, who had been at the 7 Clans Paradise Casino near Ponca City, Okla., gambling and drinking for approximately five hours, rear-ended the Harvey’s vehicle. Thomas was traveling approximately 90 miles per hour and there was no evidence of braking prior to impact. Josh Harvey, his wife Casey, their unborn child and two of their three children were killed. Thomas’ blood alcohol level was still over the limit when he was tested three hours later. He was sentenced to 15 years in prison for manslaughter.

Christopher Cook has incurred more than \$1,000,000.00 in medical bills after he was struck on his motorcycle by a car driven by Andrea Christianson. Ms. Christianson had been given free drinks at a birthday party at Avi Casino Enterprises in Southern Nevada, then was taken to her car and allowed to drive home. Her blood alcohol content the morning following the wreck was 0.25. Ms. Christianson, who also happened to be an employee of the Casino, plead guilty to aggravated assault and drunk driving and was sentenced to four years in prison.

The Harvey family, wanting to hold the Casino accountable and to provide for the remaining child, filed suit against 7 Clans Paradise Casino in an Oklahoma State Court. Christopher Cook, also wanting to hold the Casino accountable and recover for his injuries, sued Avi Casino Enterprises in Nevada.

Even though the Harvey family and Christopher Cook were not on Casino property and even though their accidents occurred on a public roadway, both suits were dismissed. The suits were dismissed because Indian casinos enjoy what is called sovereign immunity. Tribal sovereign immunity protects Indian tribes from suits absent express authorization by Congress or a clear waiver from the tribe.

Lawyers in our firm were shocked to learn that Indian Casinos could send drunken patrons and employees out on our public roadways and not have to answer to anyone for this conduct. Even more unbelievable was that victims and their families who are injured or killed by this conduct are left with no remedy. That's an absolute travesty.

The 9th U.S. Circuit Court of Appeals issued the opinion in the *Avi Casino Enterprises* case. The Court held that sovereign immunity applies to the tribe's commercial as well as governmental activities. Additionally, the Court ruled that the protection from suit extends to the employees "when acting in their official capacity and within the scope of their authority."

Cook argued it was unfair to allow tribes to create commercial corporations that can compete in the marketplace while enjoying immunity from legal liabilities that all other corporations must face. He said it was unnecessary to grant tribal corporations immunity to protect tribal autonomy and self-government.

The Appeals Court went on to state "this leaves Mr. Cook without a remedy against Avi Casino for his grave injuries under our law, even if his assertions of negligence by Casino employees are correct." The Court suggested that either the U.S. Supreme Court or Congress should review the rule limiting tribal sovereign immunity involving Indian gaming casinos. The Court also suggested that the tribe itself could take responsibility for the action of its employees and waive sovereign immunity.

Our firm was recently contacted by a client who was seriously injured by an employee of Wind Creek Casino & Hotel in Wetumpka, Ala. This employee, driving a company owned vehicle, left the casino to run an errand. She was involved in an accident involving our client. As it turned out, this employee had a blood alcohol level well in excess of the legal limit of .08. We filed suit on behalf of the client. However, as with Christopher Cook and the Harvey family, the casino is claiming sovereign immunity from suit. The casino's Motion to Dismiss is currently pending before the Court.

States should not allow Indian casinos to purchase and sell alcoholic beverages unless the casinos agree to waive Sovereign Immunity. There is no reason to shield casinos from liability when they act irresponsibly and someone is injured or killed. This is particularly true when those who were injured or killed never set foot on casino property. Those of us who use our public roadways deserve better. If you need more information about the subject discussed above, contact Graham Esdale, a lawyer in our firm's Personal Injury/Products Liability Section, at 800-898-2034 or by email at Graham.Esdale@beasleyallen.com.

VIII. THE CORPORATE WORLD

FINES ON FINANCIAL INSTITUTIONS WERE MORE THAN \$7.8 BILLION IN THE FIRST QUARTER OF THE YEAR

Penalties imposed on financial institutions totaled more than \$7.8 billion in the first quarter of 2015, up 73 percent from the prior quarter, according to data released last month by the Committee on Capital Markets Regulation. There were four mega-settlements of more than \$1 billion that led the pack. The most recent total eclipsed the fourth-quarter 2014 clip of \$4.5 billion, which concluded a record \$61.7 billion in penalties last year, the highest recorded by the nonprofit group since it began researching such matters. "Data show that financial institutions in the U.S. continue to face historically unprecedented public financial penalties," the committee said in a news release.

Public financial penalties include class action settlements that arise from suits brought by the government and regulatory penalties that follow enforcement actions. The U.S. Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC) are typically the agencies most active in enforcing such actions. Many settlements reflect continued fallout

from the financial crisis. In February Morgan Stanley paid \$2.6 billion to end a U.S. Department of Justice investigation into its mortgage-backed securities deals. That accord, which was the largest first-quarter deal, followed the investment bank's tentative \$275 million settlement to resolve an SEC investigation into subprime residential mortgage-backed securities, (RMBS), that Morgan Stanley sponsored and underwrote in 2007.

German financial giant Deutsche Bank AG in April agreed to pay \$2.5 billion globally—about \$2.1 billion to U.S. agencies—and entered into a deferred prosecution agreement to settle claims with United States and United Kingdom regulators that its traders helped rig the London Interbank Offered Rate (Libor) and other key benchmarks.

Much like previous Libor settlements, no individuals at Deutsche Bank entered a guilty plea or were named in court documents; however, the New York regulator forced Deutsche Bank to terminate seven employees and install an independent monitor. Deutsche Bank agreed to pay \$600 million to the N.Y. Department of Financial Services, \$800 million to the CFTC, \$775 million to the Justice Department and £227 million (\$357 million) to the Financial Conduct Authority.

In February, Standard & Poor's Financial Services LLC also agreed to pay \$1.375 billion to settle lawsuits brought by the Department of Justice (DOJ) and 20 attorneys general over the rosy ratings it assigned to large securities that turned toxic and exacerbated the financial crisis. Additionally, Commerzbank AG, in March agreed to enter into a deferred prosecution agreement and to pay \$1.45 billion to New York and federal regulators and law enforcement agencies, in addition to firing five employees implicated in the processing of transactions for Iranian and Sudanese entities and enabling a \$2 billion fraud at Olympus Corp.

The Cambridge, Mass.-based Committee on Capital Markets Regulation, which advocates improved regulation of capital markets, consists of 36 members across finance, investment, business, law and accounting and academic circles. It's led by Harvard Law School professor Hal Scott. The research group has previously called on the Federal Reserve to better coordinate its stress test rules on financial institutions required under the Dodd-Frank Act with other regulators, including the Federal Deposit Insurance Corp., and with its existing stress testing procedures.

Source: Law360.com

FIVE BANKS GUILTY OF RATE-RIGGING AND WILL PAY MORE THAN \$5 BILLION IN FINES

Swiss banking giant UBS agreed last month to pay \$545 million to settle an inves-

tigation by U.S. authorities into its role in manipulating interest and currency rates. UBS agreed to plead guilty to one count of wire fraud. So far five major banks have agreed to plead guilty to criminal charges and pay more than \$5.5 billion in collective penalties to settle charges their traders routinely manipulated the world's foreign-exchange market for their own profit. The Department of Justice, the Federal Reserve and other U.S. and European authorities and regulators said corporate units of Citicorp, JPMorgan Chase, London-based Barclays and Royal Bank of Scotland acknowledged their traders rigged foreign exchange prices of U.S. dollars and euros from Dec. 2007 to Jan. 2013. In "normal times," such a revelation would be shocking. But today, it's just a blip on the nightly news. The \$2.5 billion in criminal fines levied as part of the resolutions represent the largest federal anti-trust penalties ever obtained by U.S. authorities.

Prices the market sets for currencies "influence virtually every sector of every economy in the world." The traders' actions, according to reports from the DOJ, "inflated the banks' profits while harming countless consumers, investors and institutions around the globe—from pension funds to major corporations, and including the banks' own customers." Euro-U.S. dollar traders at Citicorp, JPMorgan, Barclays and RBS—self-described members of the cartel—used an exclusive electronic chat room and coded language to manipulate benchmark exchange rates of the two currencies in ways that benefited their own trading positions, prosecutors said.

The bank violated terms of the 2012 non-prosecution agreement that had settled UBS' involvement in rigging the London Interbank Offered Rate (Libor). As we have previously explained, the financial benchmark is used to set rates on trillions of dollars in mortgages, loans and credit cards. As a result, UBS agreed to plead guilty to one count of wire fraud, pay a \$203 million fine and accept a three-year term of probation for Libor rate manipulation by its traders. UBS also agreed to pay \$342 million to the Federal Reserve and make remedial changes to its foreign-exchange business practices. No individual bank employees were hit with criminal charges as part of the settlements, but it was reported that investigations into foreign-exchange issues are continuing.

The criminal settlements mark the latest result from a global crackdown on systematic manipulation of financial benchmarks by bank traders. In all, the five banks have now paid nearly \$9 billion in total criminal and civil fines and penalties for rigging the foreign-exchange spot market. Bank officials took responsibility for the illegal activity, terminating dozens of traders as investigators around the world probed foreign exchange practices. Citi also announced that it has agreed to a separate \$394 million settlement of a private class-action lawsuit related to the

foreign-exchange activity. The settlement is subject to court approval.

Source: Law360.com

BANK OF AMERICA SETTLES FOREIGN EXCHANGE LAWSUIT FOR \$180 MILLION

Bank of America has paid \$180 million in a settlement to resolve claims it helped rig the foreign exchange market. The Charlotte-based bank disclosed the settlement amount in a securities filing. The settlement had been announced in April by investors involved in the settlement. The investors—several pension and hedge funds—accused Bank of America and some other financial institutions of conspiring to manipulate benchmark trading rates in the foreign exchange market.

The antitrust class action alleged that this was part of a conspiracy to rig the approximately \$5 trillion-per-day foreign exchange market. The bank said that it would use its existing reserves to cover the cost of settling the suit. The settlement is subject to court approval.

JPMorgan Chase & Co. and UBS AG settled the same lawsuit earlier this year, agreeing to pay \$99.5 million and \$135 million, respectively. The settlement amount is covered by existing legal reserves. Bank of America said in the filing. The settlement adds to the billions of dollars Bank of America has paid to resolve litigation since the financial crisis.

The lawyers representing Bank of America, as part of the settlement, agreed to cooperate in the Plaintiffs' continuing investigation and litigation against nine remaining banks in federal district court in New York. At press time it was being said that Citi and Barclays are in settlement talks. Bank of America's settlement should provide more ammunition for the Plaintiffs in their negotiations.

Judge Schofield rejected the banks' claims that the U.S. Plaintiffs failed to bring enough evidence of a potential conspiracy, finding that the facts laid out in the complaint, including the existence of chat rooms where traders "congratulated each other on the manipulation of 'the Fix,'" were enough that discovery and trial were needed to determine their veracity. "The Fix" is an industry term for the median price of a widely traded currency 30 seconds before market close that sets the closing price for the day. Judge Schofield wrote:

Even the names the FX traders gave their chat rooms—such as 'The Cartel,' 'The Bandits' Club' and 'The Mafia'—support the inference that the chat rooms were used for anti-competitive purposes.

The Plaintiffs, including the Louisiana Municipal Police Employees' Retirement System, filed their complaint alleging rigging of the \$5.4 trillion-per-day foreign exchange market in 2012. It was alleged that the banks routinely charged pension funds the worst possible forex rates when processing transactions on their behalf. Other Plaintiffs filed similar class action complaints. They were eventually consolidated in New York district court. A series of enforcement actions from U.S. and other regulators resulted in about \$4.3 billion in fines against the banks. This definitely helped the Plaintiffs' claims. Discovery in the class action was stayed for six months as the U.S. Department of Justice continues its investigation into forex rigging. The case is in the U.S. District Court for the Southern District of New York.

Source: Bloomberg and Law360.com

JPMORGAN TO PAY \$500 MILLION IN LANDMARK MBS CLASS SETTLEMENT

A New York federal judge has approved what is said to be the largest ever class action settlement involving the sale of mortgage backed securities. JPMorgan Chase & Co. has agreed to pay \$500 million to settle accusations arising from the sale of \$17.58 billion in Bear Stearns Cos. securities. U.S. District Judge Laura Taylor Swain agreed that the terms of the settlement were fair and should be approved.

The suit was filed on behalf of pension funds that purchased billions' worth of securities backed by mortgages signed off on by loan originators owned by Bear Stearns. Those mortgage pools were given high investment ratings despite the poor underwriting practices underlying the loans and the lender's overvaluation of the properties being financed, the complaint alleges. When the housing market collapsed, it took the value of the mortgage-backed securities along with it and put a huge dent in the suing unions' pension funds.

Source: Law360.com

REGIONS FINED \$7.5 MILLION FOR BREAKING OVERDRAFT RULES AND WILL REFUND \$49 MILLION TO CUSTOMERS

The federal government has fined Regions Bank \$7.5 million for breaking overdraft rules and failing to correct the violations for nearly a year after discovering them. Regions has refunded \$49 million in illegal fees to consumers and will pay a fine of \$7.5 million to the Consumer Financial Protection Bureau (CFPB). When customers withdraw more money than is in their checking account, a bank can advance that money and charge an overdraft fee. Federal rules that took effect

in 2010 require that customers have to opt-in to be charged these fees. If customers don't opt-in, banks can decline a transaction, but the banks can't charge a fee.

Regions allowed their customers to link their checking accounts to their savings accounts or lines of credit. That means when a customer withdraws more than is in their checking account, that money can automatically be withdrawn from another account. But Regions didn't allow customers who had these accounts link to opt in for overdraft coverage. Instead, the bank paid transactions that were greater than the balance of all available accounts, charging a \$36 fee for doing so. A Regions' internal review found that the linked accounts policy violated the rule, but the bank didn't stop the charges until almost a year later in April 2012. When the compliance department told senior executives about the violation, Regions reported the policy to the CFPB and stopped charging those fees in July 2012.

Regions no longer offers this product, which offered short-term loans for small amounts to customers who make regular deposits into their accounts. Under this program, Regions would collect payment from an account, but if payment was larger than the available balance, cover the transaction and charge an overdraft fee or reject its own transaction and charge a fee. Despite claiming it did not charge these fees, the bank collected about \$1.9 million in fees from 36,000 customers, according to the CFPB. Regions voluntarily refunded affected customers. Regions will hire an independent consultant to identify any remaining customers who were charged illegal fees, under the terms of a consent order filed last month.

Regions also will fix all negative credit reporting that came as a result of illegal fees. CFPB Director Richard Cordray said in a statement:

Today the CFPB is taking its first enforcement action under the rules that protect consumers against illegal overdraft fees by their banks. Regions Bank failed to ask consumers if they wanted overdraft service before charging them fees. In the end, hundreds of thousands of consumers paid at least \$49 million in illegal charges. We take the issue of overdraft fees very seriously and will be vigilant about making sure that consumers receive the protections they deserve.

Regions is headquartered in Birmingham and operates in 16 states. The bank has had numerous problems and definitely needs to clean up its operations.

Source: AL.com

REGIONS AGREES TO PAY \$90 MILLION TO END STOCK INFLATION CLAIMS

Regions Financial Corp. will pay \$90 million to settle allegations that the bank misled investors about company accounting after its 2006 buy of AmSouth Bancorp. The shareholders alleged that because of Regions' shoddy internal controls it was not until the bank came under increased scrutiny after its October 2008 government bailout that it admitted \$6 billion in so-called goodwill asset estimates from the \$10 billion AmSouth deal were seriously impaired. Stock prices fell sharply after the announcement on Jan. 20, 2009. Regions will pay \$90 million into a settlement fund for investors who held stock from February 2008 to January 2009.

Source: Law360.com

FOAM MANUFACTURERS PAY \$275 MILLION TO SETTLE PRICE-FIXING CLASS ACTION

Six foam manufacturers have agreed to pay nearly \$276 million to settle a class action lawsuit over claims that they fixed prices. Direct customers will recover as much as 80 percent of their estimated damages. The settlement was reached on the eve of trial between the direct purchaser class of Plaintiffs and the final six Defendants who had not settled with the group. The six agreements total \$275.5 million and will bring the direct purchasers' settlement total to \$433.1 million.

I will explain how the settlements will break down between the Defendants. About half comes from Mohawk Industries Inc., which agreed to pay \$98 million to resolve the suit. Foamex Innovations Inc. will pay \$60 million; and Woodbridge Foam Corp. will pay \$50 million. The settlements also include \$32 million from Future Foam Inc., \$19.5 million from Hickory Springs Manufacturing Co. and \$16 million from FFP Holdings LLC. The Defendants have already put much of those funds into escrow accounts.

There are still some individual direct purchasers proceeding with the litigation. The indirect purchasers, who are also still litigating the case, reached their own settlement with Leggett & Platt Inc. That company has already paid nearly \$40 million to settle with the direct purchasers.

Source: Law360.com

ACTIVISION GETS \$275 MILLION SHAREHOLDER SETTLEMENT APPROVED

Activision Blizzard Inc., publisher of "World of Warcraft" and "Call of Duty," has received court approval for a \$275 million settlement. Delaware Court of Chancery Vice Chancellor J. Travis Laster gave approval to

the settlement, which was tentatively reached with Activision leaders in November. It resolves allegations that CEO Bobby Kotick and Chairman Brian Kelly put their own interests over those of other shareholders when an investment vehicle they control bought more than \$2 billion worth of stock concurrent with the California video game giant's \$5.8 billion equity buyback from its former majority stakeholder.

Under the terms of the agreement, certain Defendants and insurers will pay Activision \$275 million, while Kotick and Kelly would agree to reduce their voting power from 24.9 percent to 19.9 percent and add two independent directors to the company's board. Vice Chancellor Lester stated:

The monetary consideration of \$275 million is the largest cash recovery ever achieved on stockholder derivative claims. The magnitude of the settlement reflects that lead counsel advanced strong claims for breach of the duty of loyalty. That does not mean that the claims were without risk.

Vice Chancellor Lester referred to the transaction as a "restructuring" in the opinion because it redrafted Activision's governance and shareholder structure. Activision Blizzard Inc. investors had urged a Delaware Chancery judge in March to overrule an objection from a dissenting shareholder and bless the settlement with company leaders that would end derivative and class action litigation over an \$8.2 billion deal to buy back Vivendi SA's controlling stake in the game publisher.

It was reported that under the Vivendi deal, Activision bought back \$5.8 million worth of shares at \$13.60 each from the French conglomerate, while Kotick's and Kelly's group took \$2.3 billion worth of the remaining shares and gained \$664 million.

Source: Law360.com

\$200 MILLION MENINGITIS PAYOUTS APPROVED BY COURT

A Massachusetts bankruptcy judge has approved New England Compounding Center's (NECC) Chapter 11 plan, which provides up to \$200 million in payouts to those affected by a 2010 meningitis outbreak that killed at least 64 people and resulted in the company going into bankruptcy. U.S. Bankruptcy Judge Henry J. Boroff signed off on the deal, which was introduced in December and sets aside a minimum of \$135 million for a trust that will distribute settlements to resolve about 3,500 personal injury or death claims against NECC.

Source: Law360.com

GEORGIA HOSPITAL TO SETTLE FALSE MEDICARE BILLING CHARGES FOR \$20 MILLION

A central Georgia hospital system has agreed to a multimillion dollar settlement to resolve charges of fraudulent Medicare billing. The Medical Center of Central Georgia has agreed to pay \$20 million to settle claims that it billed Medicare for services that were more expensive than what the hospital should have been billing for between 2004 and 2008. According to federal prosecutors, hospital officials knowingly charged Medicare for unnecessary inpatient admissions when they could have performed outpatient procedures and billed less. Hospital officials said in a statement that they've entered an agreement with federal officials requiring the hospital to give employees more compliance training. The Medical Center of Central Georgia is based in Macon and is reported to be the second largest hospital in the state.

Source: *Insurance Journal*

IX. WHISTLEBLOWER LITIGATION

FOUR ISSUES TO WATCH IN AMARIN'S OFF-LABEL MARKETING SUIT

Amarin Pharma Inc. has filed a lawsuit that presents a constitutional challenge to U.S. Food and Drug Administration restrictions on off-label marketing. The suit will involve important questions for other False Claims Act (FCA) litigation, as well as issues relating to the criminal punishment of drugmakers. Also included will be issues relating to free speech rights and the FDA's duty to set clear rules before putting the hammer down on officials. Jeff Overley wrote an article, appearing in Law360, that says there are four important issues to watch:

Caronia Clarity May Emerge

Amarin's suit was filed in a New York federal court, which falls under the jurisdiction of the Second Circuit. As a result, this could help clarify the still-murky impact of the circuit's 2012 ruling in *U.S. v. Caronia*, which found that a drug salesman was wrongly prosecuted for speech about off-label uses. Amarin is seeking a like ruling, arguing that current government policy "plainly contradicts" the Caronia ruling and that a court order protecting truthful and nonmisleading off-label promotion "falls squarely within Second Circuit precedent." The complaint also is distinct

from other recent cases, such as *Solis v. Millennium*, that involve off-label marketing but also are more amenable to being resolved without resorting to a First Amendment analysis. Unlike FCA suits where drugmakers can cite free speech as one of many defenses, Amarin's requested relief is focused almost exclusively on constitutional remedies.

Big Themes May Produce Narrow Ruling

Amarin's proposed remedies touch on broad themes. The company seeks recognition of a First Amendment right to limited off-label promotion, a declaration that FDA policies are so vague that they violate Fifth Amendment due process protections, and a conclusion that its proposed off-label speech wouldn't breach the FCA. The American suit poses a threat to the FDA's duty to prevent the indiscriminate dissemination of drugs that have not been adequately confirmed as safe and effective.

Speaker-Based Restrictions Are Key

One of the more powerful aspects of Amarin's complaint asserts that the FDA is singling out drugmakers for disparate treatment—the sort of speaker-based restrictions that courts tend to eye skeptically. For example, the complaint notes that many dietary supplement makers are allowed by the FDA to claim that there is "supportive but not conclusive research" about the heart benefits of omega-3 fatty acids. Amarin wants to claim pretty much the same thing about its prescription-only fish oil drug Vascepa, and unlike supplement makers, it vows only to market to physicians, not consumers. The FDA reviewed Amarin's clinical evidence and found insufficient support for an implicit claim of cardiovascular benefit associated with Vascepa. That review, and the deference afforded to agency prerogatives on public health, could mean that Amarin faces an uphill climb.

Confusing Rules Loom Large

A constant refrain of drugmakers in recent years has been that FDA policies on off-label promotion are too vague. Amarin's complaint claimed the ambiguity an affront to due process.

The FDA has acknowledged that it needs to clear up the existing confusion. Last year, the agency approved citizen petitions seeking clarity on several issues related to off-label promotion. The FDA recently announced plans to hold a public meeting this summer to receive input on communications involving unapproved uses. Experts were split, however, on how Amarin's case

might be affected by the fact that regulators are currently updating policies. This case is in the U.S. District Court for the Southern District of New York.

Source: Law360.com

MOTOR VEHICLE SAFETY WHISTLEBLOWER ACT

On Feb. 26, 2015, the Senate Committee on Commerce, Science and Transportation approved a bill titled the Motor Vehicle Safety Whistleblower Act. This bill is the handiwork of Chairman John Thune and Ranking Member Bill Nelson. The Thune-Nelson bill allows for employees or contractors of motor vehicle manufacturers, part suppliers, and dealerships to receive compensation for penalties resulting from any governmental legal action exceeding one million dollars.

The purpose of this legislation is to prevent roadway injuries and death from defective automobiles. It will provide a powerful tool to ensure the prompt disclosure of any known issues with vehicles regarding safety defects. Most manufacturers say they are dedicated to maintaining roadway safety; however, their actions don't always live up to those claims. Individuals have been hurt or killed because of defective cars being put on our highways. This bill will hold participants in the automobile industry responsible for their decisions that result in harmful consequences to the public.

This bill is designed, much like several other statutory whistleblower protections, to encourage the disclosure of unknown information. It provides incentives for whistleblowers to come forward with this unknown information. Whistleblowers can receive up to 30 percent of the monetary penalties if they disclose information involving an unknown defect or condition that is likely to cause injury or death. It can be either to the Department of Transportation or the U.S. Department of Justice. This bill also takes into account the significance of the information, as well as the opportunity the whistleblower had to report the problems to his employer. Conclusively, this bill will incentivize disclosing information in order to maintain public safety.

The Motor Vehicle Safety Whistleblower Act is needed to protect whistleblowers who are aware of serious and dangerous defects in automobiles driven by Americans every day. The purchase of an automobile is a significant investment and is the second costliest expense many Americans have, outside of a home mortgage. When citizens purchase defective automobiles, they are not only exposed to dangerous and deadly defects, but they are also overpaying for a vehicle with a defect that they would not have bought had they known of the risks.

Last year was the “Year of the Recalls” and this year hasn’t slowed down. We have written on recalls in this issue. Whistleblowers need to be encouraged and not punished for stepping forward and telling the truth. Simply put, whistleblowers save lives. Hopefully, this bill will pass and be signed into law.

Lawyers at Beasley Allen continue to vigorously investigate fraud against both the federal and state governments and we encourage anyone who knows of fraudulent activities to step forward and report them. Potential whistleblowers must be protected against being retaliated against for doing the right thing and reporting fraud they have witnessed. Anyone considering doing the right thing and blowing the whistle is strongly urged to seek legal advice before doing so. They must understand their legal rights and authority so as to do things right and be protected.

Our lawyers are knowledgeable concerning the federal False Claims Act and its state counterparts and have experience in whistleblower litigation. They can help guide whistleblowers through the process. If you need any information and would like to speak with a lawyer, contact Andrew Brashier, a lawyer in our firm’s Consumer Fraud and Commercial Litigation Section, at Andrew.Brashier@beasleyallen.com, or at 800-898-2034 or 334-269-2343.

X. ACTIVITY IN THE PERSONAL INJURY AND PRODUCT LIABILITY SECTION

We have had a number of requests wanting to know about specific projects lawyers are working on in our firm’s Personal Injury and Product Liability Section. I will give a brief summary of some of the ongoing projects in the Section. Cole Portis heads up the Section and there are a total of 15 lawyers in the Section. We also have 11 legal assistants and seven in-house investigators in the Section who are involved in these projects.

GM Defective Ignition Switch—General Motors has recalled more than 17 million vehicles related to a defective ignition switch problem, which can leave a vehicle without power and the driver unable to control the vehicle in sudden and dangerous situations. Court documents and other evidence reveal that GM knew about the ignition switch problem as early as 2001. GM has established a Victims Compensation Fund to

address serious injuries and deaths resulting from the ignition switch defect. To date, the fund has acknowledged more than death claims eligible for compensation since the fund began accepting claims on Aug. 1. The deadline to file a claim with the fund was Jan. 31, 2015. Our lawyers are also still filing claims outside the fund. Contacts: Ben Baker or Mike Andrews at 800-898-2034 or by email at Ben.Baker@beasleyallen.com or Mike.Andrews@beasleyallen.com.

18-wheeler Accidents—There are significant differences between handling an interstate trucking case and other car wreck cases. It is imperative to have knowledge of the Federal Motor Carrier Safety Regulations, technology, business practices, insurance coverages, and to have the ability to discover written and electronic records. Expert testimony is of utmost importance. Accidents involving semi-trucks and passenger vehicles often result in serious injuries and wrongful death. Trucking companies and their insurance companies almost always send accident investigators to the scene of a truck accident to begin working to limit their liability in these situations. Our lawyers, staff and in-house accident investigators immediately begin the important task of documenting and preserving the evidence. Lawyers in the Section will review any case involving catastrophic injury or death. Contacts: Mike Crow, Julie Beasley, or Chris Glover at 800-898-2034 or by email at Mike.Crow@beasleyallen.com, Julie.Beasley@beasleyallen.com or Chris.Glover@beasleyallen.com.

Defective Tires—Tire failure can result in a serious car crash and even a vehicle rollover accident, causing serious injury or death to vehicle occupants. Air, heat and sunlight can cause the rubber in tires to break down. When a tire is defective, potentially serious problems like detreads and blowouts can occur long before the tire would be expected to wear out. If the tire failure is the result of design or manufacturing defects, and the manufacturer is aware of the problem, they have an obligation to alert consumers to the potential danger. Contact: Rick Morrison at 800-898-2034 or by email at Rick.Morrison@beasleyallen.com.

On-the-job Product Liability—Quite often product liability claims arise from on-the-job accidents that are considered workers compensation claims. After we investigate the circumstances that caused the injuries, many times we dis-

cover a defective machine may be the cause of the injuries. That can give rise to a products liability claim. Contact: Kendall Dunson at 800-898-2034 or by email at Kendall.Dunson@beasleyallen.com.

Heavy Truck Product Liability Claims—Tractor trailers and other heavy trucks are not required to contain many of the same protections for occupants as smaller passenger cars. They can contain dangerous defects putting the truck driver or passengers at risk of serious injury or death. These trucks many times have particularly weak roofs that crush in rollovers. The passenger compartments are often not protected by effective cab guards, and this allows loads to shift into the truck cab. We would like to review any case involving catastrophic injury or death. Contact: Ben Baker at 800-898-2034 or by email at Ben.Baker@beasleyallen.com.

If you need more information on any of the projects mentioned above, contact Sloan Downes, Section Administrator, at 800-898-2034 or by email at Sloan.Downes@beasleyallen.com and she will have a lawyer contact you.

XI. MORE PRODUCT LIABILITY UPDATES

TRUCK TIRE FAILURES SURE TO FOLLOW INCREASED SPEEDS RICK MORRISON

Rick Morrison, who handles tire litigation for our firm, says that one of the most dangerous tires he has seen is the Goodyear G159 RV tire. One of the primary problems with the Goodyear RV tire was that it was not designed to travel at highway speeds. The G159 was designed to tolerate speeds less than 65 mph and once RV owners started to drive their RVs at interstate speeds, the tires started experiencing failures leading to tragic consequences.

Many tractor-trailers on our nation’s highways are driven in excess of the 75 mph their tires are designed to handle. This creates a public hazard that has been linked to wrecks and tire blowouts that cause highway wrecks. Unfortunately, this problem has largely escaped the attention of highway officials.

Most heavy truck tires are designed for a maximum speed of 75 mph. Currently 14

states, mainly west of the Mississippi River, have speed limits of 75 and 80 mph. In parts of Texas, the speed limit is 85 mph. All of this is a recipe for disaster when combined with the tolerance of truck tires.

Safety advocates and tire experts say that habitually driving faster than a tire's rated speed can generate excessive heat that damages the rubber, with potentially catastrophic results. Rick says he has handled numerous cases where this was the problem.

While even the most basic tires on passenger vehicles can safely tolerate speeds up to 112 mph, the rubber on standard commercial truck tires starts to degrade at or below the speed limits in the "faster" states. Highways also become scorching hot during much of the year in many of the Western states where the higher speed limits appear. Hot asphalt adds further stress to the already overtaxed tires on heavy trucks and elevates the risk of catastrophic blowouts.

Tire manufacturers can produce truck tires that tolerate the higher speed limits at about the same cost as the 75-mph-rated tires, but few do. So as speed limits rise across broad regions of the country, tire manufacturers look the other way rather than produce a product that meets the changing needs.

A report by the Associated Press reveals that "manufacturers are hesitant to make more (of the higher-speed rated tires), fearing sales won't be big enough to justify the cost of redesigning and retooling." The tire makers contended many trucking companies already equip their trucks with speed governors to prevent them from driving faster than 75 mph.

Bridgestone, one of the largest producers of commercial truck tires, proposes a nationwide appeal of the higher speed limits to solve the problem, rather than making tires that endure higher speeds. We believe the tire manufacturers have a responsibility to design safer tires.

The combination of increased legal speed limits, truck driver's habits and the tire industry's reluctance to provide more robust tires will tragically lead to even more injuries and deaths on our highways. If you want more information, contact Rick Morrison at 800-898-2034 or by email at Rick.Morrison@beasleyallen.com.

XII. AN UPDATE ON OUR MASS TORTS SECTION

I will give a brief summary of some of the projects that lawyers in our firm's Mass Torts Section are currently working on. Andy

Birchfield heads up the Section and Melissa Prickett serves as the Section Administrator. There are 30 lawyers and 18 legal Assistants in the Section. Those lawyers and all of the staff personnel in the Section have been very busy in this issue. Due to space and time limitations, I won't include all of the settlements or the new case filings in this section.

Xarelto—Lawsuits filed against Johnson & Johnson subsidiary Janssen Pharmaceuticals and Bayer Corp. over the blood thinner Xarelto have been consolidated in Louisiana federal court. Xarelto has been linked to serious side effects including internal bleeding, gastrointestinal bleeding, brain bleed and death. The Xarelto lawsuits come on the heels of the recent \$650 million Pradaxa settlement. Researchers linked Pradaxa, also a blood thinning medication, to more than 500 deaths. Xarelto blood thinner litigation has been consolidated before U.S. District Judge Eldon Fallon in the Eastern District of Louisiana. Judge Fallon presided over suits against Merck & Co. over its medication Vioxx. The Vioxx litigation resulted in a \$4.85 billion settlement in 2007. Contacts: David.Byrne@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

Talcum powder and ovarian cancer—As many as 2,200 cases of ovarian cancer diagnosed each year may have been caused by regular use of talcum powder. Talc is a mineral made of up various elements including magnesium, silicon and oxygen. Talc is ground to make talcum powder, which is used to absorb moisture and is widely available in various products including baby powder and adult products including body and facial powder. Talc products used regularly in the genital area increase the risk of ovarian cancer. A jury recently found consumer health care products manufacturer Johnson & Johnson knew of the cancer risks associated with its talc products but failed to warn consumers. Contacts: Ted.Meadows@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

Transvaginal mesh—The FDA has issued an updated safety communication warning doctors and patients that the placement of surgical mesh through the vagina to treat pelvic organ prolapse may present greater risk for the patient than other options. This is also called transvaginal mesh. Reported complications from using the mesh include the mesh becoming exposed or protruding out of the vaginal tissue, pain, infection, organ perforation and urinary problems. There was a major development in a trial just completed last month in a

Delaware Court. It will be mentioned separately. Contacts: Leigh.Odell@beasleyallen.com, Chad.Cook@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

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

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

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

noma. Contact: Melissa.Prickett@beasleyallen.com.

Risperdal, an atypical antipsychotic drug used to treat schizophrenia and certain problems caused by bipolar disorder, has been linked to the development of gynecomastia in boys and young men. Gynecomastia is a condition that causes boys to grow breasts. The drug is manufactured by Johnson & Johnson. A settlement occurred on May 27 in a case that was going to trial in Philadelphia. Contacts: James.Lampkin@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

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

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

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

Byetta, Januvia, Janumet and Victoza—These are drugs from a class known as incretin mimetics that are used to treat Type 2 diabetes. The FDA approved Byetta in 2005, Januvia in 2006, Janumet in 2007 and Victoza in 2010. These drugs have been prescribed to millions of people in the United States. Since approving the medications, the FDA has issued several warnings about links between Byetta, Januvia, Janumet and Victoza to complications related to pancreatic diseases. Recent studies have linked these drugs to acute pancreatitis and increased risk of pancreatic cancer. We are currently investigating claims of thyroid cancer and pancreatic cancer. Contacts: David.Dearing@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

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

If you need any additional information on any of the projects listed above, contact [Melissa Prickett](mailto:Melissa.Prickett@beasleyallen.com) at 800-898-2034 or by email at Melissa.Prickett@beasleyallen.com. She will either answer your inquiry or have another lawyer in the Section contact you.

XIII. MORE ON MASS TORTS LITIGATION

\$2.4 BILLION SETTLEMENT AGREEMENT REACHED IN ACTOS BLADDER CANCER LITIGATION

Takeda Pharmaceutical Co. has agreed to pay up to \$2.4 billion to resolve bladder cancer claims tied to its Type 2 diabetes drug Actos. The settlement will compensate an estimated 10,000 claimants who were diagnosed with bladder cancer after ingesting Actos and who meet the other eligibility requirements of the settlement program. The settlement requires 95 percent of the eligible claimants to enroll to become effective. If 95 percent enroll, Takeda will pay \$2.37 billion into the settlement fund; if 97 percent enroll, Takeda will increase the settlement fund to \$2.4 billion.

The settlement program is designed to fairly compensate claimants based upon the extent of their injuries and their cumulative exposure to Actos, taking into account other risk factors that could have caused or contributed to their injuries. To date, only nine Actos cases have been tried in court. Without the settlement program, it could take many years for the thousands of filed cases to work their way through the legal system and be set for trial. The settlement program will provide the means for claimants to be compensated in the immediate future.

The settlement follows a record \$9 billion jury verdict in favor of the Plaintiffs a year ago in the multidistrict litigation (MDL) bellwether case. That jury verdict was found to be unconstitutional and reduced by Judge Rebecca F. Doherty, who presides over the consolidated Actos litigation in the United States District Court for the Western District of Louisiana. Takeda's appeal of that case to the 5th Circuit has been dismissed without prejudice in light of the settlement.

Andy Birchfield, one of the signatories to the settlement agreement, believes that the settlement is a tremendous result for our firm's clients. If you have any questions about the settlement program or any aspect of this litigation, contact [Roger Smith](mailto:Roger.Smith@beasleyallen.com), a lawyer in the firm's Mass Torts Section, who is overseeing the administration of the Actos settlement program on behalf of our clients. Roger can be reached at 800-898-2034 or by email at Roger.Smith@beasleyallen.com.

RECORD \$100 MILLION VERDICT RETURNED AGAINST BOSTON SCIENTIFIC IN MESH CASE

A Delaware jury awarded \$100 million last month to a woman who sued Boston Scientific Corp. over injuries she suffered from the

company's pelvic mesh. This is the biggest win yet over the medical implant that has elicited thousands of injury lawsuits. Boston Scientific will have to pay plaintiff Deborah Barba \$25 million in compensatory damages and \$75 million in punitive damages. The jury found in her favor on claims for negligence, breach of warranty, fraud and a violation of Delaware consumer protection laws. Ms. Barba had surgery in May 2009 to implant the company's Advantage Fit and Pinnacle mesh products to treat pelvic organ prolapse and urinary incontinence. Afterwards, she suffered serious complications that required two surgeries.

The plaintiff is represented by Fidelma Fitzpatrick and Fred Thompson of Motley Rice and Philip T. Edwards of Murphy & Landon. These lawyers did a tremendous job for their client in her case. The case is in the Superior Court of the State of Delaware in New Castle County.

Source: Law360.com

AN UPDATE ON THE COLEEN PERRY \$5.7 MILLION JURY VERDICT

Kern County Superior Court Judge Lorna H. Brumfield denied a motion for new trial filed by Johnson & Johnson's Ethicon in Colleen Perry's case. A \$5.7 million jury verdict for the California woman, who was injured by the company's pelvic mesh product, was reached in early March. The jury awarded \$100,000 in past non-economic damages, \$100,000 in future medical expenses, \$500,000 in future non-economic damages, and \$5 million in punitive damages to the Plaintiff, Coleen Perry, for damages as a result of a TVT Abbrevio mesh implant. The jury's award was based on a finding of negligent design, negligent failure to warn, and negligent misrepresentation of the device's safety and effectiveness.

MORE ON THE TVM LITIGATION

Currently, litigation involving transvaginal mesh devices made by Ethicon and six other manufacturers is underway nationwide. More than 70,000 cases are currently consolidated into seven multidistrict litigation (MDL) proceedings assigned to U.S. District Judge Joseph R. Goodwin. In March, days after the jury issued its verdict in *Perry*, and on the fifth day of trial, Ethicon settled a bellwether case in the *Ethicon* MDL that alleged transvaginal mesh injuries. In September 2014, a federal jury in West Virginia awarded \$3.3 million in a case involving Ethicon's TVT-O transvaginal sling.

On April 28, 2015, Boston Scientific announced a \$119 million settlement to resolve 2,970 product liability cases involving mesh. This does not include approxi-

mately 25,000 additional cases filed against Boston Scientific in U.S. and federal state courts. On May 11, 2015, the federal bellwether case of *Sanchez v. Boston Scientific* settled after a week of trial, and just before the jury heard the closing arguments. The case was remanded back to the Central District of California from West Virginia, and involved the Pinnacle Pelvic Floor Repair Kit and the Advantage Transvaginal Mid-Urethral Sling System. The Pinnacle device was found to be defective by another jury in a federal court in Florida in 2014, which awarded four Plaintiffs a total award of \$26.7 million.

In May 2014, Endo International's American Medical Systems became the first major manufacturer to settle a large number of claims, agreeing to pay \$830 million to resolve approximately 20,000 mesh claims. In smaller settlements, a majority of the remaining 23,000 claims have been resolved since the May 2014 settlement was announced.

Trials are set to begin involving Boston Scientific devices in June 2015 in Texas, Massachusetts, and California state courts. In October 2015 a case involving Mentor OB Tape is set in Georgia state court. Two trials involving Bard mesh sling devices are set prior to December 2015 in the MDL. Upcoming Ethicon trials are scheduled in August in Texas and West Virginia state courts, with one in December in Pennsylvania. If you need additional information on this litigation, contact Leigh O'Dell, a lawyer in our firm's Mass Torts Section, at 800-898-2034 or by email at Leigh.Odell@beasleyallen.com. Leigh has been very active in the TVM litigation.

ADVIL-RELATED LAWSUIT FILED AGAINST PFIZER AND WYETH

An Advil lawsuit has been filed against Pfizer Inc. and Wyeth in a New York state court. It's alleged in the complaint that Pfizer and Wyeth concealed for 30 years the risk of serious allergic reactions to its pain reliever Advil. The parents of a young girl contend that the drug was responsible for melting off 80 percent of their daughter's skin. Thomas and Jennifer Lynch, the parents, said that Pfizer, which acquired Advil through its 2009 purchase of Wyeth, has failed to warn U.S. consumers that some people who take the drug face an increased risk of contracting Stevens-Johnson Syndrome (SJS) and Toxic Epidermal Necrolysis (TEN), two serious, potentially fatal conditions. They say that their daughter was left permanently disfigured. It's alleged in the complaint:

As a direct and proximate result of defendants' wrongful conduct as described herein, [the Lynches' daughter] has sustained permanent harm

and disfigurement, extreme physical pain, scarring all over her body, blindness in both eyes, and the attendant emotional trauma of being left in a permanently disabled state for the remainder of her natural life.

The Lynches said their daughter suffered "diffuse" scarring that can be addressed with cosmetic surgery in some areas but has to go untreated in others, leaving her with pigment changes across her body and potential infertility due to scarring in her vaginal and cervical area. They said that Wyeth has warned consumers in France and other countries about the risk of SJS and TEN, after admitting in 2003 that it had known of a "plausible causal relationship" between the conditions and ibuprofen, the active ingredient in Advil. But they say Wyeth hasn't warned Americans of this risk.

The U.S. Food and Drug Administration ordered Wyeth to change its labels in 2005, but the company provided a "deliberately understated" list of symptoms such as "rash," "blisters" and "skin reddening," the complaint alleges. Pfizer and Wyeth have known for years that children, African Americans, females and others are genetically predisposed to contracting SJS and TEN as a result of taking Advil. A World Health Organization (WHO) database contains 397 reports linking the drug with those diseases. Mr. & Mrs. Lynch said that Advil's risk of causing the conditions is four times higher than Bayer AG's drug Aleve. The Defendants' dermatology expert, according to the complaint, has confirmed that Advil is more likely to cause both diseases than other over-the-counter pain medications.

The following claims against Pfizer and Wyeth in the complaint are failure to warn, breach of warranty, gross negligence and other claims. The Plaintiffs are seeking punitive damages against the companies. The case is in the Supreme Court of the State of New York for the County of New York.

Source: Law360.com

ZOLOFT TRIAL CAN SHAPE EXPERT TESTIMONY IN THE MDL

The second bellwether trial over the birth defect risks of Zoloft, Pfizer Inc.'s antidepressant drug, should have started by the time this issue is received. The success of the expert in that case will affect plaintiffs' chances in the Zoloft multidistrict litigation, which is in federal court. The plaintiffs have good experts and they should do well in this case. But the plaintiffs will have to persuade U.S. District Judge Cynthia Rufe, who is presiding over the federal MDL, to admit the testimony of some of the experts. So far, Judge Rufe has restricted testimony by three plain-

tiff's experts and rejected that of the plaintiffs' only epidemiological expert.

Opening statements in the state court trial, which involves 8-year-old Mia Robinson's heart defects, were scheduled for Monday, June 1, in a Pennsylvania state court. This suit was filed in 2011. This child was born with transposition of the great arteries, a condition in which two of the main blood vessels exiting the heart are in the wrong position. The condition requires intensive medical attention and surgery.

There are about 20 or so Zoloft birth defect suits in state courts and significantly more in the MDL, which included up to 100 lawsuits when it was consolidated in 2012. Judge Rufe has so far selected five federal bellwethers to start in January 2016. A win in the Robinson case is crucial to all plaintiffs because it was the plaintiff's pick to go to trial.

Source: Law360.com

JUDGE APPROVES UNLIMITED DAMAGES FOR TYLENOL LIVER BELLWETHER TRIAL

A Pennsylvania federal judge has ruled that plaintiffs can seek unlimited punitive damages under Alabama law in the first bellwether trial later this year in multidistrict litigation. It's alleged that the acetaminophen in various Tylenol products from a Johnson & Johnson Inc. unit was responsible for users' severe liver damage. U.S. District Judge Lawrence F. Stengel ruled that Denice Hayes, who died of acute liver failure after taking Extra Strength Tylenol, lived in Alabama, bought the medicine in Alabama and died in Alabama. The judge found that those facts outweigh the fact that Johnson & Johnson and its Tylenol-manufacturing subsidiary McNeil-PPC Inc. are New Jersey corporations.

This decision is seen to be a blow to Johnson & Johnson, which sought to apply more drugmaker-friendly New Jersey law that would have minimized the wrongful death and punitive damages claims in the case. New Jersey precludes punitive damages in drugs product liability cases in which the drug at issue has been generally recognized as safe and effective by the U.S. Food and Drug Administration. Judge Stensel stated:

In short, the plaintiff could gain maximum punitive damages under Alabama law and minimal, if any, punitive damages under New Jersey law.

Rana Terry, the plaintiff, sued on behalf of her sister, Ms. Hayes' alleging she took Tylenol Extra Strength in August 2010 according to the label's instructions. But Ms. Hayes went to the emergency room later that month with catastrophic liver damage and

died a week later. It's alleged that Johnson & Johnson has known for years that the medicine is defective and unreasonably dangerous. The suit includes claims of negligent design defect, breach of express warranty and fraud, among others. The suit is part of multidistrict litigation that includes nearly 200 other cases.

Judge Stengel said in his opinion that a "true conflict" exists between Alabama's law and New Jersey's. Alabama law is clearly intended to protect the lives of its citizens by imposing unlimited damages on tortfeasors causing death, whereas New Jersey law is designed to protect drugmakers from excessive damages in product liability cases, he said. The judge wrote:

Where one state's interest is to protect the economic interests of its corporations and another state's interest is to protect its citizens from tortious conduct within its borders, courts in this district are inclined to find the latter interest to be greater, especially when the plaintiff's home state is also the place of injury.

This was a significant win for the plaintiffs in this bellwether case, which is scheduled to go to trial on October 26 of this year. It will be most interesting to see what the jury does in the trial. I predict that there will be a substantial jury verdict in the case.

Source: Law360.com

RISPERDAL TRIAL SETTLES ON DAY OF TRIAL

Johnson & Johnson reached a settlement with a California boy on May 27, just hours before opening arguments were to start in what would have been the third opportunity for a Philadelphia jury to weigh the connection between antipsychotic drug Risperdal and abnormal breast growth in youth. The settlement was in the case of plaintiff Christopher Walker, which is part of Philadelphia's mass tort program involving the drug. The terms of the settlement are confidential.

The plaintiffs in this case are represented by Steven Sheller and Christopher Gomez of Sheller and Thomas Kline of Kline & Specter. They did a very good job in this very important case. The case is Christopher Walker v. Janssen Pharmaceuticals Inc., in the Court of Common Pleas of Philadelphia County, Pennsylvania.

Source: Law360.com

XIV. BUSINESS LITIGATION

EVA AIRWAY TO PAY \$99 MILLION TO SETTLE AIR CARGO ANTITRUST MDL

EVA Airways Corp. has agreed to pay \$99 million to settle class action claims that it fixed the price of air cargo services with dozens of other carriers. This brings the total settlements in the multidistrict litigation (MDL) to more than \$1 billion. EVA reached an agreement with companies that purchased air cargo services directly from the airlines and claimed the Taiwanese carrier participated in the plot to hike rates that run during much of the 2000s.

More than two dozen companies have now settled with the direct purchasers, though four carriers—Air China Ltd., Air India Ltd., Air New Zealand Ltd. and Polar Air Cargo Worldwide Inc.—are still fighting the Plaintiffs' claims, according to Hausfeld. The multidistrict litigation dates to 2006, when consumers brought more than 90 lawsuits against more than two dozen airlines after the U.S. Department of Justice (DOJ) and the European Commission began investigating the air freight industry.

According to the DOJ, the conspirators used meetings, conversations and other communications to determine the rates the airlines should charge for various routes. The airlines and former executives then imposed the agreed-upon rates and participated in subsequent meetings in the U.S. and other countries to enforce the price-fixing plots, the government alleged.

EVA paid \$13.2 million as part of a plea deal with the DOJ in 2011. Although both direct and indirect purchasers initially brought suits, the Second Circuit upheld the dismissal of indirect-purchaser Plaintiffs in 2012, saying that federal aviation law pre-empted price-fixing claims brought against foreign carriers under state antitrust statutes.

Source: Law360.com

SOLEUS WINS \$42.5 MILLION JURY AWARD OVER JOINT VENTURE GONE BAD

A California federal jury awarded \$42.5 million to Soleus International Inc. in its suit against a Chinese company. It was alleged that Soleus' Chinese ex-partner strangled its business and ruined their \$150 million joint venture. Soleus claims that the Chinese company acted in retaliation after Soleus reported the Chinese company's fire-prone dehumidifiers to federal regulators. The jury found in favor of Soleus in its contract interference and economic advantage claims

against Gree Electric Appliances Inc. of Zhuhai over Gree's alleged sabotage of their \$150 million joint venture. Soleus was awarded \$12.5 million in compensatory damages and \$30 million in punitive damages.

Soleus accused Gree of persuading customers, including Sears Holdings Corp., to drop their accounts with "Gree USA," the joint venture between Soleus and the Chinese company. The Sears deal, agreed to in December 2011, designated Gree USA as the retailer's air conditioner and dehumidifier vendor until 2015. It was expected to bring in sales of more than \$150 million.

XV. AN UPDATE ON SECURITIES LITIGATION

US SUPREME COURT HOLDS EMPLOYERS RESPONSIBLE FOR 401(k) DECISIONS

For generations, pensions were the retirement plan standard for just about every employer. A good pension was what employers used to attract the best workers. It was also a promise that if the employee devoted himself to the company, the company would take care of him and his family after his working years were over. A pension is often referred to in technical terms as a "defined benefits plan." These plans offer guaranteed automatic payouts in retirement based on a formula that usually takes into account your salary and years of service.

The longer a person works and the more they make, the higher their automatic payouts. Social Security is a type of defined benefit plan. Pensions have become like the spotted owl—they still exist but they are hard to find. The predominant retirement benefits scheme being used by employers today is the 401(k) plan. This retirement plan is technically called a "defined contribution plan."

This is a type of retirement plan where an employee, employer, or both contribute money to an employee's retirement plan. These plans have more risk than a traditional pension since they are dependent on the returns of the investments in the stock market. In 1978, conventional pensions accounted for nearly 70 percent of all U.S. retirement plans. By 2013, conventional pensions accounted for only 35 percent of retirement plans. Now that most employees have defined contribution plans, such as 401(k)s, that require them to make major investment decisions, the question is, who bears the responsibility for making those important

financial decisions? If investments are made in the wrong stocks, bonds or funds, there may not be enough money to get a person through retirement.

Workers have long been saddled with 401(k) plan options that limit investment choices and provide no way to negotiate for better plans or lower fees that are charged for keeping the plan updated. In contrast, employers are the ones who set up the plans and/or hire the investment managers.

Traditionally, many courts have refused to hold employers accountable for bad investment decisions. That's because technically workers chose which funds to invest their savings in, within the narrowly tailored 401(k) plan. However, the U.S. Supreme Court recently issued an important ruling that was a rare victory for workers. In *Tibble v. Edison International*, a unanimous court held that employers can't just set these retirement plans up and then close their eyes. The ruling effectively shifts the burden in disputes over monitoring retirement plans from workers to the employers that administer them. This is important for a number of reasons.

Management fees associated with 401(k) plans typically are buried deep in legal documents and can go unnoticed by most workers. As a percentage, these fees appear small—1 percent or 2 percent of total assets—but they can do major damage to an investment portfolio over time. For example, over two decades, a 1 percent fee on a \$100,000 portfolio would cost a retirement fund \$30,000 more than a fee of 0.25 percent, assuming an annual 4 percent rate of return. Put another way, an employee with the lower-fee plan would have \$30,000 more for retirement. The larger the nest egg the worker saved, the more they would benefit from the better rate.

Hopefully, this ruling will get the attention of Corporate America and cause employers to work harder at protecting workers' hard earned savings. If you need more information on this subject, contact Roman Shaul at 800-898-2034 or by email at Roman.Shaul@beasleyallen.com.

Source: *LA Times*, "Employers must monitor 401(k) fees."

SEC FILES FRAUD LAWSUIT AGAINST ITT AND TWO EXECUTIVES

A lawsuit was filed last month by the U.S. Securities and Exchange Commission against ITT Educational Services and its two top executives. It's alleged that they lied and concealed information from investors about losses on two student loan programs that eventually amounted to hundreds of millions of dollars. The Carmel-based for-profit college company runs ITT Tech campuses

throughout the country. The SEC said in a news release:

ITT created the loan programs after the private student loan market collapsed, to help students cover costs not taken care of by federal and state aid. ITT guaranteed repayment of the loans to entice lenders to finance the loans by minimizing the risk, an SEC news release said. By 2012, so many students were defaulting on the loans that ITT's guarantee was triggered, the news release said. ITT projected owing hundreds of millions of dollars on its guarantees—but instead of telling investors that the loans were performing poorly, the company and its top executives "engineered a campaign of deception and half-truths, that left ITT's auditors and investors in the dark concerning the company's mushrooming obligations.

Here's how the SEC said ITT hid how much the guarantee obligations would cost:

- Without disclosing it, ITT made payments on delinquent student loans to keep them from defaulting and triggering guarantee payments.
- ITT framed its anticipated guarantee payments against projections of future recoveries—creating a short-term cash crunch—but it didn't disclose that approach.
- ITT didn't consolidate one of its loan programs into its financial statements, even though it controlled the loan program's economic performance.
- ITT "misled and withheld significant information" from its auditor.

The SEC names ITT chief executive officer Kevin Modany and chief financial officer Daniel Fitzpatrick in its case—both of whom had recently announced their departures from the company. ITT is also facing another government lawsuit over one of those student loan programs. The Consumer Financial Protection Bureau (CFPB) accused ITT of predatory lending practices by pushing students into costly private student loans while knowing they would be likely to default.

Both the SEC and the CFPB complaints are pending in the U.S. District Court for the Southern District of Indiana. For-profit colleges are under increasing federal scrutiny over the cost and quality of their education. We mentioned these schools in a separate section of this issue. Government investigations led to the shutdown of the for-profit Corinthian Colleges, which oversaw the Everest College chain, during the past year.

Source: *Indystar.com*

XVI. INSURANCE AND FINANCE UPDATE

WELLS FARGO AND ASSURANT SETTLE FORCE-PLACED INSURANCE SUIT

Wells Fargo Bank NA and Assurant Inc. have settled a putative class action lawsuit in an Illinois federal court. The two companies were accused in the case of conspiring to inflate the cost of force-placed hazard insurance in order to provide kickbacks to the bank. The settlement in the Illinois case was said to be related to another settlement in Florida. That settlement was in a case (*Fladell et al v. Wells Fargo Bank NA*) involving the very same issues. The Defendants settled for an undisclosed amount, promising “significant monetary relief” to customers. Plaintiffs in those two cases had tried in 2013 to join in a multidistrict litigation case. Their efforts were unsuccessful.

In the Florida case, class members received cash payments equal to 7 to 11 percent of the premiums they paid. Wells Fargo was accused in both cases of striking an agreement with Assurant to exclusively use the insurance company or its subsidiaries—including American Security Insurance Co., which is named in the suit—to provide forced-place insurance. Assurant would then inflate premiums up to 10 times market value and Wells Fargo would receive a kickback or commission from each sale. In this case, class members alleged they had to pay for unnecessary retroactive coverage for periods when no loss had occurred and said Wells Fargo misappropriated money from their escrow accounts, violating fiduciary duties and breaking the terms of its lending contracts. The bank has said it disclosed to borrowers that it would earn commissions from the policies and its borrowers were repeatedly warned that force-placed insurance would be more costly than if they took out their own insurance.

The Illinois case, filed in July 2012, involves borrowers in Illinois, Texas and New York. Another putative class action was filed against Wells Fargo and Assurant regarding force-placed hazard insurance on May 5. The day before, Assurant was named in a similar putative class action with PNC Bank. In 2015, Assurant, paired with various lenders, agreed to pay at least \$141.8 million in settlements for similar cases. In 2013, Assurant had to pay \$14 million to New York state to end an investigation by regulators over its force-placed insurance. In 2012, Assurant, along with QBE/Balboa, controlled 99.7 percent of the force-placed insurance

market, according to the Center for Economic Justice.

Source: Law360.com

XVII. PREMISES LIABILITY UPDATE

WAL-MART SETTLES MONTGOMERY WOMAN'S LAWSUIT

A Montgomery woman represented by our firm settled a most significant case against Wal-Mart in a Montgomery County Circuit Court last month. The case involved a slip and fall incident that happened at one of the Wal-Mart's Montgomery stores. Our client, a customer, fell after slipping in an oily substance on the floor in the Garden Center section of the store. She was seriously injured and has had two major surgeries, the last involving a total knee replacement. We have learned in litigation that Wal-Mart has a history of slip and fall incidents in its stores.

We learned in this case that Wal-Mart's safety policies leave a great deal to be desired. Many of the stores are under-staffed and have employees who have been inadequately trained. As usual, Wal-Mart played hard-ball on all discovery efforts in this case. After a number of tough discovery battles, and some great discovery orders entered by Judge Greg Griffin, we received a great deal of valuable information that helped settle the case. There is a protective order in place, however, so we can't say any more about this. Julie Beasley handled this case and did a very good job for her client.

MIAMI DADE COLLEGE REACHES \$33.5 MILLION SETTLEMENT IN FATAL PARKING GARAGE COLLAPSE

A settlement has been reached in the case involving a collapsed parking garage at Miami Dade College. The college reached a \$33.5 million settlement with the contractor and subcontractors hired to build the garage at the Doral campus. The parking garage collapsed during construction in October 2012, killing four people and injuring seven others. Juan Mendieta, a spokesman for the college, says the settlement will allow for the demolition of the old structure and the construction of a new, safe parking garage.

It was reported that work crews are clearing the last of the rubble and construction is expected to begin soon. It will take about 18 months to complete the project. As part of the settlement, the college received \$26.5

million. The \$7 million the school owed the contractors for the garage was also waived.

Source: *The Miami Herald*

CHEVRON SETTLES GAS WELL EXPLOSION DEATH SUIT FOR \$5 MILLION

A wrongful death lawsuit arising out of a gas well explosion has been settled for \$5 million. The settlement was between Chevron Appalachia LLC and the parents of a man who was killed in a 2014 explosion at a natural gas well pad. The settlement was approved by the court on May 13. The settlement brings to a close claims brought by the parents of Ian McKee, who sued the oil company after their son—who worked as a contractor for Chevron—was killed in an explosion at a well operated by the company in Greene County. The McKees' suit accused Chevron of negligence, including inadequate maintenance, supervision, planning and operation of the well site.

But, the trial judge overruled Chevron's contention that natural gas drilling is not an inherently dangerous activity in an order last October. The McKees are represented by John Gismondi of The Law Offices of Gismondi & Associates. The case is the Allegheny County Court of Common Pleas.

Source: Law360.com

XVIII. WORKPLACE HAZARDS

A LOOK AT MINE SAFETY LITIGATION

We have discussed workplace safety in prior issues and have attorneys to convey the message that workers are entitled to a safe place to work. That is extremely important especially considering that we spend most of our waking hours at our places of employment. As we all know, some jobs are more dangerous than others. Mining sites include underground operations, elevated environments in excess of 400 feet, and involves heavy machinery and blasting. Given the work environment and the necessary hazardous activities, injuries and fatalities are to be expected. Poor safety practices only enhance these injuries and deaths. Mine safety took a huge leap forward in 1978, the first year of the Mine Safety and Health Administration (MSHA). As we have previously reported, MSHA's purpose is to reduce injuries and deaths through enforcement, education and training.

Although injuries and deaths have decreased since the creation of MSHA,

mining operators across the country engage in unsafe practices in violation of state and federal regulations that lead to unnecessary accidents. According to MSHA statistics, between 250 and 300 fatalities occurred in U.S. mining facilities in 1978. That number decreased to a low of between 40 and 50 fatalities in 2014. MSHA statistics for nonfatal injuries have been steadily declining. In 2003, MSHA documented more than 8,000 nonfatal injuries. In 2012, that number decreased to just over 5,500 nonfatal injuries. The prevailing thought is the numbers are decreasing due to MSHA's efforts in conducting inspections, working with mine operators to improve safety on mining sites and issuing civil monetary penalties when violations are discovered. Along with the enforcement of federal regulations through MSHA, some states also impose safety requirements on mining operations. Chapter 9 of the Alabama Code (Coal Mine Safety) contains our state's regulations with respect to mining operations.

Currently, our firm is handling two cases involving nonfatal mining site injuries. The first case involves a severe injury to our client's arm. MSHA investigated the incident, identified numerous safety regulation violations and issued civil monetary penalties against the mining operator. That case is still pending.

In February of this year, another incident occurred at a mining site in Talladega County, Ala. We represent a worker who was injured. Our client was operating heavy equipment at an elevation exceeding four hundred feet. Because the highwall was not constructed in accordance with federal and state regulations the equipment fell off the elevation more than 100 feet to a lower level. As a result of the fall, the client sustained a serious brain injury.

Unfortunately for his family, it is likely that our client will remain in a vegetative state for the remainder of his life. His spouse went from having a gainfully employed husband to performing all of his activities of daily living for him. MSHA is currently investigating this incident and we expect numerous findings of safety violations and the imposition of civil monetary fines.

Those findings and civil monetary fines will do nothing, however, to assist with the medical care that will be necessary for our client for the remainder of his natural life. The Talladega case is in its infancy; however, we know that the costs associated with the care and treatment of our client could well exceed several million dollars. Based on what we already know, the incident was preventable if safety regulations had been followed. MSHA's findings will provide a roadmap for the litigation.

We will keep you updated with the progress of these two cases. If you need more information you can contact Kendall Dunson, the lawyer in our firm who is lead

counsel in the two cases. He can be reached at 800-898-2034 or by email at Kendall.Dunson@beasleyallen.com.

XIX. TRANSPORTATION

TRACY MORGAN AND WALMART REACH SETTLEMENT IN THE CAR CRASH LAWSUIT

Tracy Morgan has reached a settlement with Walmart in his lawsuit against the retail giant. As you may recall the case arose out of a motor vehicle crash in New Jersey which left Morgan severely injured and another man dead. The settlement amount is confidential at Wal-Mart's request.

The accident occurred on the New Jersey Turnpike in June 2014, when a Walmart truck struck a vehicle carrying Morgan and others. The suit, filed in July 2014, alleged that Walmart "knew or should have known" that its driver had been awake "for more than 24 consecutive hours" ahead of the accident, violating Federal Motor Carrier Safety Administration regulations. It was also alleged that the retail giant "had a custom and practice of recklessly and intentionally allowing its drivers to drive for prolonged and unreasonable periods of time."

Ardley Fuqua and Jeffrey Millea, who were also plaintiffs in the suit, have also settled with Wal-Mart. Comedian James McNair was killed in the crash. His case was also settled. The wrongful conduct of Wal-Mart and its driver in this case was the cause of the tragic incident.

Source: Law360.com

AMTRAK TRAIN CRASH VICTIMS FACE \$200 MILLION INJURIES CAP UNDER FEDERAL LAW

The Amtrak train crash that occurred in Philadelphia on May 12 has received tremendous media coverage. It also has caused the federal government to look seriously at a number of issues that have been brought to light. There are many questions surrounding the Amtrak crash. The question involving the engineer's actions is certainly paramount in the investigation. But the amount of money available that victims could receive for injuries isn't one of them. That's because federal law caps total rail-accident damages at \$200 million.

Congress established the \$200 million limit in 1997 on all rail accidents, not just Amtrak, as part of a compromise to bail out the ailing railroad. It's an arbitrary cap imposed regardless of the number of victims or how horrific the accident. Obviously, this limit in a mass casualty situation like this is

far too low. There will be a huge number of lawsuits and claims arising out of this decision.

Federal investigators are looking into the actions of the train engineer in the derailment. Eight persons were killed, with many more being seriously injured. The 1997 law limits damages against all Defendants for all claims arising from a single accident, which means a judge will ultimately need to decide how the money is allocated among the victims.

Amtrak's New York-bound Northeast Regional Train 188, which originated in Washington, went off the tracks about 9:30 p.m., closing part of the busiest passenger-rail corridor in the U.S. The train, carrying 238 passengers and five crew members, was traveling 106 miles per hour when it derailed along a curved section of track in Philadelphia's Frankford neighborhood. Train engineer Brandon Bostian says he has no recollection of the accident. Bostian, who was knocked out by a concussion, is going to speak to National Transportation Safety Board (NTSB) personnel investigating the incident.

The engineer applied full brakes, slowing the train to 102 mph on the 50 mph curve before it derailed, according to Robert Sumwalt, an NTSB member. The NTSB said it determined the speed based on preliminary data. There is no way the train should have been traveling at A speed, double the speed limit for that section of track.

The Federal Railroad Administration has ordered Amtrak, the U.S. passenger rail service, to immediately improve safety on its Northeast Corridor route from Washington to Boston. Amtrak must expand the use of technology to control train speeds. The regulators also ordered Amtrak to analyze curves on its tracks along the northeast route and add additional speed limit signs for engineers and conductors.

Source: Insurance Journal

STRICTER SAFETY RULES FOR OIL-CARRYING TRAINS

The U.S. Department of Transportation (DOT) unveiled the final version of updated safety standards for oil-by-rail transportation last month. These new standards require phasing out older tank cars that have been involved in several fiery derailments. They will also require new tank car designs and enhanced electronic braking systems for trains carrying flammable materials. The rule, which aligns with new tank car standards developed by Canadian transportation regulators, applies to so-called "high-hazard flammable trains." These are defined as trains with a continuous block of 20 or more tank cars loaded with a flammable liquid or

35 or more tank cars loaded with a flammable liquid dispersed through a train.

The standards call for older DOT-111 tank cars used to transport crude to be retrofitted or replaced within three years and the industry's enhanced rail car, the CPC-1232, to be retrofitted or replaced within five years if they are not outfitted with insulating jackets in order to meet a new DOT-117 standard, which calls for thicker tank shells and insulating jackets, thermal protection and improved pressure relief valves. All tank cars built after Oct. 1, 2015, must meet the DOT-117 standard. Transportation Secretary Anthony Foxx said in a statement:

Safety has been our top priority at every step in the process for finalizing this rule, which is a significant improvement over the current regulations and requirements, and will make transporting flammable liquids safer. Our close collaboration with Canada on new tank car standards is recognition that the trains moving unprecedented amounts of crude by rail are not U.S. or Canadian tank cars—they are part of a North American fleet and a shared safety challenge.

The rule also requires high-hazard flammable trains (HHFTs) to have a functioning, two-way end-of-train device or a distributed power braking system. A single train with 70 or more tank cars loaded with Class 3 flammable liquids such as crude oil or ethanol is classified as a high-hazard flammable unit train and must be operated with an electronically controlled pneumatic braking system by 2023. For HHFTs with at least one tank car with highly flammable Packing Group I materials, the required braking system must be in operation by 2021. The rule imposes a 50-mile-per-hour speed limit on all HHFTs in all areas and a 40-mile-per-hour speed limit on HHFTs that don't meet the new tank car standards in high-hazard urban areas. The DOT had previously issued an emergency order imposing the 40-mile-per-hour speed restriction.

The new Canadian tank car standard, the TC-117, shares the same characteristics of the DOT-117 tank car: thicker shells and jackets, thermal protection, and pressure relief valves. Canadian transport minister Lisa Raitt said in a statement:

This stronger, safer, more robust tank car will protect communities on both sides of our shared border. Through strong collaboration, we have developed a harmonized solution for North America's tank car fleet.

The Association of American Railroads is critical of the requirement of electronically controlled pneumatic brakes, saying they won't prevent accidents and will impose

unnecessary retrofitting costs and disrupt U.S. rail operations. It was reported that the American Petroleum Institute is "lukewarm" on the final rule. The Institute says it supports enhanced tank car standards, but that the ECP brake requirement will only make retrofitting rail cars more difficult to accomplish by the rule's deadlines. Jack Gerard, the API President and CEO, said in a statement:

We support upgrades to the tank car fleet and want them completed as quickly as realistically possible. The railcar manufacturing industry's own calculations show it does not have the shop capacity to meet the retrofit timeline announced today, which will lead to shortages that impact consumers and the broader economy.

Meanwhile, environmental and anti-fossil fuel groups blasted the final rule as weak and repeated their calls for the older DOT-111 tank cars to be banned immediately. Patti Goldman, who is Earthjustice's managing attorney, said in a statement:

Allowing hazardous tank cars to remain in crude service for five more years is disgraceful. As the head of the National Transportation Safety Board said two years ago, the DOT shouldn't need a higher body count before we ban these defective cars from carrying explosive fuel through our towns and cities.

The North American shale boom has led to a similar boom in oil-by-rail transportation. But U.S. and Canadian regulators have been under pressure to toughen safety standards because of a number of crashes involving trains carrying crude oil, primarily from North Dakota's Bakken Shale. The most notable crash was the July 2013 fiery derailment of a Bakken crude-carrying Montreal Maine and Atlantic Railway Ltd. freight train in Lac-Mégantic, Quebec, which killed 47 people and destroyed a large portion of the town. The tanker cars that derailed in Quebec and spilled more than 1 million gallons of Bakken crude were equivalent to DOT-111 tank cars.

It will be most interesting to see what develops now that the new rule has been released. I suspect there will be opposition from a number of industry groups. In fact, as you will read below, the activity has already started.

Source: Law360.com

OPPOSING GROUPS FILE SEPARATE SUITS OVER OIL TRAIN SAFETY RULES

Seven environmental groups have filed a lawsuit challenging the safety rules for trains carrying oil, arguing the regulations are too

weak to protect the public. The groups, including the Sierra Club and Center for Biological Diversity, charge that the rules will allow the industry to continue to use "unsafe tank cars" for up to 10 years and fail to set adequate speed limits for oil trains. "We're suing the administration because these rules won't protect the 25 million Americans living in the oil train blast zone," said Todd Paglia, executive director for ForestEthics, one of the groups bringing the lawsuit.

In their suit, the green groups asked the 9th U.S. Circuit Court of Appeals to force the Transportation Department to reconsider the "unduly long phase-out period" for these tank cars, as well as the speed limit and public notification requirements in the rule. While environmentalists have argued the phase-out for the tank cars is too long, energy and rail groups have raised concerns that the time allotted to switch over tank cars is not feasible.

The American Petroleum Institute also filed a lawsuit May 18 in the U.S. Court of Appeals for the District of Columbia Circuit challenging the timetable for retrofitting rail cars and requirements for electronically controlled pneumatic brakes.

Source: Insurance Journal

SAFETY WATCHDOGS SAY TRUCKING-FRIENDLY PLAN NOT CONCERNED WITH SAFETY

Safety watchdogs say so-called "less-than-truckload" companies such as FedEx, United Parcel Service Inc. (UPS), Con-way and YRC Worldwide Inc., among others, are trying to add dangerous trucking provisions to a federal Transportation Department appropriations bill. By attaching the companies' provisions, which safety advocates say allow for dangerous policy changes and block existing or proposed safety measures, to the must-pass bill, the industry effectively avoids congressional review.

Among the proposals included in the bill is a provision that would allow two trailers of up to 33 feet to be hauled in tandem. Current regulations limit tandem trailers to 28 feet. Jackie Gillan, president for Advocates for Highway Safety, calls the measure the most aggressive attack on safety she has seen in her lifetime. She cites statistics indicating double-trailer combinations have crash rates 15 percent higher than single-trailer rigs, and says that the longer, heavier trucks are harder for drivers to handle and take longer to stop.

The trucking industry is a formidable force in Washington. This industry spent \$9.85 million lobbying Congress last year, and makes \$796 million in contributions to political candidates, parties and action committees, according to the Center for Responsive Politics. FedEx, whose CEO Fred Smith has lobbied lawmakers on the issue, made \$2.32

million in campaign contributions to House and Senate members in the two-year cycle ending in the 2014 election, according to the center.

The trucking industry is advocating for longer combinations to meet demand, especially for lighter packages like those delivered for online shoppers, according to the Coalition for Efficient and Responsible Trucking. A study commissioned by FedEx, Con-way Inc. and other shippers showed that the extra five feet in length of each trailer would save gas and cut carbon emissions and would actually reduce the number of trucks on the road, while insisting there is no safety issue. Crashes involving large trucks killed 3,921 people in the U.S. in 2012, an increase of 16 percent from the all-time low in 2009. Trucking deaths have increased in each of the past four years.

The appropriations bill was approved by a subcommittee on April 29. We expect the full committee to take a vote when Congress returns from a recess. The House bill still would have to survive a Senate vote and be signed by the president. In addition to the bigger-capacity trucks, the bill would also do away with plans to require trucking companies to carry higher insurance coverage and make it harder for regulators to re-impose more stringent rest requirements for drivers.

Source: *Claims Journal*

INDIANA JURY AWARDS \$32.5 MILLION TO TRAFFIC CRASH VICTIM

A jury in Indiana has awarded \$32.5 million to a woman with a traumatic brain injury that left her partially paralyzed nine years ago when the car she was a passenger in struck a disabled semi-trailer on an interstate. The Lake County jury found that the driver of the car, 40-year-old Kristen Zak of Dyer, was a passenger in and was 40 percent responsible for the collision, and that J.B. Hunt Transport Inc. and its driver, Terry Brown Jr., were 60 percent liable.

The crash occurred on Interstate 65 near Remington, Indiana, about 60 miles south of Gary, on Jan. 17, 2006. Brown was traveling too fast for the wintry conditions and failed to abide by safety regulations, which required him to turn the flashers of the truck on and set out reflective triangles.

Ms. Zak was in a coma for a month. Her mother, Peggy Skaggs, said her daughter, who was a registered nurse, has gained some independence though years of physical therapy. But she still needs help eating, getting dressed and with other daily activities. Todd Schafer, a lawyer with Schafer & Schafer, a firm located in Merrillville, Indiana, represented the plaintiff in the case and he did a very good job for his client.

Source: *Insurance Journal*

FAMILY OF WOMAN AWARDED \$1.5 MILLION IN CASE AGAINST AMBULANCE COMPANY

The family of a woman who suffered a brain hemorrhage and died days after an ambulance crew dropped her on her head has been awarded \$1.5 million in a wrongful death lawsuit. The Middlesex Superior Court jury found in favor of the family of Barbara Grimes in their lawsuit against American Medical Response (AMR), the largest ambulance company in the U.S. AMR says it may appeal.

It was alleged in the lawsuit that Mrs. Grimes, 67, was being transported in January 2009 after receiving dialysis in Plymouth. A pair of emergency medical technicians rolling her into an ambulance tipped over her stretcher, causing Mrs. Grimes to fall and hit her head on the ground. She died five days later. The ambulance crew failed to follow the company's own safety policies regarding stretcher operation. AMR claimed that the stretcher malfunctioned, but it appears no defect was ever found.

Source: *Claims Journal*

XX. HEALTHCARE ISSUES

FDA WARNS OF DIABETES DRUGS FROM ASTRAZENECA AND JANSSEN

The U.S. Food and Drug Administration last month warned of serious blood problems linked to use of six diabetes drugs, including AstraZeneca PLC's Farxiga and Janssen Pharmaceuticals Inc.'s Invokana. In a safety alert, the FDA announced receiving 20 reports from March 2013 to June 2014 of so-called diabetic ketoacidosis—a disorder involving elevated levels of blood acids known as ketones—in patients using the six drugs. Every patient had to be hospitalized or visit the emergency room, and other patients have continued to be affected in ensuing months, regulators said.

The afflictions, according to the FDA, were unusual because they mainly occurred in patients with Type 2 diabetes, whereas diabetic ketoacidosis is normally seen in individuals with Type 1 diabetes. All the adverse events occurred in a class of drugs called sodium-glucose cotransporter-2 inhibitors, or SGLT2 inhibitors. It's not yet known whether any labeling revisions will be required. Regulators wrote:

We are continuing to investigate this safety issue and will determine whether changes are needed in the pre-

scribing information for this class of drugs.

Regulators implicated Astrazeneca's Farxiga, or dapagliflozin, as well as a related company product called Xigduo XR, which combines dapagliflozin and metformin. The FDA also cited Janssen's Invokana, or canagliflozin, as well as a related company product called Invokamet, which combines canagliflozin and metformin. In addition, the FDA warned of ketoacidosis in patients using Jardiance, or empagliflozin, as well as Glyxambi, which combines empagliflozin and linagliptin. Each of the products is co-marketed by Boehringer Ingelheim GmbH and Eli Lilly & Co. Inc.

Patients using any of the drugs should be on the lookout for difficulty breathing, nausea, vomiting, abdominal pain, confusion and unusual fatigue or sleepiness as potential symptoms of ketoacidosis, the FDA said. The median length of time from start of treatment to symptoms was two weeks. According to the Mayo Clinic, while ketoacidosis is treatable, it can lead to loss of consciousness and even be fatal in some instances. Many of the drugs involved in the announcement are not strangers to safety concerns and controversy.

In March, the consumer advocacy group Public Citizen complained to the FDA that Farxiga, Invokana and Jardiance were being improperly marketed as weight-loss products. In 2014, Farxiga won clearance despite links to bladder cancer, and in 2013, Invokana was approved despite earlier concerns about cardiovascular and bone risks. Given their similarities, the drugs are serious rivals for shares of the burgeoning diabetes market, and sales are likely to be robust if safety problems can be contained. Invokana and Invokamet, for example, racked up U.S. sales of \$266 million in the first quarter of 2015, according to Janssen parent Johnson & Johnson.

Source: *Law360.com*

XXI. ENVIRONMENTAL CONCERNS

DUKE ENERGY AFFILIATES TO PAY \$102 MILLION FOR COAL ASH POLLUTION

Three Duke Energy Corp. subsidiaries have pleaded guilty to environmental crimes in a North Carolina federal court and will pay \$102 million after coal ash pollution illegally leaked from five in-state facilities. This ends the federal investigation stemming from last year's Dan River coal ash spill. Duke Energy Business Services LLC, Duke Energy

Progress Inc. and Duke Energy Carolinas LLC were sentenced by U.S. District Judge Malcolm Howard on nine criminal violations of the Clean Water Act, including criminally negligent discharge of pollutants and failure to maintain treatment equipment.

The penalty includes a \$68 million criminal fine, a \$24 million community service payment to the National Fish and Wildlife Foundation to benefit river ecosystems in North Carolina and Virginia and \$10 million to a wetlands mitigation bank for the purchase of wetlands. Both Duke Energy Carolinas and Duke Energy Progress must also certify that they've reserved enough money to meet legal obligations regarding their North Carolina coal ash deposits—an estimated \$3.4 billion. Assistant Attorney General John C. Cruden said in a statement:

The massive coal ash spill into North Carolina's Dan River last year was a crime and it was the result of repeated failures by Duke Energy's subsidiaries to exercise controls over coal ash facilities. The terms of these three plea agreements will help prevent this kind of environmental disaster from reoccurring in North Carolina and throughout the United States.

Duke says that the ruling “officially closes this chapter in company history.” The company said in a statement:

We've used the Dan River incident as an opportunity to set a new, industry-leading standard for the management of coal ash. We are implementing innovative and sustainable closure solutions for all of our ash basins, building on the important steps we've taken over the past year to strengthen our operations.

The nine charges were filed by U.S. Attorneys in all three of North Carolina's federal districts over incidents dating back to 2010. Four cover the spill of 82,000 tons of coal ash across 70 miles of the Dan River, while the remaining violations were found as the federal investigation broadened based on allegations of historical violations at Duke's other facilities. U.S. Attorney Thomas G. Walker said in a statement:

Duke Energy's crimes reflect a breach of the public trust and a lack of stewardship for the natural resources belonging to all of the citizens of North Carolina. The massive release at the Dan River coal ash basin revealed criminal misconduct throughout the state—conduct that will no longer be tolerated under the judgment imposed by the court today.

The spill occurred in February 2014 when a broken 48-inch stormwater pipe at a shut-

tered Duke coal-fired power plant released enough ash from its riverside steam station to fill up to 32 Olympic-sized swimming pools. The ash contained arsenic, copper, lead, mercury and other substances deemed hazardous by the Superfund law, the U.S. Environmental Protection Agency said.

Prosecutors also said Duke failed to maintain equipment at its Cape Fear steam electric plant and illegally released coal ash at its Riverbend steam station, H.F. Lee electric plant and Asheville steam electric generating plant. The cases were transferred into a single proceeding in the Eastern District of North Carolina. Duke is also facing a derivative suit by shareholders who seek to hold management liable for the Dan River spill, a case Duke asked a Delaware Chancery judge earlier this month to stay so it could defend itself in other litigation, including the cases decided Thursday.

In early April, Duke agreed to pay \$2.5 million in Virginia as part of a proposed settlement over the Dan River spill, the state's Department of Environmental Quality said. The money includes \$2.25 million for environmental projects benefiting areas affected by the spill and \$250,000 for an emergency environmental response fund. The company was hit in March with a \$25.1 million fine by North Carolina's Department of Environmental and Natural Resources, the largest ever issued by the agency, regarding coal ash groundwater contamination at a North Carolina facility. Duke has since appealed the fine.

Source: Law360.com

XXII. AN UPDATE ON CLASS ACTION LITIGATION

LOTS OF ACTIVITY IN CLASS ACTION LITIGATION

This past month has been very busy on the class action litigation front. There have been a large number of significant events, including both settlements and new case filings. I am going to mention several of the settlements and a few of the new filings in this section. If you need more information on class action litigation contact Michelle Fulmer, Section Administrator of our firm's Consumer Fraud and Commercial Litigation Section at 800-898-2034. She will have a lawyer respond to your request.

AN UPDATE ON THE MASTERCARD SETTLEMENT WITH TARGET OVER THE DATA BREACH

The proposed \$19 million settlement between MasterCard Inc. and Target Corp. over the retailer's 2013 data breach failed because not enough banks accepted the settlement. The agreement, announced in April, would have provided up to \$19 million to banks and credit unions that sued Target in federal court in Minnesota over the breach. Lawyers in our firm who are involved in the litigation representing banks and other financial institutes opposed the settlement and were not surprised that the required number of acceptances fell far short.

The lead lawyers for the banks had argued that the settlement with MasterCard, which was not a party to the lawsuit, was an attempt to undercut their claims for damages. A federal judge in early May rejected the banks' attempt to block the settlement, even though he expressed real concerns about its fairness. But, the settlement was contingent on banks that issued at least 90 percent of the MasterCard accounts signing on to the agreement by May 20. Any bank that accepted the settlement was required to drop further claims against Target. A MasterCard spokesman had confirmed that the threshold was not met.

The development means that the banks will continue to litigate their claims against Target in the lawsuit. In a statement, the lead lawyers for the plaintiffs said:

We are pleased that financial institutions have resoundingly rejected Target and MasterCard's attempt to avoid fully reimbursing the losses suffered during one of the largest data breaches in U.S. history.

Lawyers for the banks have estimated the total losses at more than \$160 million, with approximately half that amount lost to fraud and half to the cost of reissuing nearly 9 million credit cards. In 2013, Target said the breach during the holiday shopping season compromised at least 40 million credit cards and may have resulted in the theft of personal information from as many as 110 million people. Target is still negotiating with Visa Inc. over losses from the breach.

As the result of a recent court order, Target Corp. will have to tell financial institutions suing over the retailer's massive 2013 data breach whether it suffered similar attacks in the past and if so, how it responded to them. Magistrate Judge Jeffrey J. Keyes ruled in the MDL litigation on May 27. He partially granted the bank plaintiffs' motion to compel discovery, giving Target seven days to either make a sworn statement that there were no data breaches between 2005 and 2010 or give up the details of the incursions. This was a very good ruling.

If you need more information on this litigation, contact Dee Miles, who heads up our firm's Consumer Fraud and Consumer Litigation Section, and is one of the lead lawyers in this litigation.

Source: Law360.com

APPELLATE COURT APPROVES \$133 MILLION WESTERN UNION WIRE TRANSFER SETTLEMENT

The Tenth Circuit Court of Appeals has rejected objections to a \$133 million settlement between The Western Union Co. and class action Plaintiffs. The company was accused of keeping money from failed wire transfers for five years despite having senders' contact information. The appellate court said it was not unsympathetic to the arguments raised by two objecting class members claiming the settlement was unfair, particularly the fact that the named Plaintiffs have already received refunds, so the unreturned money funding the settlement, which includes \$40.57 million in attorneys' fees as well as incentive awards, actually belongs to the other class members. The 10th Circuit said:

Through the settlement, class members will recover interest for the time during which Western Union held these funds, something they would not have received simply by asking Western Union to return their money.

The appellate court also noted that without the settlement, Western Union wouldn't have had any incentive to change its business practices, which it agreed to amend by informing customers when their transfers fail. The suit stemmed from Western Union's practice of keeping money from failed transfers and earning interest, electing not to inform customers until their money was due to be absorbed by states' unclaimed and abandoned property departments. The Plaintiffs said Western Union waited so long that the contact information it had on file was often incorrect by the time it finally sent notice.

Many of the class members are immigrants who sent money to family members. Western Union has changed its policy, which was described as "a reprehensible business practice," and that's certainly an appropriate description.

Source: Law360.com

BOEING TO PAY \$90 MILLION TO SETTLE ERISA CLASS ACTION

The Boeing Co. has agreed to pay \$90 million to settle a class action filed by several unions that disputed whether employees who lost their jobs following the 2005 sale of

a Kansas commercial aircraft facility were entitled to retirement benefits. The Society of Professional Engineering Employees in Aerospace and other unions alleged that Boeing violated the Employment Retirement Income Security Act (ERISA) by claiming that the employees were not eligible for tens of millions of dollars in early retirement medical benefits and pensions because the workers were terminated, not laid off.

The benefits allowed the employees to retire at 55 and receive the medical benefits and pensions as a "bridge" until they were eligible for Medicare. But Boeing claimed that because workers were terminated, their collective bargaining agreements did not entitle them to the benefits following the sale of its Wichita, Kansas, center to Spirit AeroSystems Inc.

If the settlement is approved, Boeing would only be responsible for providing the \$90 million. The responsibility for allocating the settlement money, i.e., who would be eligible for receiving money from the settlement fund, falls to the claims administrator.

Source: Law360.com

BANK OF NEW YORK MELLON TO PAY \$180 MILLION TO SETTLE FOREX CLASS ACTION

The Bank of New York Mellon Corp. (Mellon) will pay \$180 million to settle a putative class action brought by institutional investors accusing the company of running a deceptive foreign currency exchange program. The tentative settlement will resolve claims brought by the state of Oregon on behalf of several public pension funds and others alleging Mellon misled investors by making deceptive public statements about its foreign exchange program in violation of securities laws. "This settlement effectively resolves virtually all of the currently pending foreign exchange-related actions, with the exception of several lawsuits brought by individual customers," the company said in the regulatory filing.

The settlement brings an end to the long-running multidistrict litigation (MDL) first brought in 2011, alleging that Mellon told customers it provided the "best execution" for foreign currency trades when in reality it bought the currencies at the lowest price of the day and sold it at the highest, pocketing the difference.

In March, Mellon paid \$714 million to settle fraud claims by the SEC, the U.S. Department of Justice, the New York attorney general and others over the foreign exchange program. Mellon also admitted to certain facts and agreed to fire two executives implicated in the scheme. According to prosecutors, Mellon employees admitted to investigators that the bank neither sought the best rates for the exchange program's customers nor provided the best execution.

The investor class sought damages on behalf of investors who purchased Mellon stock between February 2008 and October 2011. The bank had argued last month it should be able to defend itself separately against each institutional investor's claim.

Source: Law360.com

CHASE TO PAY UP \$10 MILLION TO SETTLE ROBOCALL CLASS ACTION

JPMorgan Chase Bank NA has agreed to pay \$10.2 million to settle a class action lawsuit accusing its automotive loan department of violating the Telephone Consumer Protection Act (TCPA). It was alleged that by placing robocalls to more than 2 million customers' cellphones without consent, the act was violated. The settlement agreement stipulates that Chase will pay \$10.2 million into a non-reversionary settlement fund. About 2.2 million class members can expect to receive approximately \$45 to \$55 each from the fund.

The class includes about 33.8 million customers from across the country, nearly 14 million of whom received calls or texts providing alerts about their accounts and almost 20 million who received automated phone calls attempting to collect on a debt, with both subclasses covering an approximately five-year period. The case is in the U.S. District Court for the Northern District of Illinois.

Source: Law360.com

GUNMAKER SETTLES CLASS ACTION LAWSUIT OVER SAFETY DEFECTS

Forjas Taurus SA, a Brazilian gun manufacturer, has settled a class action lawsuit. Under the settlement the company will provide expanded warranties, training and up to \$30 million in cash for returned handguns. It was alleged that the company's weapons can fire when dropped, even with the safety on. In a joint motion for preliminary approval of the settlement, Forjas Taurus agreed to provide cash payments of up to \$200 for returned pistols along with training and warranties for owners of nine handgun models, including six PT Millennium models. The \$200 figure is dependent on fewer than 10,000 pistols being returned, and the settlement set a \$150 minimum that would be exhausted by 200,000 claims. The gunmaker also agreed to cover up to \$9 million in legal fees. About one million of the pistols named in the suit have been sold nationwide.

The additional training that Forjas Taurus agreed to provide would address the alleged safety defects and cover proper handling and operation of the affected semiautomatic

pistols. The pistols are eligible for a free inspection by the company under the enhanced warranties provided by the settlement. It was alleged that the company's guns suffered from a "drop-fire defect" that caused some models to fire due to a sudden impact, as well as a "false safety defect" that allowed the guns to fire when it appeared as though their manual safety latches were engaged. The complaint said that the Plaintiff's Forjas Taurus pistol went off while he was working as a deputy with the Scott County, Iowa, sheriff's department as a narcotics agent and his gun hit the ground during a foot pursuit. It was stated that the gun's safety was on and no one was injured by the shot, which hit a car.

The company knew about the defects since at least 2007, according to the complaint, which said that Forjas Taurus settled cases involving serious injuries from unintended discharges and claimed that the Sao Paulo State Military Police in Brazil recalled 98,000 Forjas Taurus pistols in 2013 after realizing they could go off without anyone pulling the trigger. The claims against the company were suppression, failure to warn and violating the Magnuson-Moss Warranty Act and state consumer protection statutes.

Source: Law360.com

XXIII. AN UPDATE ON PROJECTS IN OUR CONSUMER FRAUD AND COMMERCIAL LITIGATION SECTION

I will give a brief summary of a few of the projects currently being worked on by lawyers in our firm's Consumer Fraud and Commercial Litigation Section. Dee Miles heads up this Section and Michelle Fulmer is the Section Administrator.

False Claims Act / Whistleblower—

Lawyers in the Section are handling and investigating whistleblower claims of government fraud ranging from Medicare/Medicaid to military contracts, and any other type of fraud involving a government contract. Under the False Claims Act the whistleblower is entitled to a percentage of the recovery. Studies show that as much as 10 percent of Medicare/Medicaid charges are fraudulent. Common schemes involve double-billing for the same service, inaccurately coding services, and billing for services

not performed. Additionally, the Commission on Wartime Contracting has warned that the lack of oversight of government contractors has led to massive fraud and waste. Contacts; Lance.Gould@beasleyallen.com, Larry.Golston@beasleyallen.com, or Andrew.Brashier@beasleyallen.com.

Antitrust— Our lawyers are handling claims related to the violation of federal and state antitrust laws. They are currently involved in claims alleging a wide array of anticompetitive conduct, including illegal tying, exclusive dealing, monopolization, and price fixing. Contacts: Archie.Grubb@beasleyallen.com, Roman.Shaul@beasleyallen.com or Alison.Hawthorne@beasleyallen.com.

Health Care Fraud— Lawyers in the Section are also looking into cases of fraud in the health care industry. Contacts: Roman.Shaul@beasleyallen.com, Clay.Barnett@beasleyallen.com, or Rebecca.Gilliland@beasleyallen.com.

Fair Labor Standards Act (FLSA)— They are working on several cases involving Fair Labor Standards Act (FLSA) violations. The FLSA cases are brought on behalf of clients whose job title is misclassified by their employers so that employees are not compensated for overtime worked. Cases may also involve unequal pay, where women are paid less for doing the same job as men. Contacts: Lance.Gould@beasleyallen.com or Larry.Golston@beasleyallen.com.

State and Municipalities Litigation— Lawyers in our firm have represented a number of states throughout the country. These cases have been handled through the Attorneys General of the state and have involved various civil actions. Many times, individuals are barred from bringing a consumer fraud type claim but the state government is not. In the Medicaid litigation (AWP) we recently concluded litigation in six of eight states for a recovery of more than \$1 billion, with still two states remaining. Contacts: Dee.Miles@beasleyallen.com, Roman.Shaul@beasleyallen.com or Alison.Hawthorne@beasleyallen.com.

If you need more information on any of the above projects, or other litigation that lawyers in the section are pursuing, contact Dee Miles or Michelle Fulmer, at 800-898-2034 or by email at Michelle.Fulmer@beasleyallen.com. She will have a lawyer respond to your request.

XXIV. THE CONSUMER CORNER

BEASLEY ALLEN HAS FILED A CLASS ACTION LAWSUIT OVER TOXIC FLOORS

Lawyers in our firm have filed a class action lawsuit against Lumber Liquidators, Inc., for selling floors containing toxic chemicals. The suit alleges that the Virginia-based flooring retailer resells laminate flooring products manufactured in China. The laminate floors emit dangerously high levels of formaldehyde, a known carcinogen according to the American Cancer Institute. Dr. Philip Landrigan, a professor of preventive medicine and pediatrics at Mount Sinai Hospital, New York, confirms that emissions from Lumber Liquidators' laminate floors are "not a safe level." Long-term exposure to such levels increases the risk for chronic respiratory irritation, lung function changes, and asthma, especially for those more at risk, such as children, says Landrigan.

Problems with Lumber Liquidators' floors came to light in a recent *60 Minutes* investigation, which found elevated levels of formaldehyde in all but one of dozens of flooring samples tested. *60 Minutes* correspondent Anderson Cooper traveled to China to visit manufacturing facilities and talk to employees, who revealed the floors contained dangerous levels of formaldehyde. The news program's report led the Consumer Product Safety Commission (CPSC) to launch an investigation into the safety of Lumber Liquidator's laminate flooring products.

In April the Department of Justice (DOJ) announced it would seek criminal charges against Lumber Liquidators for violating the Lacey Act, a conservation law that prohibits imports of products from illegally logged woods. It has been reported that Lumber Liquidators imports wood illegally harvested from protected forests in the Russian Far East.

On May 7, in the wake of the CPSC and DOJ probes as well as consumer and investor lawsuits, Lumber Liquidators suspended sales of its Chinese laminate flooring. The company announced it has hired former FBI director Louis Freeh to lead an internal review of its products and suppliers, and to advise it on compliance issues. Since March, the company has offered thousands of home air quality test kits to customers, although these kits have been criticized as providing inaccurate or misleading results. The following Lumber Liquidators laminate floor models may contain impermissibly dangerous levels of formaldehyde:

*8mm Bristol County Cherry; 8 mm
Dream Home Nirvana (French Oak*

and Royal Mabogany); 12 mm Dream Home Isipiri (Americas Mission Olive, Chimney Tops Smoked, Poplar Forest Oak); 12 mm Dream Home Kensington Manor (Antique Bamboo, Cape Doctor, Fumed African Ironwood, Glacier Peak Poplar, Gold Teak, Hand-scraped Imperial Teak, Handscraped Summer Retreat Teak, Sandy Hills Hickory, Tanzanian Wenge, Warm Springs Chestnut); and 12 mm St. James (African Mabogany, Blacksburg Barn Board, Brazilian Koa, Chimney Rock Charcoal, Cumberland Mountain Oak, Golden Acacia, Nantucket Beech, Oceanside Plank Bamboo, Vintner's Reserve, and Sky Lakes Pine).

The U.S. Department of Justice is seeking criminal charges against Lumber Liquidators Inc., for violating a conservation law in connection with the imported wood flooring products discussed above. Lumber Liquidators said in its quarterly report, filed with the U.S. Securities and Exchange Commission (SEC), that the DOJ indicated that it is seeking criminal charges under the Lacey Act, a conservation law that prohibits import of products made from illegally logged woods. The company said it has set aside \$10 million, "our best estimate of the probable loss that may result from this action," according to the filing. We learned as the Memorial Day weekend approached that Bob Lynch, the CEO of Lumber Liquidators has resigned without warning. This came as a huge surprise.

For further information on the Lumber Liquidators litigation, contact Clay Barnett (Clay.Barnett@beasleyallen.com), Archie Grubb (Archie.Grubb@beasleyallen.com), or Andrew Brashier (Andrew.Brashier@beasleyallen.com), lawyers in our firm's Consumer Fraud and Commercial Litigation Section. You can also call these lawyers, who are handling this litigation for our firm, at 800-898-2034.

Source: Law360.com

FOR-PROFIT COLLEGES GETTING RICH ON BACKS OF STUDENTS AND TAXPAYERS

Momentum is growing in a nationwide effort to crack down on for-profit colleges, which are getting rich at the expense of low-income and military students, while robbing the government of funds that could be better spent to provide free public higher education. Groups including Rolling Jubilee, The Debt Collective, and the new Corinthian 15 are fighting back against crippling student loan debt with creative crowdsourced funding solutions, litigation, and outright refusal to pay back loans that led to worthless degrees or, worse, no degree and no job.

Debt for student loans of all types—including legitimate colleges and universities—has reached the \$1.3 trillion mark. Only home mortgage debt is greater in the United States, and soon student loan debt will exceed that, and will be greater than the subprime home mortgage debt that tanked the economy in 2008. That's a scary prospect. Student loan debt is endangering our economy.

Efforts to reform student loan programs offer a patchwork of fixes that don't really fix anything—requirements for transparency on graduation employment rates, income-contingent repayments, and a stricter gainful employment rule. That last one, proposed by President Obama, seeks to hold the for-profit college industry's worst performers accountable by cutting off federal funding to colleges that have a high percentage of students who don't graduate, accrue heavy debts or finish the program so poorly educated they are unable to find a good enough job to repay their loans.

Even that modest—and entirely sensible—plan has been blocked by politicians in the pocket of for-profit college industry lobbyists. While the U.S. Department of Education adopted the gainful employment rules in October 2014, the for-profit college mouthpiece Association of Private Sector Colleges and Universities (APSCU) almost immediately filed suit in Washington, D.C., alleging the new rules are unconstitutional. In February APSCU filed a motion for summary judgment in the suit (*APSCU v. Arne Duncan*).

Make no mistake. For-profit colleges are definitely an industry. Mass-market college conglomerates are the nation's fastest-growing provider of higher education. Just one of these behemoths, Apollo Education Group, which operates the University of Phoenix, collected more than \$200 million in profit in 2014. I will be shocked if any of our readers haven't seen this school advertised on television.

The for-profit college industry is doing so well financially, and so determined to keep its foothold on the private investment dollars from Wall Street and the taxpayer dollars from federally funded student loans, it has quadrupled its lobbying budget in the last 10 years. The industry made \$4.4 million in political contributions in the 2012 presidential and congressional campaigns, and spent nearly \$3 million in the 2014 congressional elections alone. The number one recipient of for-profit college lobbying dollars is Rep. John Kline—chairman of the House Education Committee.

Groups like Rolling Jubilee, The Debt Collective and Corinthian 15 are demanding the return of public, tuition-free college education. Objectors say the cost of free higher education will be too steep, with the burden entirely on the taxpayer. But taxpayers already spend more than \$120 billion a year to fund education, most of it in the form of Pell grants and other student loan programs.

If that money could be redirected—with red tape and pork barrel projects eliminated—it would go a long way toward funding education for everyone.

We cannot continue on our current path. It is a danger to the U.S. economy and, worse, a danger to the future success of our nation. If we do not place a higher priority on ensuring our people have access to good, affordable educational opportunities—including learning trades—we are cutting off our potential at the roots.

Source: *The Hightower Lowdown* and *The Huffington Post*

MISSOURI JURY RETURNS \$82 MILLION VERDICT AGAINST DEBT COLLECTION FIRM

A Jackson County, Mo., jury has returned verdicts totaling about \$82 million against a debt collection firm that had demanded payment from the wrong woman. The jury awarded \$251,000 in damages to Maria Guadalupe Mejia Alcantara and assessed \$82 million in punitive damages against Portfolio Recovery Associates, LLC, a debt collection firm. The case began two years ago when Ms. Alcantara was sued by the company for not paying a credit card debt of about \$1,130. The bank had sued the wrong person because Ms. Alcantara didn't owe the debt. Ms. Alcantara filed a counter-claim in the suit, alleging violation of the federal fair debt collection act.

Source: *The Kansas City Star*

XXV. RECALLS UPDATE

We are again reporting a large number of safety-related recalls. We have included some of the more significant recalls that were issued in May. If more information is needed on any of the recalls, readers are encouraged to contact Shanna Malone, the Executive Editor of the Report. We would also like to know if we have missed any safety recalls that should have been included in this issue.

THE SAGA OF THE TAKATA AIR-BAG RECALLS CONTINUES

Recently, there have been lots of highly significant developments on the Takata air-bag recall front. We wrote about the recalls in detail in the automobile section and won't repeat it here. I will just say that 34 million cars have been recalled and the story is far from over.

THREE MORE AUTOMAKERS JOIN TAKATA AIR BAG RECALL IN JAPAN

Three Japanese carmakers have recalled more than 700,000 vehicles equipped with air bags made by Takata, citing the company's admission that its air bags contained potentially dangerous faults. The recalls by Mazda, Mitsubishi and Subaru added 715,000 cars and trucks to what is already the largest auto safety recall in history. That number could grow, as the recall notices by Mazda and Subaru covered only models sold in Japan. The two companies said they were consulting safety regulators in other countries to determine whether additional recalls were needed. Mitsubishi said it would recall vehicles abroad.

DAIMLER TRUCKS ADDED TO TAKATA AIRBAG RECALL LIST

Daimler Truck North America has also been added to the laundry list of manufacturers affected by the Takata airbag recall. Daimler Trucks claims the number of affected trucks is small. As of press time, the scope of Daimler trucks to be recalled—including model and number of units—was unknown. A National Highway Traffic Safety Administration document names Daimler Trucks North America as one of eight manufacturers that installed 7.7 million Takata airbags.

FORD RECALLS 156,000 MORE CARS OVER DOOR LATCH DEFECT

Ford Motor Co. has expanded the recent safety recall for vehicles potentially affected by faulty door latches that can block doors from closing or cause them to unlatch while the car is in motion, upping the number of affected cars to nearly 550,000 in North America. The automaker said in a statement that 156,000 additional vehicles were being added to its April 24 recall of 390,000 model year 2012 to 2014 Ford Fiestas and 2013 to 2014 Ford Fusion and Lincoln MKZ vehicles. The National Highway Traffic Safety Administration requested the expansion of the recall.

The safety recall is the third latch-related recall by the automaker in 2015, following a March recall of 213,000 Ford Explorer and Police Interceptor SUVs and a January recall of 205,000 Ford Taurus sedans. The automaker said that the affected vehicles may have door latches that have a broken pawl spring tab, which can result in a condition that prevents the door from latching. "If a

customer is then able to latch the door, there is a potential the door may unlatch while driving, increasing the risk of injury," Ford said.

The agency launched its preliminary investigation of door latch problems in 2011 to 2013 Ford Fiesta models in September and upgraded it to an engineering analysis on Feb. 27. NHTSA's Office of Defects Investigation has received 207 unique reports of latch problems in the car models, 65 of which claim a door opened while the car was moving. The agency goes through an engineering analysis to determine if it needs to ask an automaker to issue a recall. The Office of Defects Investigation said that the rate of door latch failures in the Ford models is "comparable" to those in other door latch failure investigations. It also questioned the efficacy of warning signals, given the number of claims that a door opened while the car was moving.

FORD LAUNCHES 2 RECALLS ON MORE THAN 440,000 VEHICLES

Ford Motor Co. has launched two safety recalls for more than 440,000 North American vehicles because of power steering glitches or elevated underbody temperatures. Neither has caused injuries, according to the automaker. This comes one month after a prior recall involving power steering concerns. The first set of recalls involves nearly 423,000 vehicles, including certain 2011-2013 Ford Taurus and Flex vehicles and Lincoln MKS and MKT vehicles, plus certain 2011-2012 Ford Fusion and Lincoln MKZ vehicles and 2011 Mercury Milan vehicles. Ford said it issued the recall after learning of a potential intermittent electrical connection in the steering gear that might result in the loss of electrical power steering while driving. "If this happens, the steering system defaults to manual steering mode, making the vehicle more difficult to steer, especially at lower speeds," Ford said in a statement. "This could result in the increased risk of a crash." The company said its dealers will either update software for the power steering control module or replace the steering gear, depending on what diagnosis determines is needed.

Separately, Ford is recalling about 19,500 2015 Ford Mustang vehicles with a 2.3-liter engine for elevated underbody temperatures. The automaker said prolong exposure to elevated underbody temperatures might degrade the fuel tank and fuel vapor lines, which could result in a fuel leak. Prolonged

exposure to such temperatures could also cause parking brake cable seals to degrade, potentially affecting parking brake functions.

Ford acknowledged that a fuel leak in the presence of an ignition source increases the risk of fire. The automaker also said impaired parking brakes could result in unexpected vehicle movement. The company said it is not aware of any accidents, injuries or fires from this problem. Ford dealers will replace the current fuel tank shield with better insulating capability, install thermal patches on the fuel tank and parking brake cable and install thermal wraps on the fuel lines.

GM RECALLS 522,000 VEHICLES OVER SEAT SAFETY

General Motors has announced two safety recalls on improperly anchored seats and seat belts attached by cables prone to fatigue that affect nearly 522,000 cars and trucks, making it the largest recall for the automaker so far this year. The automaker said 437,045 of its model year 2011 and 2012 Chevy Malibus in the U.S. and 31,842 in Mexico and Canada had seat belts that could come loose from the vehicle after wear. It also said 52,930 2015 model Chevy and GMC midsize pickup trucks had seats that may not have been installed properly.

GM explained that steel cables anchoring the seat belt to the car were susceptible to wear as the rider moved around in the seat. Dealers will replace a bracket to move the seat belt tensioner toward the back, inspect the cable and replace the lap pretensioner if necessary. The car manufacturer said there had been 36 warranty claims over the incident, though it only knew of one minor injury and no crashes or fatalities connected to the flaw.

GM also recalled the 2015 models of its Chevy Colorado and GMC Canyon trucks. The affected trucks sold in the U.S. and Canada had seat frames that were not correctly attached to the body when they were assembled. When drivers bring the trucks in, dealers will inspect the hooks that attach the seat frame to the vehicle and repair them if necessary. GM said it does not know of any injuries, crashes or fatalities that have resulted from the loose seats.

OXO RECALLS NEST BOOSTER SEATS

Nest Booster Seats have been recalled by OXO, of El Paso, Texas. The stitching on the restraint straps can loosen which

allows the straps to separate from the seat, posing a fall hazard to children. This includes about 25,000 in the U.S. and 130 in Canada. This recall involves the Nest Booster Seat sold in green (model 6367200), pink (model 6367300), taupe (model 6367500) and orange (model 6367400) with a white base. A sticker affixed to the underside of the seat reads "Nest Booster Seat" with the model number and manufacture date. The manufacture date code represents the month and year in MMY format and recalled units have the code: 0714, 0814, 0914, 1014, 1114 or 1214. The formed plastic seats are about 13 inches wide by 14 inches tall by 12 inches deep and have a grey three-point child restraint strap system. The OXO logo is embossed on the restraint system's buckle. The firm has received five reports of the stitching coming undone releasing the straps following a child pulling on the strap or an adult tightening the straps. No injuries have been reported.

The seats were sold at buybuy Baby, Toys R Us/Babies R Us and independent specialty stores nationwide and online at Amazon.com from September 2014 through April 2015 for about \$55. Consumers should immediately stop using the Nest booster seats and contact OXO for a free repair kit with redesigned safety straps and installation instructions. Consumer Contact: OXO at (800) 545-4411 from 9 a.m. to 6 p.m. ET Monday through Friday, email at info@oxo.com or online at www.oxo.com and click on Customer Service under the Contact Us tab at the bottom of the page for more information.

FELT BICYCLES RECALLS CRUISER BICYCLES

Felt Bicycles of Irvine, Calif., has recalled about 200 Felt Cruiser bicycles. The bicycle's brakes can fail, posing a crash hazard. Consumers should immediately stop using the recalled bicycles and contact their local Felt bicycle dealer for a free inspection and replacement of the rear hub cog/driver. This recall involves beach cruiser style Felt Deep Six and El Guapo model bicycles with one speed and coaster brakes. "Felt" and "Deep Six" or "El Guapo" are printed on the bicycle's frame. The Deep Six was sold in black cherry with white sidewall tires and the El Guapo was sold in matte black with white tires. The Deep Six has a serial number between YI31106188 and YI31106287. The El Guapo has a serial number between YI31106288 and YI31106387. The serial number is printed on the bicycle's bottom bracket. Felt Bicycles

has received 26 reports of incidents with the recalled bicycles. No injuries have been reported.

The bicycles were sold at bicycle specialty stores nationwide from June 2014 through March 2015 for between \$600 and \$750. Contact Felt Bicycles toll-free at 866-433-5887 from 8 a.m. to 5 p.m. PT Monday through Friday or online at <http://www.feltbicycles.com/> and click on "Notices" for more information.

HEWITT RECALLS MARINE WINCHES

About 1,000 Chain driven winches have been recalled by Hewitt Machine & Manufacturing Inc., of Nicollet, Minn. The top and bottom roller chains in the winch can break, causing the winch and marine lift to fail. This can pose an injury hazard to the user or bystander. This recall includes Hewitt Machine & Manufacturing winches with model number 1501, 2001 and 2501 printed on the front label of the product. The winches can be used in various marine lifts. The products are silver, metal and measure 21 inches high by 12 inches wide by 8 inches deep. Recalled winches were manufactured December 2013 through September 2014 and have a date code in the MM YY format stamped on the front right side of the product. There have been six incidents of the roller chains breaking in the recalled winch housing. No injuries have been reported.

The winches were sold at Independent boat and watersport dealers nationwide and internationally and online at buyhewitt.com from April 2014 through October 2014 for about \$400. Consumers should immediately stop using the recalled winches and contact Hewitt Machine & Manufacturing or their local dealer to arrange for a free replacement of the roller chains. Contact Hewitt Machine & Manufacturing Inc. at 800-544-2067 from 8 a.m. to 4:30 p.m. CT Monday through Friday or online at www.hewitt-roll-a-dock.com and click on "2014 Lift Chains Recall" link at the bottom of the page for more information.

IKEA RECALLS PRESSURE-MOUNTED SAFETY GATES DUE TO FALL HAZARD

PATRULL KLÄMMA and PATRULL SMIDIG Safety Gates have been recalled by IKEA North America Services LLC, of Conshohocken, Penn. The friction between the wall and the pressure-mounted safety gate is insufficient to hold the gate in its intended position, posing a fall hazard. In addition, the

lower metal bar can be a tripping hazard. These safety gates are white, made of steel and plastic, and measure about 29 inches high with an adjustable width from about 29 inches to 34 inches. The gate has a spring mechanism that fits between the two sides of the door frame to hold the gate in place. A permanent label is attached to the metal bar at the bottom of the safety gate containing an article number. To view a list of article numbers for gates being recalled, visit <http://www.cpsc.gov/en/Recalls/2015/IKEA-Recalls-Pressure-Mounted-Safety-Gates/> There have been 18 incidents worldwide, including three incidents in which children have been injured as a result of falling down stairs. No injuries have been reported in the U.S.

The gates were sold at IKEA stores nationwide and online at www.ikea-usa.com from August 1995 through February 2015 for about \$35. Consumers should stop using the safety gate and return it to any IKEA store for a full refund. Any PATRULL KLÄMMA / SMIDIG safety gate extensions may also be returned for a full refund. Consumers who want to keep their PATRULL KLÄMMA or SMIDIG safety gate for limited use in a doorway between rooms or at the bottom of a staircase can contact IKEA to receive free updated user instructions and new adhesive warning labels to put on their safety gate. Contact: IKEA toll-free at 888-966-4532 anytime or online at www.ikea-usa.com and click on the recall link on the top or bottom of the page for more information.

PEDEGO RECALLS ELECTRIC BICYCLE BATTERIES DUE TO FIRE HAZARD

Pedego Inc., of Irvine, Calif., has recalled about 5,000 Lithium ion rechargeable batteries. The batteries can overheat, posing a fire hazard. This recall involves 36-volt and 48-volt lithium ion rechargeable batteries sold separately and as original equipment with Pedego electric bikes. Recalled batteries of each voltage came in two styles. One style has a silver or black metal case that measures about 13 ½ inches long, 6 ½ inches wide and 2 ½ inches high, with black plastic end caps and a handle. The other style has a black or white plastic case that measures about 14 inches long, 6 ½ inches wide and 2 ½ inches high with a red indicator lamp on one end. The batteries have serial numbers that start with "DLG." A label with the serial number is on one side of the metal batteries and on the underside of the plastic batteries.

Pedego has received six reports of batteries overheating and catching fire, including one report of property damage. No injuries have been reported.

The batteries were sold at bicycle stores and electric bike retailers and online at www.pedegoelectricbikes.com from January 2010 through September 2013. The batteries were sold separately for about \$600 to \$900 and on electric bicycles that sold for between \$2,000 and \$3,000. Consumers should immediately remove the battery from the bike and contact Pedego for a free replacement battery. Contact Pedego Electric Bikes toll-free at 888-870-9754 from 8 a.m. to 5 p.m. PT, email info@batteryrecall2015.com, or online at www.pedego-electricbikes.com and click on "Voluntary Battery Recall" for more information.

VIKING RANGE RECALLS GAS RANGES

Gas ranges have been recalled by Viking Range LLC, of Greenwood, Miss. The ranges' ovens can turn on by themselves, posing a burn hazard to consumers. This recall involves Viking Range freestanding gas ranges sold in stainless steel, black, white and 21 different colors and finishes. The ranges were sold in various surface configurations: All burners or burners with griddle and/or grill. The ranges are about 36 inches tall to the top of the side trim, 30, 36, 48 or 60 inches wide and 24.5 inches deep to the end of the side panel. The model and serial numbers can be found on a label in one of three locations: On the bottom of the control panel above the door, on the front of the oven cavity below the control panel, or on the inside of the left side panel; which can be seen by removing the left front grate and burner bowl. Consumers should only search for the model and serial number when the range is not hot. To view a list of model and serial numbers included in this recall, click here: <http://www.cpsc.gov/en/Recalls/2015/Viking-Range-Recalls-Gas-Ranges/>. Viking Range has received 75 reports of gas ranges turning on by themselves, including three reports of burns and four reports of property damage claims, with one claim resulting in a payment of \$850.

The gas ranges were sold at ABT, Ferguson, Morrison, Pacific Sales, PC Richard & Son and other stores nationwide from July 2007 through June 2014 for between \$4,000 and \$13,000. Consumers should immediately contact Viking Range to schedule a free in-home repair.

While waiting for a free repair, consumers can contact Viking Range for steps to avoid a burn injury. Contact Viking Range toll-free at 877-929-2581, from 8 a.m. to 5 p.m. ET Monday through Friday or www.vikingrange.com and click on Safety Recall Information at the bottom right of the homepage for more information.

ELECTROLUX RECALLS KENMORE ELITE RANGES

About 250 Sears Kenmore Elite dual fuel ranges have been recalled Electrolux Home Products Inc., of Charlotte, N.C. The burner flame can go out while the gas is turned on. This can allow gas to escape and poses fire and burn hazards. This recall involves Sears Kenmore stainless steel slide-in ranges with gas cooktops and electric ovens. Model number 790.42603xxx with serial numbers ranging from AF42500601 through AF43000916 and model number 790.42613xxx with serial numbers ranging from AF42500541 through AF43103647 are included. The model and serial numbers are located on the inside frame of the range door on the left side. Kenmore Elite is printed on the front of the oven door. The ranges were sold exclusively at Sears stores nationwide from June 2014 through October 2014 for between \$3,200 and \$3,700.

KALDI'S COFFEE ROASTING RECALLS JAVA JACKET CUP SLEEVES

About 700,000 Java Jacket Disposable Cup Sleeves have been recalled by Kaldi's Coffee Roasting Company, of St. Louis, Mo. The Java Jacket cup sleeve can ignite if used in a microwave, posing a fire hazard. Consumers should immediately stop using and discard the recalled Java Jackets. This recall involves Kaldi's Coffee Java Jackets disposable paper cup sleeves used with 12- and 16-ounce paper cups. The black paper cup sleeves have the "Kaldi's Coffee" and the company logo printed on the front, and "100% Recycled Paperboard" printed on the back. Kaldi's has received two reports of the Java Jackets catching fire when heated in the microwave. No injuries have been reported.

The sleeves were sold at Kaldi's Coffee Roasting stores in Missouri from February 2014 through March 2015 at no cost with hot drinks. Contact Kaldi's toll-free at 888-892-6333 from 9 a.m. to 5 p.m. CT Monday through Friday, or online at <http://kaldiscoffee.com/> and click on "Recall" for more information.

PRECISION TRADING RECALLS ESPRESSO MAKERS DUE TO RISK OF BURNS

About 4,700 PREMIUM® Espresso Makers have been recalled by Precision Trading Corp., of Miami, Fla. The filler cap at the top of the unit can crack and allow steam to escape, posing a risk of burns to the user. In addition, the cap can pop off unexpectedly as a result of pressure buildup, posing a risk of injury to a bystander. This recall involves Precision Trading Corp.'s PREMIUM® four-cup Espresso Makers manufactured in September 2014 and November 2014. The recalled units have model number PEM585 and product date code "0914" or "1114" printed on a rating label affixed to the bottom of the espresso maker. The Premium logo is printed on the bottom front of the espresso maker. Espresso makers with "2015" marked on the cap are not included in this recall. The company has received one report of a consumer who sustained burns to her arm when the cap unexpectedly released steam from the espresso maker.

The makers were sold at BrandMart U.S.A. and other retail stores in Florida and Puerto Rico between November 2014 and February 2015 for about \$30. Consumers should immediately stop using the recalled espresso makers and contact Precision Trading Corp. to request a free replacement cap. Contact Precision Trading Corp. at 800-477-4501 from 9 a.m. to 5:30 p.m. ET Monday through Friday, by email at recall@precisiontrading.com or visit the company's website at www.premiumus.com and click on Recall Information for more information.

BABY'S DREAM RECALLS CRIBS AND FURNITURE DUE TO VIOLATION OF LEAD PAINT STANDARD

About 4,600 cribs and furniture pieces and accessories with vintage grey paint finish have been recalled by Baby's Dream Furniture Inc., of Buena Vista, Ga. The vintage grey paint on the cribs, furniture, and accessories exceeds federal lead limits. If ingested, lead can cause adverse health effects. This recall involves Baby's Dream full-size cribs, furniture and accessories sold in a vintage grey paint finish under the Brie, Braxton, Heritage, Everything Nice and Legendary collections. Cribs and furniture included in this recall were manufactured between March 2014 and March 2015 in Chile. A label affixed to the bottom of the crib's back frame and the back panel of the furniture lists the product name, date and location of man-

ufacture, model number and purchase order number (PO#). Model numbers included in the recall can be viewed here: <http://www.cpsc.gov/en/Recalls/2015/Babys-Dream-Recalls-Cribs-and-Furniture/>

The cribs and furniture were sold at specialty furniture stores nationwide and online at BabysDream.com from March 2014 through March 2015 for between \$350 and \$900 for the cribs, and between \$450 and \$1,000 for the dressers, hutches, nightstands, bookcases and chests. Additional accessories were sold for between \$100 and \$300. Consumers should immediately contact Baby's Dream to arrange for an exchange. Contact: Baby's Dream Furniture at 800-835-2472 from 9 a.m. to 5 p.m. ET Monday through Friday, or visit the firm's website at www.babysdream.com and click on the recall image for more information.

KENMORE ELITE RANGES RECALLED BY ELECTROLUX DUE TO LACERATION HAZARD

About 5,300 Sears Kenmore Elite slide-in ranges have been recalled by Electrolux Home Products Inc., of Charlotte, N.C. The stainless steel trim below the range control panel can have a sharp edge, posing a laceration hazard to consumers. This recall involves Sears Kenmore Elite stainless steel slide-in gas, electric and dual-fuel ranges. The model and serial numbers are located on the inside frame of the range door on the left side. Kenmore Elite is printed on the front of the oven door. To view a list of models and serial numbers for ranges being recalled, visit <http://www.cpsc.gov/en/Recalls/2015/Kenmore-Elite-Ranges-Recalled-by-Electrolux/>. One consumer reported being cut by a sharp edge on the stainless steel trim below the range control panel and required stitches.

The ranges were sold exclusively at Sears stores nationwide from May 2014 through April 2015 for between \$2,400 and \$3,700. Consumers should immediately contact Sears for a free inspection and free repair. Contact Sears at 800-873-5011 between 7 a.m. and 9 p.m. CT Monday through Friday, between 7 a.m. and 6 p.m. CT on Saturday or online at www.sears.com and click on Product Recall at the bottom of the page for more information.

FDA RECALLS MAQUET HEART DEVICE OVER DEATH AND INJURY REPORTS

The U.S. Food and Drug Administration has issued a recall of a Maquet Medical

Systems USA medical device used during heart surgery. This came after reports that 51 injuries and at least one death have been caused by the device tearing tissue in the top left chamber of the heart. The FDA issued a Class 1 recall—the most serious of its kind—for Maquet's TigerPaw System II in March after receiving word from the company that there were complaints about the device causing bloody tears in the heart. In issuing the safety alert, the FDA noted that 51 injuries and one death had been reported.

All 4,154 devices distributed between April 2013 and March 2015 were recalled, according to the FDA notice. Maquet, the New Jersey-based subsidiary of German device manufacturer Holding BV & Co. KG, picked up the TigerPaw system in 2013 when it acquired TigerPaw developer LAAX Inc., according to a company statement at the time announcing the merger. The system is used to obstruct the left atrial appendage during open heart surgery. Recently Maquet has been receiving complaints that the device is actually tearing the appendage and causing it to bleed, leading the company to send a letter to customers in March urging them to stop using the product. The TigerPaw System II was distributed only to hospitals.

The FDA said it has documented numerous violations at Maquet facilities in the past, with 45 recalls of its manufactured devices between 2009 and 2014, including five Class 1 recalls. In February, the FDA and Maquet's parent company entered into a \$6 million settlement to end a New Hampshire federal suit accusing the company of maintaining poor quality control at three subsidiaries. As part of that settlement, Maquet agreed to temporarily pull some products from its New Hampshire unit, including one that the FDA said might have led to a serious injury or death. According to a company statement, the TigerPaw recall is unrelated to the settlement agreement.

The FDA inspected the facility in Hudson, N.H., operated by subsidiary Atrium Medical Corp., along with facilities operated by two other subsidiaries in October 2013 and found major violations of quality system regulations, medical device reporting regulations and correction and removal regulations. While the New Jersey and German facilities will remain operational, Maquet will have to appoint an independent auditor to inspect the facilities and regu-

larly report to the FDA on its compliance progress.

COST PLUS WORLD MARKET RECALLS TWIST SWIVEL STOOLS

About 125,000 Twist Swivel Stools have been recalled by Cost Plus Management Services Inc., of Oakland, Calif. The weld joint attaching the stool seat to the center post can break, posing a fall hazard. This recall involves twist swivel stools with a light brown-finish wood seat and base with four black metal legs. The stools measure 24.5 inches high in the non-extended position and 29.5 inches when fully extended. SKU number 438000 is printed on the UPC sticker attached to the underside of the stool seat. The company has received 12 reports of the stool's joint breaking. No injuries have been reported.

The stools were sold exclusively at Cost Plus World Market and World Market stores nationwide and online at www.worldmarket.com from February 2011 through February 2015 for about \$120. Consumers should immediately stop using the recalled stool and return it to any Cost Plus World Market or World Market store for a full refund. Refunds can be used toward the purchase of a replacement stool when it becomes available. Contact Cost Plus World Market toll-free at 877-967-5362 from 7 a.m. to midnight ET daily or online at www.worldmarket.com and click on "Product Recalls" for more information.

IKEA EXPANDS CRIB MATTRESS RECALL

IKEA has recalled its crib mattresses. The company's SULTAN and VYSSA crib mattress could create a gap between the mattress and the crib ends larger than allowed by federal regulations. The gap poses an entrapment hazard to infants. Approximately 300,000 in the United States, and about 44,000 in Canada have been recalled by the company, according to the Consumer Product Safety Commission (CPSC).

The Swedish retailer received two reports of infants becoming entrapped between the mattress and an end of the crib. The children were removed without injury. Consumers are recommended by the CPSC to immediately stop using a recalled mattress and inspect it by making sure there is no gap larger than the width of two fingers between the ends of the crib and mattress. The mattresses, which retail for about \$20 to \$100, were sold at stores nationwide and online between October of 2000 and May of last year.

About 169,000 VYSSA crib mattresses were recalled in January. The expansion includes about 131,000 SULTAN crib mattresses in the U.S. and 44,000 in Canada. Consumers are asked to return the mattress to any IKEA store for an exchange or full refund.

VALOR ATHLETICS RECALLS OLYMPIC WEIGHT BENCH

About 100 Weight benches have been recalled by Valor Athletics Inc., of St. Petersburg, Fla. The weld joining the front leg to the main frame can break, posing an injury hazard to the user. This recall involves Valor Fitness BF-38 Flat/Incline/Decline Olympic Benches. The benches are used to perform various free weight exercises. The recalled benches have a gray, steel frame that measures 53 inches long by 43 inches wide by 47 inches tall and have black, multi-position seat and back pads. They have adjustable bar supports with safety bar hooks and plate storage pegs on the rear of the uprights. The Valor Fitness logo and model number are on the main cross frame between the two uprights.

The benches were sold at Valorathletic-sinc.com and Valorfitness.com from January 2014 to September 2014 for about \$300. Consumers should immediately stop using the bench and contact Valor Fitness for a free repair. Contact Valor Fitness toll-free at 844-277-1641 Monday through Friday from 9 a.m. to 4 p.m. ET, if you call after hours, please leave a message, you can always email Info@valorfitness.com or online at www.valorathleticsinc.com or www.val-orfitness.com and click on CPSC Information in the Help column for more information.

TENPOINT CROSSBOW TECHNOLOGIES RECALLS TO REPAIR CROSSBOWS

About 127,000 TenPoint and Wicked Ridge crossbows have been recalled by Hunter's Manufacturing Company Inc., dba TenPoint CrossBow Technologies of Mogadore, Ohio. After the safety has been re-engaged, the crossbows can fire under certain circumstances if a consumer pulls the trigger, posing an injury hazard. This recall involves nine models of two brands of crossbows that can be identified by their serial numbers, which are located on the left side of the barrel of the crossbow below the trigger box. The TenPoint or Wicked Ridge brand name is printed on both sides of the crossbow barrel on all models except the GT Flex. The model name appears on both sides of the stock on

all models. The GT Flex crossbows are black.

The other affected models are camouflage patterns. One TenPoint Titan Extreme model crossbow and one Wicked Ridge Warrior HL model crossbow were specially produced in black, rather than the camouflage pattern that is standard for those models. The crossbows were manufactured from 2011 to 2014. For a full listing of crossbow models being recalled, visit <http://www.cpsc.gov/en/Recalls/2015/TenPoint-Crossbow-Technologies-Recalls-Crossbows/>. TenPoint has received 19 reports that arrows released from the crossbows when the consumer pulled the trigger under certain circumstances after the safety mechanism was re-engaged. There have been no reported injuries.

The bows were sold at Bass Pro Shops, Cabela's, Dick's Sporting Goods, Dunham's Sports, Gander Mountain, MC Sports, other hunting and sporting goods stores nationwide; direct sales from TenPoint; and online at Amazon.com, Basspro.com, Cabelas.com, dickssportinggoods.com and other internet retailers from January 2011 to May 2015 for between \$400 and \$1,800. Consumers should immediately stop using the recalled crossbows. Contact TenPoint for detailed instructions on how to inspect any TenPoint or Wicked Ridge crossbow and instructions on how to receive a free repair, if the crossbow poses an unexpected firing hazard. Contact TenPoint Crossbow Technologies at 800-548-6837 from 9 a.m. to 5 p.m. ET Monday through Friday, by email at safetyrecall@tenpointcrossbows.com, or online at www.tenpointcrossbows.com/ and www.wickedridgecrossbows.com/ and click on "Recall to Repair—Self Test" for more information.

SNOW PEAK RECALLS JAPANESE AXE DUE TO LACERATION AND IMPACT HAZARDS

Snow Peak USA, of Portland, Ore., has recalled 220 Japanese Axe M. The handle of the axe can crack, allowing the axe head to come loose, posing a laceration or impact hazard to the user or bystanders. The recalled Japanese Axe M has item number R-061 printed on the back page of the included manual. The black axe head measures 5-3/4 inches high by 4 inches wide and weighs 2 pounds. The axe handle measures 14 inches long and is made of a light colored maple. A small black snowflake (asterisk) is burnt into the handle near the hole at the end of the handle.

The handle has a small hole near the end, which is used for hanging the axe. The axe was sold with a white leather holder for the axe head that attaches with a snap strap.

The Japanese Axe M's were sold at Outdoor equipment retail stores including Adventure 16, Backcountry Gear LTD, Camp Saver, Snow Peak Portland Store, UTE Mountaineer, and online at www.snowpeak.com from December 2013 through August 2014 for about \$160. Consumers should immediately stop using the recalled Japanese Axe M and return it to the Snow Peak's Portland retail store or contact Snow Peak for a free replacement axe. Contact Snow Peak toll-free at 855-407-8390 from 9 a.m. to 5 p.m. PT Monday through Friday, email at recall@snowpeak.com or online at www.snowpeak.com and click on the recall poster for more information.

ROCKY BRANDS RECALLS ROCKY RUBBER SNAKE BOOTS

About 1,800 hunting boots have been recalled by Rocky Brands Inc., of Nelsonville, Ohio. The boots' snake guard can fail to protect the wearer's feet from a snake bite. The recalled boots are 16-inch tall rubber hunting boots sold under the Rocky brand name. The recalled boots have a camouflage pattern on the outside of the shaft and foot. A white label on the inside of the shaft of has the Rocky logo, product number RKYS153, a date code between 12-14 and 01-15 in the MM-YY format and the words "Men's 16 Silent Hunter Snake Boot, Camo" below the product number and date code. The company reports one incident of the boots' snake guard failing in which a Rocky Brands contractor sustained injuries from a snake bite while demonstrating the product.

The boots were sold at various retailers nationwide, including Tomlinson's, Bowie Outfitters, and Mossy Oak stores, and online at www.rockyboots.com during March 2015 for about \$200. Consumers should stop wearing the recalled boots immediately and contact Rocky Brands for a full refund or a free pair of replacement snakebite-proof hunting boots in one of the following models: Lynx Snake, Classic Lynx Snake, Pro-light Snake in lace up, pull-on or side-zip styles. Contact Rocky Brands Inc. toll-free at 866-245-2159 from 8 a.m. to 12 a.m. ET Monday through Friday and 8 a.m. to 5 p.m. Saturday and Sunday, email at customer.service@rockybrands.com, or online at www.rockybrands.com.

brands.com or www.rockyboots.com and click on Recall Notice for more information.

SCHYLLING RECALLS POLICE PRESS AND GO TOY VEHICLES

Police Press and Go Toy Vehicles have been recalled by Schylling Inc. of Rowley, Mass. The hat can detach from the policeman's head and pose a choking hazard to young children. This recall involves the Police Press & Go toy vehicles. The white plastic toy cars have a painted dark blue hood and trunk, light blue windshield with a black eyes and mouth painted on the front of the car. There is a police head coming out of the roof of the car wearing a blue police hat with a green star on the center of the hat. When the police head is pressed down it winds up the motor and the car moves forward. The toy vehicles measure about 2.5 inches wide by 3.5 inches long by 3.5 inches tall. "Schylling Rowley, MA" and UPC number "01964922782" are printed on the bottom of the toy cars. Schylling has received one report of the police hat detaching from the toy vehicles. No injuries have been reported.

The toys were sold at specialty toy and gift stores nationwide from April 2010 through April 2015 for about \$5. Consumers should immediately take the recalled toy vehicles away from children and contact Schylling for a full refund. Contact Schylling at 800-767-8697 from 8:30 a.m. to 5 p.m. ET Monday through Friday, email at SafetyAlert@Schylling.com or online at www.schylling.com and click on Safety Alerts & Recalls at the top of the page for more information.

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

XXVI. FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

BEAU DARLEY

Beau Darley, a lawyer in the firm's Mass Torts Section, came to us in August 2011. He worked in the beginning on cases involving metal-on-metal hip implants, including the DePuy ASR hip system, which was recalled in August 2010. Beau now works on claims in the transvaginal mesh (TVM) litigation. This litigation is very important and is ongoing.

Beau earned his B.S. degree in Agricultural Business and Economics from Auburn University in 2007. While at Auburn, he was a Student Ambassador for Auburn University's College of Agriculture and a member of Alpha Zeta Honorary Agricultural Fraternity. As an ambassador, he represented the College at various alumni events and handled alumni communications.

After graduating from Auburn, Beau moved to Birmingham to work for a bank, but then decided to take the LSAT since law was a career path he had always considered. Beau felt his interests in debate, advocating for people, and problem solving made the legal field far more exciting than working at a bank.

Beau then attended Samford University's Cumberland School of Law, earning his J.D. in 2011. He was a member of the Cumberland National Trial Team, and was a member of the team that won the AAJ Regional Trial Competition in Dallas, Texas, in February 2010.

Beau is a member of the Alabama State Bar, Alabama State Bar Young Lawyers Section and the Montgomery County Bar Association. He also serves on the Board of Directors for the Montgomery County Bar Association Young Lawyers Section. He is a team captain on the YMCA Boys Work Committee, which raises money for the Montgomery YMCA, and he is an active member on the Jimmy Hitchcock Memorial Award Committee, which awards high school student athletes who excel in athletics and exhibit Christian leadership.

Beau says the thing that sets Beasley Allen apart for him is the number of talented lawyers who devote 100 percent of their time to helping injured victims. He says he is thankful to have the opportunity to work with and learn from many of the brightest and most respected lawyers, not only in the state of Alabama, but throughout the country. Beau is married to the former Nikki Irvin of Montgomery, and they attend The First Baptist Church in Montgomery. In his free time, Beau enjoys turkey hunting, playing golf and watching SEC football. Beau

is a very good lawyer who works very hard and is dedicated to helping his clients. We are most fortunate to have him with us.

ELIZABETH EILAND

Elizabeth Eiland, a Montgomery native known as Liz, joined Beasley Allen in 2012 as a lawyer in the firm's Mass Torts section. Liz is currently investigating injuries caused by Mirena, a dangerous hormone-releasing IUD that can cause uterine perforation, migration outside the uterus and even embedment in the uterus itself. She was previously involved in the firm's litigation against the drug Actos, which was used to treat Type 2 diabetes, but increased the risk of bladder cancer, especially with prolonged use.

Liz earned her Bachelor of Music Education degree from Troy University in 2006, graduating *summa cum laude*. She served as Vice President of the Alabama Executive Board for the Collegiate Music Educators National Conference. Liz is a member of the honor society Phi Kappa Phi. Prior to attending law school, Liz taught kindergarten through fifth grade elementary music and chorus for Fulton County Schools in Georgia.

Liz earned her J.D. from Cumberland School of Law in May 2012, graduating *cum laude*. While at Cumberland, she served as Research Editor of the Cumberland Law Review. She has published casenote: Elizabeth A. Eiland, CONSTITUTIONAL LAW—FIRST AMENDMENT—SECTION 441B'S PROHIBITION AGAINST THE USE OF CORPORATE TREASURY FUNDS FOR EXPRESS ADVOCACY VIOLATES THE FIRST AMENDMENT. CITIZENS UNITED V. FEDERAL ELECTION COMMISSION, 130 S. CT. 876 (2010), Cumberland Law Review, Volume 41, Number 1, 2010—2011, 179; and an additional byline: Eleventh Circuit: Survey of Recent Decisions—Civil Procedure—Pleading in Diversity Actions, 41 Cum. L. Rev. 428 (2011).

Liz says it was important for her to find a practice like that at Beasley Allen, one where she could be challenged daily to help make a positive difference in the lives of her clients. She says she is thankful to work for a firm that is well-respected, both locally and nationally, and honors its motto of "helping those who need it most."

Liz is married to Lance Eiland, pastor of Robinson Springs United Methodist Church in Millbrook. They have one dog named Toby. In her free time, Liz enjoys playing the saxophone with the "Prattville Pops," and kayaking in the Autauga Creek. Liz, a very good lawyer, is a hard worker who is dedicated to the causes of her clients. We are blessed to have her with the firm.

KATY MORGAN

Katy Morgan, who grew up in Oxford, Ala., has been with the firm for three years. Katy started out as a clerical assistant for our Personal Injury department and has recently

become a full time receptionist for our 218 building. Katy was homeschooled and attended Gadsden State Community College where she earned a general studies certificate in cosmetology and also studied music as well. As a receptionist with the firm, Katy is responsible for answering a high volume of daily calls that come through our switchboards. She assists callers by directing them to the appropriate attorney or staff member within the firm. Katy also greets and assists clients and others who may stop by the firm.

Katy has three brothers and one sister. She is married to Matt Morgan, who is a worship leader at Centerpoint Fellowship Church, which is located in Pike Road. She serves alongside her husband as a vocalist in the praise band. Katy also plays piano and is looking forward to learning how to play the cello as well as other instruments. As a certified Personal Trainer, Katy is passionate about health and fitness and hopes to spread that passion to others. Katy is doing a very good job in her new role as a receptionist. We are blessed to have her with the firm.

SANDRA MOTES

Sandra Moates, who currently serves as a clerical assistant for Frank Woodson and Matt Munson, came to work as a “temporary employee” at the firm in November of 2004. She was later hired on a permanent basis in June of 2005. Her current duties consist of bates stamping documents, filing, scanning, and ordering and downloading medical records. She handles other projects as the need arises.

Sandra has been married to her husband, Roger, for 36 years. They have one son and a granddaughter. Sandra enjoys spending time with family, traveling and reading. She is a very good employee and we are fortunate to have her with us.

TIRE INSPECTION EVENT HELD IN PRATTVILLE, ALABAMA

Our firm and the Prattville Police Department sponsored a free tire safety inspection on May 16 at the Prattville Town Center Police sub-station. A trained Prattville Police officer was on hand and did a good job, explaining the tire manufacturer’s code to each driver. The code serves as an expiration date for each tire.

With no dependable system in place to ensure tire safety, it falls to the consumer to be vigilant. Tire tread and inflation levels are common factors in tire-related accidents. Many people are not aware that as tires age the rubber can become more brittle and more prone to a blowout, regardless of tread or inflation levels. Our firm grateful to the Prattville Police Department for helping us spread the word and explain how to deter-

mine tire age and to instruct drivers on manufacturer guidelines.

XXVII. SPECIAL RECOGNITIONS

THE BRONNER VISION FOR GOLF HAS BEEN VERY GOOD FOR ALABAMA

Nearly 22 years ago, Dr. David Bronner, the head of Retirement Systems of Alabama (RSA) made it his mission to fund the Robert Trent Jones Golf Trail (RTJ) by promising Alabamians, “The stronger the Retirement Systems can make Alabama, the stronger the Retirement Systems of Alabama will be.” As a result of Dr. Bronner’s dream and his tireless efforts, Alabama’s economy now enjoys a \$9.3 billion tourist industry—and it’s still growing strong.

The RTJ Golf Trail wasn’t built by Dr. Bronner alone, but rather the work involved countless experts from all across the golf industry. Dr. Bronner first brought in former golf director Bobby Vaughan to organize a team consisting of the best of the best to tackle what has been known as the most ambitious golf course construction project in the game’s history. A total of 378 holes across seven stunning sites in Alabama would eventually form what would be known as the Robert Trent Jones Golf Trail.

Through 1992 and 1993, Alabama would see the realization of Dr. Bronner’s vision with the first seven facilities of the RTJ Golf Trail. The massive jump in tourism allowed Dr. Bronner to expand the RTJ Golf Trail with four more sites, bringing the RTJ’s total to 11 sites, 26 courses and 468 holes. In 2013, the RTJ Golf Trail celebrated its 10 millionth round—only about 20 years later. Dawn Hathcock, Vice President for the Montgomery Area Chamber of Commerce Convention & Visitors Bureau, had this to say:

Since its completion more than 20 years ago, the Robert Trent Jones Golf Trail continues to be a huge draw to Alabama and truly changed the image of our state. On any given night in Montgomery, you will see visitors that have spent their day playing The Trail and want to unwind and enjoy a great meal and the company of their fellow golfers.

The RTJ Golf Trail has even become a national hotspot for hosting multiple professional golfing competitions. Despite one of the greatest economic recessions since the “Great Depression,” Alabama has been able to lean on the RTJ Golf Trail as a source of strengthening the state’s weakened economy.

In 2012 alone, two LPGA pro events located in Mobile and Prattville brought in more than \$30 million in revenues to Alabama.

In the March 2014 issue of *The Advisor*, the official newsletter of the RSA, my good friend, Lee Sentell, who serves as the Director of Alabama Tourism, said, “In a short time, Alabama went from not being a golf state to becoming a destination that attracts some of the best tournaments and lots of fans. The substantial economic impact is important to our tourism industry.” Lee has done a tremendous job of promoting our state’s resources and is to be commended for his efforts. He has been a strong promoter of the Robert Trent Jones Golf Trail.

The Barbasol Championship, debuting later this summer at the Grand National—Lake Course, was recently announced by Governor Robert Bentley and representatives from the PGA Tour and the RTJ Golf Trail Foundation. As part of the four-year agreement, the Barbasol tournament will become part of the FedExCup competition, awarding 300 points to the tournament’s winner. Gov. Bentley stated:

Alabamians pride themselves on the beauty, hospitality and charm of our state, and we are excited to showcase that to the world with the PGA TOUR’s Barbasol Championship in the Auburn-Opelika area. This event will bring tens of thousands of people, from all over the world, to see the beauty that Alabama and the Robert Trent Jones Golf Trail has to offer.

Dr. David Bronner has been a tremendous asset to the State of Alabama. In addition to doing a remarkable job in handling the state’s retirement funds, Dr. Bronner has done a multitude of other good things for our state. I have great respect for Dr. Bronner, who will go down in history as one of the truly outstanding Alabamians. His contributors to Alabama have benefited both the state and to its people greatly. One of Dr. Bronner’s best and more refreshing traits is that if you ask him a question, you will always get a straight answer and it will be a good one.

My wife Sara says that if Dr. Bronner will run for Governor, she will campaign around the state for him. That’s about as strong of an endorsement as he will ever get. I agree with Sara’s belief that Dr. Bronner would be a great governor. Hopefully, he will consider a race in 2018.

Sources: *The Advisor*, 2015 RTJ Golf Trail Guide

FELLOWSHIP OF CHRISTIAN ATHLETES SETS A FOUNDATION FOR THE SPIRIT, MIND AND BODY

For more than 60 years, the Fellowship of Christian Athletes (FCA) has been providing an avenue for athletes, coaches and mentors

to impact the world for Jesus Christ. FCA focuses on serving local communities by equipping, empowering and encouraging people to make a difference for Christ. In Alabama, the FCA has been alive through volunteer service for more than 52 years, although the first official FCA board wasn't started in the state until 1978.

"Most of the 1960s and '70s FCA in Alabama was volunteer-driven, which is amazing," said John Gibbons, State Director of FCA. Today, FCA has 42 staff working throughout the state of Alabama, ministering to athletes and coaches on more than 450 campuses statewide. In 2015, FCA shared the love of Christ with more than 50,000 athletes and 3,200 coaches through 70 special events, summer camps, campus Huddle Groups, and Coaches Bible studies. More than 4,000 Bibles were distributed. "We teach excellence, integrity, teamwork and accountability," John explains. "This serves the young people in their lives, not only in sports but in every area."

FCA operates through a strategy known as the "Four Cs"—Campus, Coaches, Camps and Community. Each is an area of ministry.

- **Campus** ministry includes Huddle groups on school campuses from middle school up through college. There are more than 500 official Huddle groups in Alabama. These clubs usually meet before or after school. They have a Huddle Coach advisor but are primarily student-led. More than 50,000 students in the state of Alabama are involved in a Huddle. Activities include Bible study and a gospel outreach ministry that includes discipleship. It is a goal for Christian students who are members of the Huddle group to talk to their peers on campus and lead them to Christ, and help them find a church family.
- The **Coaches** ministry provides Bible studies for coaches; as well as conferences and other activities to help strengthen a Coach's walk with Jesus and provide him or her with the skills to share their faith and mentor the young people on their team. "They are with the kids sometimes more than the parents are," John says. "We believe the coaches are the greatest missionaries in America today. If they can use their role as a coach to reach athletes in a positive way, they can turn this world around."
- **Camps** are operated at both a national and local scope. Professional and college athletes work at the camps, which include physical development with competition and instruction in sports; plus spiritual development with chapel services three times a day; and mental development, helping kids learn self-confidence and how to be a leader. There are different camps for age groups middle school

through high school, and college athletes work as leaders. Many of the young people who attend FCA camps receive a scholarship to pay their way.

- FCA also provides a **Leadership Camp** for the students who will be leaders of their FCA Huddle the next year, so they will be trained and encouraged for their role. At leadership camp, they will develop a year-long strategy for their FCA Huddle group.
- The **Community** ministry is where adults can get involved. FCA hosted a Bowl Breakfast —last year in conjunction with the Camellia Bowl. Community supporters provided scholarships for students to attend. Five students accepted Christ at that event last year. FCA also hosted a Senior Bowl rally in 2014, attended by 3,000 youngsters. There are a variety of other community events throughout the year statewide. Members of the community are encouraged to get involved.

There are all sorts of volunteer opportunities with the FCA. They include overseeing a Huddle Group, praying for the coaching staff, meeting the teams at various times during the year, buying Bibles for the team, mentoring the kids, and providing breakfasts. This is a chance to work "hands on" to make a difference in the lives of young folks. Interested individuals also can serve as a Board member or on a development committee. There are volunteer opportunities in communities throughout Alabama.

If you would like to get involved with FCA Alabama, contact John Gibbons or Erick Armster at 334-546-4050. Erick is the Urban Area Director for the FCA. You can also support FCA with a financial contribution. Donations may be mailed to FCA, P.O. Box 230685, Montgomery, AL, 36123, or you can donate online by visiting www.alabamafca.org/donate.

ARCA DRIVER GRANT ENFINGER HITS A WALL AT TALLADEGA BUT KEEPS ON CHARGING

When last we left our favorite ARCA racecar driver Grant Enfinger, he was chasing another spot in the history books. Grant had already earned a place in ARCA history, having won three consecutive ARCA Racing Series events for the second year in a row. He is the first driver in ARCA's 63-year history to win the first three races of the season in consecutive years. Unfortunately, his victory chase hit a very real wall in Talladega on May 1, when he was caught up in crash that wrecked his racecar and injured another driver. Thankfully, Grant was not hurt.

Our law firm was Grant's first sponsor and sponsored him again at Talladega, with the race televised on Fox Sports 1. After the race,

Grant and the backup ARCA car bearing the Beasley Allen logo made a pit stop in Montgomery, where he visited with all his fans from the firm. Despite many requests, Grant did not allow any "guest drivers" to take the car for a spin up and down Commerce Street!

Although he was disappointed to wash out at Talladega, Grant was thankful to be unhurt and able to continue chasing his dreams. He said he plans to reflect on what went wrong and use the experience to analyze what went wrong and ready himself for the next race.

Last year, Grant won the H. G. Adcox Sportsmanship Award, named in honor of Grant Adcox, an ARCA driver killed during a NASCAR Winston Cup race. The award is presented each year to the driver who exhibits the ability to show class in competition and truly defines sportsmanship to fellow competitors, race officials and fans in the ARCA Racing Series. All of us at Beasley Allen are excited to watch Grant's progress. I am sure we will see Grant in victory lane many more times in his career!

Source: *Montgomery Independent*

XXVIII. FAVORITE BIBLE VERSES

Montgomery Mayor Todd Strange furnished his favorite scripture this month. Todd explained that his father died when he was a young boy. At that time, Todd says he was extremely mad with God because his father had died. However, over the years, scriptures found in 1 Corinthians 13:4-13 helped him to cope with his father's death and not to be angry. Todd is a dedicated Christian who loves the Lord and serves Him daily. He is doing an outstanding job as mayor of the Capital City.

Love suffers long and is kind; love does not envy; love does not parade itself, is not puffed up; does not behave rudely, does not seek its own, is not provoked, thinks no evil; does not rejoice in iniquity, but rejoices in the truth; bears all things, believes all things, hopes all things, endures all things. Love never fails. But whether there are prophecies, they will fail; whether there are tongues, they will cease; whether there is knowledge, it will vanish away. For we know in part and we prophesy in part. But when that which is perfect has come, then that which is in part will be done away. When I was a child, I spoke as a child, I understood as a child, I thought as a child; but when I became a man, I put away childish

things. For now we see in a mirror, dimly, but then face to face. Now I know in part, but then I shall know just as I also am known. And now abide faith, hope, love, these three; but the greatest of these is love. 1 Corinthians 13:4-13

Mike Crow, one of the veteran lawyers in our firm, furnished two verses for this issue. Mike says these scriptures have helped him to raise his two teenage children. He has to explain the virtues of patience and strength to his children quite often. Those virtues are great qualities to have—whether you are a teenager growing up in today's world or a grown up coping with all of today's stressors.

Fear not, for I am with you, Be not dismayed, for I am your God, I will strength you, I will uphold you with my righteous right hand. Isaiah 41:10

Knowing that the testing of your faith produces patience. But let patience have its perfect work, that you may be perfect and complete, lacking nothing. James 1:3,4

Erick Armster, the Urban Area Director for the FCA in Alabama, sent in a timely verse this month. Erick says that the theme for the 2015 FCA summer camp is "undefeated," and he points out that we serve a God who is undefeated.

But thanks be to God, who gives us the victory through our Lord Jesus Christ. 1 Cor. 15:57

Debbie Galloway, from Albertville, Alabama, furnished a timely verse to be included in this issue. Her verse discusses spiritual gifts. Incidentally, Mrs. Galloway is Chris Glover's mother-in-law.

Now concerning spiritual gifts, brethren, I do not want you to be unaware. Now there are varieties of gifts, but the same Spirit. And there are varieties of ministries, and the same Lord. There are varieties of effects, but the same God who works all things in all persons. But to each one is given the manifestation of the Spirit for the common good. 1 Corinthians 12:1& 4-7

Brittany Scott, a lawyer in our Mass Torts Section, furnished a verse for this issue. Brittany says that she loves 1 Corinthians 2:1-5 because it teaches that anyone can share God's word if they allow Him to speak through them.

And I, brethren, when I came to you, did not come with excellence of speech or of wisdom declaring to you the testimony of God. For I determined not to know anything among you except

Jesus Christ and Him crucified. I was with you in weakness, in fear, and in much trembling. And my speech and my preaching were not with persuasive words of human wisdom, but in demonstration of the Spirit and of power, that your faith should not be in the wisdom of men but in the power of God. 1 Corinthians 2:1-5

Courtney Gray, who is working in our Mass Torts Section, furnished one of her favorite verses for this issue. Courtney says that at times it can be difficult to understand what is going on in your life, or why certain things happen, but that she knows everything happens for a reason.

Wait on the Lord: be of good courage, and he shall strengthen thine heart: wait, I say, on the Lord. Psalm 27:14 King James Version (KJV)

XXIX. CLOSING OBSERVATIONS

SOME 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

THE PERSONS WHO CHEATED CANCER PATIENTS SHOULD BE PUT IN JAIL

Alabama Attorney General Luther Strange has joined other attorneys general across the country in a federal lawsuit against cheaters who operated four phony cancer charities. The group literally stole \$187 million in donations. The operators portrayed the so-called charities as legitimate organizations that focused on supporting cancer patients. Instead, donations were wasted and misused, cancer patients were not helped, and the charities were illegitimate.

Donors were told that contributions would provide pain medication to children with cancer, help transport patients to chemotherapy appointments and pay for hospice care. Instead, the majority of the contributions—often at least 85 percent—went to the perpetrators, along with their families and friends. If that sort of thing does constitute criminal violations, the laws need to be changed.

The defendants hired family members and friends, spending more money on salaries than on goods and services for cancer patients. The attorneys general said they used donations to buy cruises, jet ski outings, concert tickets and memberships to dating sites and covered up the misuse by wrongful reporting on financial statements.

The complaint claims that the charities "operated as personal fiefdoms characterized by rampant nepotism, flagrant conflicts of interest, and excessive insider compensation, with none of the financial and governance controls that any bona fide charity would have adopted." Officials from all 50 states, Washington, D.C., and the Federal Trade Commission joined together to file the civil suit. The complaint names Cancer Fund of America Inc., Cancer Support Services Inc., and the president of these two corporations, James Reynolds Sr.; as well as the CFO of both and the former president of Cancer Support Services, Kyle Effler; Children's Cancer Fund of America Inc., and its president and executive director, Rose Perkins; and The Breast Cancer Society Inc., and its executive director and former president, James Reynolds II.

The Defendants are charged with misrepresenting that contributions would be used for charitable purposes, misrepresenting specific program benefits, misrepresenting revenue and program expenses related to international gifts-in kind, and misrepresenting that the primary focus was to provide direct assistance to individuals in the U.S. Thirty-six states also charged defendants with making false and misleading filings with state charities regulators. Alabama Attorney General Luther Strange had this to say:

These aggressive enforcement actions are necessary to protect consumers, so that they may have confidence in donating to true and worthy charities. This case is a sad example, however, of how important it is to be aware of where your contributions are going and to research to ensure the integrity of charities.

There have been the following developments involving settlements that are related to the ongoing investigation:

Two corporations and three individuals have reached settlements in the lawsuit, while litigation is ongoing against the others. In their settlements, five Defendants agreed to leave the "charity business" and to stop fundraising. Children's Cancer Fund of America and Rose Perkins agreed to entry of a judgment for \$30,079,821, the amount donated between 2008 and 2012. The judgment against the organization will be partially satisfied by payment of the proceeds of the liquidation of all its assets by a receiver. Perkins will be banned from fundraising, from managing a charity, and from oversight of charitable assets.

Breast Cancer Society agreed to entry of a judgment for \$65,564,360, the amount donated between 2008 and 2012. Breast Cancer Society also agreed to the appointment of a liquidating receiver who will close its operations and dissolve its corporate existence. James Reynolds II will be

banned from fundraising, from managing a charity, and from oversight of charitable assets.

Finally, Kyle Effler agreed to a \$41,152,231 judgment, the amount donated to Cancer Support Services between 2008 and 2012. Effler will be banned from fundraising, from managing a charity, and from oversight of charitable assets.

Litigation will proceed against Cancer Fund of America, Cancer Support Services, and James Reynolds, Sr. The civil action was filed in the U.S. District Court for the District of Arizona. The settlement agreements will not be final until approved by the court. I am not sure how much actual money will be received from the settlement.

The individuals who engaged in this massive fraud, using the fear of cancer and the desire of persons to contribute to the fight against the dreaded disease, should be ashamed of what they have done. Not only should they be ashamed, they should be prosecuted in the criminal courts to the fullest extent of the law. I would hope that criminal prosecutions would be more than just a possibility. If what these people did isn't a crime, we need some changes in our laws dealing with this sort of thing.

Source: AL.com

XXX. PARTING WORDS

There are all sorts of folks in our world and each one of them has some traits that are like those of others. But all are also quite different in lots of ways. In fact, as we all know, no two people are totally alike. We have our likes and dislikes and it would be a mighty dull place if all of us liked the same things. There is one trait that is very high on my list and that is loyalty. I have always put a high value on loyalty and have tried my best to be loyal to my family, to my friends and to my co-workers. Unfortunately, I have dealt with a few individuals over the years who put very

little stock in loyalty. I suspect each of you have known a few folks like that.

Sara and I have had a number of great dogs over the years. The first was Duke, a German Shepherd, who came to live with us in Tuscaloosa and was a great dog. Duke was followed by two other German Shepherds, Tiger and Blazer. Then came Dixie, a mix who I found abandoned on I-65 and I brought home to Rosemont Drive. Dixie had a litter of puppies in about 2 weeks. We kept one of the pups, Sam, and placed the others in good homes. We also had Beau, a French Poodle, a tough fella who fit right in with the big boys.

Another great pup to come to live with us was a little guy named Lawyer. He might have been the toughest of the lot. Lawyer was definitely Sara's buddy. Sam, our first Black Lab, became a member of the family when we lived out on the Woodley Road farm. Sam was a big, strong boy who liked it better outdoors. Buck was our cow dog. He was a Border Collie-Blue Healer mix, was purchased at a horse show and he joined Sam at the farm.

We now have Buddy, another Black Lab, and Woody, a Bulldog-Great Dane mix, and those two are like brothers. They have been with us now for about 12 years and are great dogs. Buddy will meet Sara at the foot of the stairs every morning. He used to go up to our bedroom on second floor and wait for her there. But he now avoids the stairs and waits for her on the first floor. Woody is our watchdog and he can smell a person as far away as the front gate. He is extremely protective and will let us know if anybody is heading our way. Both Buddy and Woody love attention, or I should say they demand attention, and make sure they get it on a regular basis.

The one trait each of our dogs has had is extreme loyalty. Each of them really loved us and showed it daily. We considered each of our pups to be a real friend and also a faithful and loyal companion. Humans could learn lots from dogs when it comes to loyalty. For anybody who doesn't have a dog, I strongly recommend that they get one. They will teach lots about loyalty to any person who needs a good lesson in that area. I am totally convinced that God gave us dogs for a reason.

To view this publication on-line, add or change an address, or contact us about this publication, please visit our Website: BeasleyAllen.com

No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.

218 COMMERCE STREET (36104)
POST OFFICE BOX 4160
MONTGOMERY, ALABAMA 36103-4160
(334) 269-2343
TOLL FREE
(800) 898-2034
TELECOPIER
(334) 954-7555
WEB PAGE
www.BeasleyAllen.com

PRESORTED
STANDARD
U.S. POSTAGE
PAID
MONTGOMERY, AL
PERMIT NO. 275

RETURN SERVICE REQUESTED



Jere L. Beasley, Principal & Founder of the law firm Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. is one of the most successful litigators of all time, with the best track record of verdicts of any lawyer in America. Beasley's law firm, established in 1979 with the mission of "helping those who need it most," now employs over 75 lawyers and more than 175 support staff. Jere Beasley has always been an advocate for victims of wrongdoing and has been helping those who need it most for over 35 years.



No representation is made that the quality of services to be performed is greater than the quality of legal services performed by other lawyers.

Beasley Allen
BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, P.C.
Attorneys at law
helping those who need it most since 1979